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SERVICE DATE – LATE RELEASE JUNE 3, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35520

THE NEW BRUNSWICK RAILWAY COMPANY—CONTINUANCE IN CONTROL
EXEMPTION—MAINE NORTHERN RAILWAY COMPANY

Docket No. FD 35518

MAINE NORTHERN RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—
MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

Docket No. FD 35519

MAINE NORTHERN RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—
MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

Digest:¹ The New Brunswick Railway Company (NBRC) asks for Board authority to control two railroads when one of its subsidiaries, Maine Northern Railway Company (MNRC), becomes an operator of a rail line. The line MNRC wishes to operate consists of 233 miles of line that had been approved for abandonment, but that was then bought by the State of Maine for continued rail service. Here, we grant NBRC the control authority it requests so that MNRC can begin rail service. Additionally, the original owner of the transferred line, Montreal, Maine & Atlantic Railway, Ltd. (MMA), has granted MNRC authority to operate over several of its lines. This decision allows NBRC and MNRC to exercise that authority on an expedited basis.

Decided: June 3, 2011

These proceedings concern: (1) the efforts by the State of Maine, by and through its Department of Transportation (State), and others to preserve rail service over approximately 233 miles of line in Northern Maine; and (2) the State's choice of Maine Northern Railway Company (MNRC) to operate that line. MNRC is currently a noncarrier, but it intends to file a modified certificate under 49 C.F.R. § 1150.22 to become a Class III carrier and to commence service on June 15, 2011. In furtherance of the new operations, MNRC's parent company, The New Brunswick Railway Company (NBRC), a noncarrier that already controls a Class III carrier, Eastern Maine Railway (EMR), filed a petition in Docket No. FD 35520 on May 20, 2011,

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).

seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323 and 11324² to continue in control of MNRC and EMR once MNRC becomes a Class III carrier. As discussed below, this decision grants the control exemption NBRC seeks in its petition and makes the exemption effective on June 15, 2011.

In related Docket Nos. FD 35518 and FD 35519, MNRC has concurrently filed notices of exemption to exercise trackage rights being granted to it by Montreal, Maine & Atlantic Railway, Ltd. (MMA). Normally under our rules, the trackage rights authority would become effective 30 days after the filing date, but NBRC and MNRC ask that we make the authority effective sooner to facilitate MNRC's proposed operations. This decision grants that request and makes those exemptions effective on June 15, 2011, as well.

BACKGROUND

NBRC's petition stems from an abandonment granted by the Board in Montreal, Maine & Atlantic Railway, Ltd.—Discontinuance of Service and Abandonment—in Aroostook and Penobscot Counties, Me., AB 1043 (Sub-No. 1) (STB served Dec. 27, 2010). In that docket, MMA had filed an application to abandon the 233 miles of rail line located in Northern Maine.³

The State actively sought to preserve service on the line. To that end, the State reached an agreement to purchase the line from MMA if the Board were to grant MMA abandonment authority. Specifically, the State proposed to acquire the line pursuant to the class exemption found in Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982), codified at 49 C.F.R. § 1150.22. The State also proposed to find a new operator. MMA agreed to the State's proposal, agreed to provide interim service until the new operator could begin operations, and requested that the Board issue a modified certificate pursuant to 49 C.F.R. § 1150.22 to allow it to provide the interim service.

² While NBRC does not reference in its exemption request 49 U.S.C. § 11325, which sets forth the procedures the Board must follow in handling a control application, we construe NBRC's exemption request as extending to any prior approval requirements of § 11325 as well.

³ The application, as amended, identified the line to be abandoned as comprising: (1) the Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties; (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County; (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County; (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County; and (5) the Houlton Subdivision, running between milepost 0.0 near Oakfield and milepost 17.27 near Houlton in Aroostook County, and including the B Spur.

As noted, the Board granted the application to abandon the line on December 27, 2010. In that decision, the Board also issued a modified certificate for MMA to provide interim service, but provided that the modified certificate would not become effective until the State acquired the line and MMA provided certain information, including the interim service agreement. On January 18, 2011, MMA filed the requisite data and indicated that it had conveyed the line to the State on January 14, 2011. MMA's modified certificate became effective on January 18, 2011, and it has provided interim service under that authority since that time.⁴

In April 2011, the State selected MNRC, currently a noncarrier, as the new operator. On April 14, 2011, MMA filed its 60-day notice to terminate its interim service. MMA noted that the interim service agreement provides that it must end its service by June 14, 2011, and that the new operator proposes to commence service immediately thereafter. In furtherance of this plan, MMA has sought trackage rights to connect the two parts of MMA's system separated by a segment of the transferred line.⁵

To facilitate the transition to MNRC operations, MNRC's parent company, NBRC, filed the instant petition on May 20, 2011. NBRC seeks an exemption to continue in control of EMR, a Class III carrier that NBRC already controls, and MNRC, once MNRC becomes a Class III carrier.⁶

NBRC asks that the exemption be given expedited handling and made effective on June 15, 2011.⁷ It notes that MNRC cannot begin operations without NBRC's having authority to control the two carriers, and that MMA service is scheduled to cease on June 14, 2011. NBRC asserts that, if the Board does not grant the exemption as requested or requires the parent company to seek authority through an application, a lapse in service could occur for the shippers on the line.

Also on May 20, 2011, in Docket Nos. FD 35518 and 35519, MNRC filed notices of exemption for trackage rights over various MMA lines that would provide MNRC with access to

⁴ See Montreal, Me. & Atl. Ry.—Modified Rail Certificate—in Aroostook and Penobscot Cntys, Me., FD 35463 (STB served Jan. 26, 2011).

⁵ In Montreal, Maine & Atlantic Ry.—Trackage Rights Exemption—Eastern Maine Ry., FD 35505 (STB served May 27, 2011), MMA invoked Board authority for trackage rights being granted to it by the new carrier. MMA made clear in a subsequent filing that, among other things, it sought the trackage rights from MNRC.

⁶ NBRC asserts that MNRC will file the requisite modified certificate when the Board makes the control exemption effective. This filing would make MNRC a Class III carrier and allow it to commence operations immediately.

⁷ Because MNRC will connect with EMR, NBRC filed a petition for exemption, rather than invoke the Board's class exemption for certain control transactions codified at 49 C.F.R. § 1180.2(d)(2).

other carriers in the area, including EMR. In its petition, NBRC asks that the Board expedite the effective date of these exemptions so that they become effective on June 15, 2011, as opposed to the customary 30-day period. MNRC echoes these requests in its notices of exemption.⁸ NBRC explains that such relief is warranted to allow it to coordinate properly the institution of its service to avoid a lapse in service that would otherwise occur after June 14, 2011. NBRC attaches letters supporting its petition for exemption from various shippers and the State.

On May 24, 2011, the Board, through its Director of the Office of Proceedings, made replies to NBRC's petition due on May 27, 2011. No opposition to NBRC's petition was filed.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. § 11323(a)(5). Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction or service from regulation if it finds that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is limited in scope; or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption in this case from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Approving the control transaction will allow MNRC to commence service to the shippers on the line so as to avoid a potential lapse in service. Detailed scrutiny through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary to carry out the RTP. Indeed, a lengthy proceeding could actually harm the RTP by creating a lapse in service while the application is under review. Rather, an exemption will promote the RTP by minimizing the need for Federal regulatory control over the proposed transaction, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry, in furtherance of 49 U.S.C. §§ 10101(2), (4), and (7). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. The State and a number of shippers support the transaction, and allowing it to proceed on an expedited basis will ensure that shippers will continue to receive service. Moreover, the common control of MNRC and EMR by NBRC should not lessen competition in Northern Maine because MNRC will preserve rail service over a line approved for abandonment, supporting our conclusion that regulation under 49 U.S.C. §§ 11323-25 is not necessary. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c),

⁸ See 49 C.F.R. § 1180.4(g)(1). NBRC and MNRC have served their respective petition and notices on all parties of record for the underlying abandonment in Docket No. AB 1043 (Sub-No. 1) to ensure that all interested parties have notice of the expedited treatment requested.

however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III rail carriers.

The acquisition of control is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

As indicated, NBRC has requested expedited action on its petition for exemption. NBRC points out that a lapse in service could occur if the exemption becomes effective after June 15, 2011. We will make the exemption effective on that date. Accordingly, this decision is being issued on an expedited basis, and the exemption is being made effective in less than the normal 30 days. To accommodate this effective date, we will make petitions for stay and for reconsideration due by June 10, 2011.

In the related Docket Nos. FD 35518 and 35519, NBRC and MNRC ask that the Board also make those exemptions effective on June 15, 2011. MNRC filed its notices of exemption on May 20, 2011, and absent action on our part, they would become effective on June 19, 2011, with stay petitions due by June 13, 2011. NBRC argues that the effective date should be advanced, given that MMA's service is scheduled to expire no later than June 14, 2011. We will grant the request and advance the effective date of the trackage rights exemptions. This action will promote efficient operations by eliminating extra interchanges for MNRC traffic and by allowing MNRC to better coordinate its operations from the outset. As in Docket No. FD 35520, we also will make petitions for stay due by June 10, 2011.

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, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 NBRC's continuance in control of MNRC.
2. NBRC's request for expedited action in Docket No. FD 35520 and NBRC and MNRC's requests for expedited action in Docket Nos. FD 35518 and FD 35519 are granted.
3. Notice in Docket No. FD 35520 will be published in the Federal Register on June 9, 2011.

4. The exemptions in Docket Nos. FD 35518, FD 35519, and FD 35520 will be effective on June 15, 2011. Petitions for stay must be filed by June 10, 2011, and petitions for reconsideration in Docket No. FD 35520 must be filed by June 10, 2011.

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