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SERVICE DATE – SEPTEMBER 12, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35661

GRAND TRUNK WESTERN RAILROAD COMPANY—ACQUISITION OF OPERATING
EASEMENT—CSX TRANSPORTATION, INC.

Decided: September 11, 2012

On August 13, 2012, Grand Trunk Western Railroad Company (GTW), an indirect, wholly owned subsidiary of Canadian National Railway Company (CN), filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements at 49 U.S.C. §§ 11323-25 to acquire from CSX Transportation, Inc. (CSXT) an exclusive, perpetual, non-assignable railroad operating easement over approximately 2.1 miles of CSXT's Memphis Terminal Subdivision, between Leewood, Tenn., milepost 00F371.4, and Aulon, Tenn., milepost 00F373.4 (the Leewood-Aulon Line). The Leewood-Aulon Line is currently owned by CSXT. Illinois Central Railroad Company (IC), a GTW affiliate, operates over it via trackage rights. Along with the proposed easement acquisition by GTW, CSXT would retain local and overhead trackage rights over the Leewood-Aulon Line.¹

GTW's easement acquisition is one element of an Agreement for Exchange of Perpetual Easements between GTW and CSXT.² In exchange for GTW's acquiring an easement from CSXT over the Leewood-Aulon Line, GTW has agreed to grant CSXT an exclusive, perpetual, non-assignable railroad operating easement over 22.37 miles of GTW track on the Elsdon Subdivision between the connection with CSXT at Munster, Ind., milepost 31.07, and Elsdon, Ill., milepost 8.7, which connects to the southern end of the BNSF Railway Company's Corwith Yard (Elsdon Line). CSXT currently operates over the Elsdon Line via trackage rights.³ As part of CSXT's acquisition of this easement, GTW would retain local and overhead trackage rights

¹ CSXT's retained trackage rights would limit the total number of CSXT trains operating over the Leewood-Aulon Line to 16 trains per day, but the parties may agree to increase that number. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, application, vol. 2, Exh. E of Exh. F, § 3.2 (filed August 13, 2012).

² See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, application, vol. 2 (filed Aug. 13, 2012). Volume 2 includes this overarching agreement and a number of related agreements.

³ See CSX Transp., Inc.—Trackage Rights Exemption—Grand Trunk W. R.R., FD 35346 (STB served Feb. 12, 2010).

over the Elsdon Line.⁴ CSXT has also agreed to convey local and overhead trackage rights over the line to a number of GTW's affiliates and to a CSXT subsidiary, the Baltimore & Ohio Chicago Terminal Railroad Company. On August 13, 2012, the same day GTW filed its petition for exemption in this docket, CSXT filed, in Docket No. FD 35522, an application pursuant to 49 U.S.C. § 11323(a)(2) and 49 C.F.R. pt. 1180 seeking approval for its proposed easement acquisition over the Elsdon Line,⁵ and notices of exemption were filed in two embraced subdockets for CSXT's grants of trackage rights over the Elsdon Line.⁶

Today, the Board is issuing a decision and publishing a notice in the Federal Register in Docket No. FD 35522 and the two embraced subdockets that accepts that application and the related subdocket filings. Because the proposed easement acquisitions in this docket and Docket No. FD 35522 are related parts of the same overall easement exchange—and indeed, each easement acquisition is essentially the sole consideration for the other⁷—the Board is adopting a schedule under which it will consider and rule on the petition for exemption in this docket and the application in Docket No. FD 35522, et al., at the same time.

⁴ In the agreement by which GTW is retaining trackage rights over the Elsdon Line, GTW (referred to in the agreement as CN) agrees that its traffic shall not be limited over the line, except that the total number of CN/Union Pacific Railroad Company interchange trains using the Line between Blue Island (at or near milepost 19.3) and Munster (Milepost 31.07) is limited to two trains in each direction per day. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, application, vol. 2, p. 2 and Exh. E of Exh. E, § 3.2 (Filed August 13, 2012). The agreement in Docket No. 35522 (Sub-No. 2) in which CSXT grants trackage rights to the GTW affiliates includes a similar limit to two trains in each direction per day. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, application, vol. 2, Exh. F of Exh. E, § 3.2 (filed Aug. 13, 2012).

⁵ See CSX Transp. Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522 (application filed Aug. 13, 2012). Volume 2 of the application filed in Docket No. FD 35522 includes the agreement for GTW's easement over the Leewood-Aulon Line and the agreement for CSXT to retain trackage rights over that line. A protective order is being served today in Docket No. FD 35522. The proceeding in this Docket No. 35661 is considered a “related proceeding” under the terms of that protective order.

⁶ See Balt. & Ohio Chi. Terminal R.R.—Trackage Rights Exemption—CSX Transp., Inc., FD 35522 (Sub-No. 1) (verified notice of exemption filed Aug. 13, 2012, in volume 3 of the application in FD 35522); Chi., Cent. & Pac. R.R., Elgin, Joliet & E. R.R., Ill. Cent. R.R., & Wisc. Cent. Ltd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35522 (Sub-No. 2) (verified notice of exemption filed Aug. 13, 2012, in volume 3 of the application in FD 35522).

⁷ See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, application, vol. 1, p. 5 (filed Aug. 13, 2012).

To accomplish this goal, today's decision institutes a proceeding in this docket⁸ and adopts a procedural schedule that generally matches the schedule announced for Docket No. FD 35522, et al.⁹ Under the procedural schedule for Docket No. FD 35661: any person who wishes to participate in this proceeding as a party of record must file a notice of intent to participate no later than September 26, 2012; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the petition, must be filed by November 9, 2012; and responses to comments, protests, requests for conditions, and other opposition, as well as petitioner's rebuttal in support of the petition, must be filed by November 29, 2012. The Board plans to issue its final decision by February 8, 2013.

It is ordered:

1. Under 49 U.S.C. § 10502(b), a proceeding is instituted in this docket.
2. Interested parties are directed to follow the procedural schedule in the attached Appendix A.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

⁸ The Board must decide whether to begin an appropriate proceeding within 90 days after receiving a petition for exemption. Any proceeding shall be completed with nine months after it is begun. See 49 U.S.C. § 10502(b).

⁹ An environmental review is not necessary for GTW to acquire the easement over the Leewood-Aulon Line. GTW explains in its petition that the proposed acquisition would not result in any operational changes that would exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) and (5), and that this Tennessee transaction would not result in any action that would normally require environmental documentation. Additionally, as noted by GTW, under 49 C.F.R. § 1105.8(b)(1), this proposed easement acquisition is also exempt from historic preservation reporting requirements.

APPENDIX A: PROCEDURAL SCHEDULE

August 13, 2012	GTW's petition for exemption filed with the Board.
September 26, 2012	Notices of intent to participate due.
November 9, 2012	Comments due from all parties on the petition for exemption.
November 29, 2012	Replies to comments due. Petitioner's rebuttal in support of the petition due.
February 8, 2013	Final decision served.