

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35495

CSX TRANSPORTATION, INC.—LEASE EXEMPTION—CONSOLIDATED RAIL
CORPORATION

Digest:¹ This decision permits CSX Transportation, Inc. to lease from Consolidated Rail Corporation approximately 1,303 feet of rail line in the South Jersey/Philadelphia Shared Assets Area in Philadelphia, Pa. Under the lease, CSXT proposes to construct a new connection between its Trenton Subdivision Line and the leased line to improve traffic flows.

Decided: June 30, 2011

By petition filed on April 18, 2011, CSX Transportation, Inc. (CSXT or petitioner) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25 to lease from Consolidated Rail Corporation (Conrail) approximately 1,303 feet of rail line (the Line) in the South Jersey/Philadelphia Shared Assets Area, between mileposts 5.20 and 5.45 in Philadelphia, Pa. Under the lease, CSXT proposes to construct an additional connection between one of its lines and the Line to improve area traffic flow. We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

According to CSXT, the Line is currently used by Conrail, Norfolk Southern Railway Company (NS), and to a minimal extent, CSXT. Petitioner uses the Line as a connection between its Trenton Subdivision Line (Trenton Line) and the Amtrak-owned, Conrail-operated, Delair Branch in Philadelphia. CSXT asserts that its lease of the Line will not affect use of the Line by Conrail or NS.

CSXT states that its Trenton Line and the Line join at a single turnout, and that the existing configuration of the tracks does not allow petitioner to make efficient use of the Line to

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

connect its Trenton Line and the Delair Branch. CSXT proposes to construct an additional connection between the Line and the Trenton Line. The new connection would facilitate operations over the Trenton Line and the Delair Branch.

The project will be located on property owned by CSXT and Conrail. The portion of the turnout into Conrail's track will be on existing Conrail right-of-way, with the remainder of the turnout on CSXT's right-of-way. The new track will be constructed and owned by CSXT, although the new connection turnout into Conrail's track and some signaling will be located on Conrail property.

CSXT states that, to facilitate the project, it has agreed to lease the Line. CSXT further states that the parties have agreed that it will operate and maintain the newly configured connection to simplify control, maintenance, and operation in the Philadelphia area.

CSXT states that the new connection will not allow it to serve any new shippers or to invade any new territory. The additional track will merely enhance the efficiency of an existing operation in the area without disrupting operations over the Line by Conrail or NS, and without any anticompetitive effect.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. This project is designed solely to make existing rail operations more efficient, an objective that is entirely consistent with the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. § 10101(2)], ensure the development and continuation of a sound rail transportation system [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation [49 U.S.C. § 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. § 10101(7)], and encourage efficient management of railroads [49 U.S.C. § 10101(9)]. Other aspects of the rail transportation policy are not adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Service options available to shippers will not be diminished. Accordingly, the lease will have no adverse effects on competition and will not result in any foreclosure of

competition in the transportation corridors served by the individual carriers. There are no interline routes to close or existing divisions with connecting carriers to cancel. Rather, the lease should benefit shippers by allowing CSXT and Conrail to reconfigure a connection to move traffic more efficiently. No shippers have filed comments objecting to the lease. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate—California Western Railroad, 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 C.F.R. § 1105.6(c) and the historic reporting requirements under 49 C.F.R. § 1105.8(b).

CSXT requests expedited consideration of its petition in order to commence construction of the proposed connection as soon as possible. Accordingly, the request will be granted and the exemption will be effective on July 16, 2011, rather than the normal 30 days.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. §§ 11323-25 CSXT's lease of the above-described segment, subject to the employee protective conditions in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate—California Western Railroad, 360 I.C.C. 653 (1980).

2. Notice of the exemption will be published in the Federal Register on July 6, 2011.

3. This decision will be effective on July 16, 2011. Petitions to stay must be filed by July 11, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.