

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION—ACQUISITION EXEMPTION—
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

Decided: August 6, 2009

The notice of exemption under 49 CFR 1150.31 for Florida Department of Transportation (FDOT), a noncarrier, to acquire from CSX Transportation, Inc. (CSXT) certain physical assets and associated right-of-way, including approximately 61.5 miles of rail line in Poinciana, Volusia, Seminole, Orange, and Osceola Counties, FL, was served and published on April 17, 2009 (74 FR 17896-97). Together with the notice of exemption, FDOT filed a motion to dismiss the notice of exemption on the ground that the Board lacks jurisdiction over the acquisition because CSXT would retain an exclusive, permanent rail freight easement and FDOT would not obtain the right to provide freight service over the rail line. Replies to the motion to dismiss were due by May 7, 2009.¹

On May 7, 2009, FDOT filed a letter to withdraw its previous request for expedited consideration of its motion to dismiss and requested that the Board hold this proceeding in abeyance. FDOT stated that the Florida legislature did not pass the legislation required for the proposed transaction to proceed and that the implications of this development are under review. FDOT stated that it would advise the Board of its intentions within 30 days. By decision served on May 14, 2009, the Board held the proceeding in abeyance until June 8, 2009. On June 5, 2009, FDOT requested that the Board continue to hold this proceeding in abeyance to complete its ongoing review of the situation. By decision served on June 19, 2009, the Board granted the request to continue to hold this proceeding in abeyance until August 7, 2009.

In a letter filed on August 3, 2009, FDOT requests that the Board continue to hold this proceeding in abeyance until December 31, 2009. FDOT states that CSXT has agreed to extend the date after which its contracts with FDOT may be terminated until December 31, 2009. FDOT also states it will continue to evaluate its options with respect to the proposed project and that it will advise the Board of its intentions by December 31, 2009. Accordingly, because the request is reasonable, the Board will continue to hold this proceeding in abeyance to give FDOT time to complete its ongoing review of the situation.

¹ On May 5, 2009, The Brotherhood of Railroad Signalmen filed a motion requesting an extension of time until May 22, 2009, to respond to FDOT's motion to dismiss the notice of exemption. In a decision served on May 7, 2009, that request was granted.

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

It is ordered:

1. This proceeding will be held in abeyance until December 31, 2009.
2. This decision is effective on the date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary