

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

NO. AB-31 (SUB-NO. 38)

**CSX Corporation and CSX Transportation, Inc. – Adverse Abandonment Application –
Canadian National Railway Company and Grand Trunk Western Railroad Inc.**

BACKGROUND

This proceeding involves an application for adverse abandonment filed before the Surface Transportation Board (Board) by CSX Corporation and CSX Transportation, Inc. (collectively, CSX) under 49 U.S.C. 10903. Canadian National Railway Company (CNR) and its wholly-owned affiliate Grand Trunk Western Railroad Incorporated (GTRI) (jointly, GTW) are the owners of the line being proposed for adverse abandonment.¹ The line is 2952 feet in length and extends from milepost 26.4 to milepost 27.0 of the adjacent Baltimore & Ohio Chicago Terminal Railroad Company (BOCT) Blue Island Subdivision mainline. The line is the northern segment of Track No. 239, which is near 43rd Street and Damen Avenue in Chicago, Cook County, Illinois.

An adverse abandonment is a proceeding where a party other than the one who is the owner or operator of the line comes before the Board to request that the Board withdraw its jurisdiction over the line and require or permit abandonment of the line by issuing an abandonment certificate. CSX has done so here by requesting that the Board permit abandonment of a GTW rail line. Such an abandonment certificate would enable CSX to pursue court proceedings regarding the disposition of the line. The Board and its predecessor, the Interstate Commerce Commission, have long held that granting an adverse abandonment application would remove this agency's primary jurisdiction over the line, thereby subjecting the line to actions under state law.²

GTW owns the track, but leases the real estate on which the right-of-way is situated from New York Central Lines (NYC). CSX has an operating agreement with NYC, acquired as part of CSX's acquisition of certain assets of Consolidated Rail Corporation (Conrail), making it the operator of the leased property and the enforcer of the lease. CSX terminated the lease and

¹ GTRI states in its February 21, 2001 Reply to CSX's Petition for Waiver that it owns the line at issue here and contends that CNR is not a proper party to this proceeding.

² See Modern Handcraft, Inc. - Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operations Exempt. - Aban., 7 I.C.C. 2d 216, 224-26 (1990); and Chelsea Property Owners - Aban. - The Consol. R. Corp., 8 I.C.C. 2d 773, 778 (1992), aff'd sub nom. Conrail v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

attempted to evict GTW from the line through a forcible entry and detainer action filed in the U.S. District Court for the Northern District of Illinois (District Court) in May 2000.

GTW filed a motion to dismiss in response to CSX's action, asserting that the Board has jurisdiction over the line and Board authorization must be obtained before GTW can be forced to abandon the line. The District Court dismissed the action, indicating that only the Board could decide whether the track fell under its jurisdiction.³ Subsequently, CSX filed this adverse abandonment application before the Board. In its application CSX states that it "seeks the issuance of a certificate of abandonment to GTW so that CSX can enforce its lease agreement under state law, assume control of the line and thereafter put Track No. 239 to the use in the manner envisioned in the Conrail transaction." (Application at 4).

According to CSX, GTW stopped using the line in 1996. GTW had previously used the line to access the Chicago Junction (CJ) tracks from the Railport intermodal facility, located south of the line, near 43rd Street. CSX states that in 1996 GTW opened a new intermodal facility and re-routed its trains, turning Railport into a storage area.

CSX constructed a new intermodal facility, the 59th Street facility, in 1999 to use with the BOCT mainline. Although several carriers use the BOCT mainline, including CSX, CSX states that GTW does not use the BOCT mainline.

If the adverse abandonment is granted, CSX seeks to use the line to facilitate its use of the BOCT mainline and gain more access to the 59th Street intermodal facility. CSX claims that it needs to use the line to reduce delays on the mainline. CSX currently controls a portion of Track No. 239, which is too short to hold the majority of CSX's intermodal trains. When trains are required to wait before entering or exiting the 59th Street facility, they cannot clear the mainline, causing rail traffic congestion and delays of up to six times a day or three or four hours per day, according to CSX. If CSX could utilize the entire length of Track No. 239, including GTW's portion, all intermodal trains would be able to fit on the track, and in CSX's opinion, obstruction of the BOCT mainline would be reduced. Although CSX has trackage rights on the line, these rights would not allow it to combine the entire length of Track No. 239. Also, CSX claims that GTW has refused to allow CSX to operate over its portion of Track No. 239.

CSX states that it is willing to grant GTW trackage rights over Track No. 239 and that GTW could also obtain trackage rights over the adjacent Track No. 237, which Norfolk Southern (NS) operates.

A map depicting the rail line in relationship to the area served is appended to the report. If the Board approves the application for adverse abandonment, GTW will be able to salvage track, ties and other railroad appurtenances, and to dispose of the right-of-way. Given the nature of this proceeding, GTW's intentions regarding salvage of the line are unknown.

³ See CSX Transportation, Inc. v. Canadian National Railway Co., et al., Case No. OOC 1462 (N.D. Ill.).

DESCRIPTION OF THE LINE

According to CSX, there are no shippers or traffic on the line. CSX plans to leave the line in place and operate over the line. But if GTW removes tracks or ties, CSX states that it will replace them to make the line operational.

The area surrounding the line is highly industrialized, with numerous rail tracks nearby. Track No. 239 is connected to CJ tracks on the northern end, and to the 59th Street intermodal facility at the southern end. GTW's portion of the track is the northern segment of the track. In a verified statement CSX's General Manager for Intercarrier Agreements, Lawrence L. Ratcliffe, states that the line's "location immediately adjacent to the BOCT mainline establishes Track No. 239 as the only track that can provide a long lead track to 59th Street with connection to the BOCT mainline." (Application attachment, Verified Statement of Lawrence L. Ratcliffe, at 5).

ENVIRONMENTAL REVIEW

CSX has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. CSX has served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules at 49 CFR 1105.7(b). We have investigated and reviewed the record in this proceeding.

CSX intends to engage in continued use of the line. According to CSX, after CSX begins using the line, the traffic on the line will consist of approximately ten trains per day, which will be shifted to Track No. 239 from the BOCT mainline. CSX claims that the shifting of the trains will actually reduce air emissions, because there will be fewer train delays on the BOCT mainline.

Although operations over the line will not cease, GTW may decide to salvage the track on the line. CSX would then need to replace the removed track with its own track. CSX states in its environmental report that "[a]ny replacement of removed material will be accomplished by use of right-of-way for access, along with existing public and private crossings, and no new access roads are contemplated. Applicant does not intend to disturb any of the underlying roadbed or perform any activities that would cause sedimentation or erosion of the soil, and does not anticipate any dredging or use of fill in the replacement of the track material. Also, during any track replacement, appropriate measures will be implemented to prevent or control spills from fuels, lubricants or any other pollutant materials from entering any waterways."

Comments have been received from the City of Chicago, Department of Planning and Development stating that the proposed adverse abandonment will not conflict with the city's land use planning instruments.

Comments have been received from the Natural Resources Conservation Service stating that there is no prime farmland in the area of the proposed adverse abandonment.

Comments have also been received from the Fish and Wildlife Service stating that the proposed adverse abandonment will not “adversely affect any federally threatened or endangered species or adversely modify critical habitat of such species.”

HISTORIC REVIEW

Although Board regulations at 49 C.F.R. 1105.8(a) normally require applicants for abandonments to submit historic reports and comply with historic review provisions, CSX has indicated that the application in this case is exempt from such review under the Board’s rules at 49 C.F.R. 1105.8(b)(1). CSX believes that applicants would need additional Board approval before service on the line could be terminated and that there are no structures or properties 50 or more years old that would be affected by the adverse abandonment proceeding.

CONDITIONS

We recommend that no environmental conditions be placed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed adverse abandonment would include denial (and therefore no change in operations) and discontinuance of service without abandonment. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a certificate of interim trail use (CITU) is due to the Board, with a copy to the railroad, by June 8, 2001. Nevertheless, the Board will accept late-filed requests as long as it

retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment. **Please refer to Docket No. AB- 31 (Sub No. 38) in all correspondence addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Rini Ghosh at (202) 565-1539.

Date made available to the public: **May 25, 2001.**

Comment due date: June 22, 2001 (30 Days)

By the Board, Victoria J. Rutson, Acting Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

MAP TO BE SCANNED