

SERVICE DATE – SEPTEMBER 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35018

STATE OF MAINE—ACQUISITION EXEMPTION—CERTAIN ASSETS
OF ST. LAWRENCE & ATLANTIC RAILROAD COMPANY

Decided: September 12, 2007

After evaluating a supplemental statement filed by St. Lawrence & Atlantic Railroad Company (SLR), the Board is granting a motion to dismiss filed by the State of Maine, acting by and through its Department of Transportation (Maine DOT).

BACKGROUND

On May 7, 2007, Maine DOT, a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from SLR certain right-of-way and trackage, totaling approximately 11 miles, in Cumberland County, ME. The rail line (Subject Line) extends between milepost 1.74 at Deering and milepost 12.163 south of the crossing diamond at Yarmouth Junction.¹ Simultaneously, Maine DOT filed a motion to dismiss the notice, asserting that the transaction is not subject to the Board's jurisdiction because Maine DOT will not become a common carrier as a result of the transaction.²

On June 20, 2007, the Board served a decision stating that it lacked information about current and future service by the line's freight carrier, SLR, to make a determination as to whether, after the transactions, SLR would maintain control of the Subject Line and continue to be able to fulfill its common carrier obligation. The Board was particularly concerned about SLR's ability to meet the needs of its shippers after the start up of passenger operations and whether SLR's easement is, in fact, "perpetual and exclusive."³ Consequently, the Board

¹ Notice of the exemption was served and published in the Federal Register on May 18, 2007 (72 FR 28095).

² In support of the motion to dismiss, Maine DOT submitted an amended purchase and sale agreement (P&S agreement), operating agreement, and a draft quitclaim deed from SLR to Maine DOT.

³ Specifically, the Board questioned whether the proposed 11 p.m. to 4:30 a.m. freight service window would be adequate for shippers' needs. The Board also noted language at section 2.3(d) of the operating agreement to the effect that Maine DOT will use its best efforts to select a new freight railroad operator that is willing to accept assignment of SLR's freight

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directed SLR to submit a statement clarifying those issues. The Board also directed SLR to serve a copy of the decision on all shippers for which it has provided service in the past two years, and to certify that it had done so. The shippers were invited to submit comments regarding the proposed freight operating window.

On July 5, 2007, SLR filed its statement. No shippers filed comments.

DISCUSSION AND CONCLUSIONS

SLR explains in its supplemental statement that it believes it can adequately satisfy its common carrier obligations on the Subject Line during the exclusive freight window between 11 p.m. and 4:30 a.m. because of the minimal traffic on the Subject Line and the short distance involved. According to SLR, it moved a total of 77 carloads of traffic over the Subject Line in 2006 and 24 in 2007 for two active customers—Burnham & Morrill and Hancock Lumber. SLR further explains that, within the last five years, it has provided service to a total of five shippers or receivers on the Subject Line.⁴ SLR asserts that the proposed freight window will provide sufficient time for it to complete its switching service for these customers, which takes approximately 3 hours once a week.

Moreover, SLR expects that Maine DOT most likely will be required to undertake improvements to the Subject Line in order to run passenger trains. SLR believes that freight customers will benefit from these improvements (including faster operating speeds), which will otherwise enhance its ability to provide freight service. SLR further states that no passenger service, routine maintenance, or upgrades will be allowed to occur during the exclusive freight window.

SLR also states that subsection 2.3(d) of the operating agreement does not give Maine DOT the ability to force it to abandon its common carrier easement on the Subject Line. According to SLR, upon commencement of passenger operations, its freight easement may be transferred only to a new operator agreeable to SLR, or SLR will continue to operate on the line jointly with Maine DOT. SLR maintains that the arrangement set forth in the agreement is fully consistent with the perpetual and exclusive nature of its freight easement, and that it will not give

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easement and attendant common carrier obligations. Moreover, if Maine DOT is able to select a new operator, and if SLR and the new operator can negotiate mutually acceptable terms and conditions for the coordination of operations on the Subject Line, SLR will assign the easement to the new operator and will terminate operations. If a new operator cannot be selected or agreement reached between SLR and the new operator, Maine DOT and SLR will jointly operate on the Subject Line. The Board expressed concern that this provision could provide a means by which Maine DOT could compel SLR to relinquish its easement.

⁴ According to SLR, in addition to the two customers previously mentioned, the only other active shipper is Richardson Dana, a small lumber company, which has not yet shipped by rail in 2007. Two others, Nappi Distributors and SLC Cement, are not presently shipping by rail.

Maine DOT the right to curtail or otherwise materially interfere with freight rail operations on the Subject Line.

Because SLR will continue to have sufficient access to the Subject Line to conduct its freight operations, and because SLR has explained that Maine DOT cannot force it to abandon its freight rail operations, we are satisfied that SLR will be able to continue to fulfill its common carrier obligation once the P&S and operating agreements' terms take effect. We are also satisfied that those agreements will not conflict with our precedent in Maine, DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835, 836-37 (1991). The fact that no shipper submitted comments objecting to the agreements supports these determinations. Therefore, no Board authorization for Maine DOT's purchase of the right-of-way and trackage of the Subject Line is required. Maine DOT's motion to dismiss the notice will be granted.

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

It is ordered:

1. The motion to dismiss the notice filed by Maine DOT is granted and the notice is dismissed.
2. This decision will be effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary