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FR-4915-01-P

## DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34495]

Buckingham Branch Railroad Company — Lease — CSX Transportation, Inc.

AGENCY: Surface Transportation Board, DOT.

**ACTION:** Decision No. 2 in STB Finance Docket No. 34495; Notice of Acceptance of Railroad Lease Application; Issuance of Procedural Schedule.

**SUMMARY:** The Surface Transportation Board (Board) is accepting for consideration the BBRR-1/CSXT-1 application (referred to as the BBRR/CSXT application) filed May 26, 2004, by Buckingham Branch Railroad Company (BBRR, a Class III railroad) and CSX Transportation, Inc. (CSXT, a Class I railroad) (BBRR and CSXT are referred to collectively as “applicants”).<sup>1</sup> The BBRR/CSXT application seeks Board approval and authorization under 49 U.S.C. 11321-26 for: (1) the lease by BBRR of an approximately 199.7-mile CSXT line (referred to as the C&O Line) that runs between Clifton Forge, VA, and AM Junction, VA (near Richmond, VA); and (2) the assumption by BBRR of CSXT’s lease of a 9.1-mile Norfolk Southern Railway Company (NS) line that runs between Gordonsville, VA, and Orange, VA (referred to as the Orange Line).<sup>2</sup> The Board finds that the BBRR/CSXT transaction proposed in the BBRR/CSXT application is a “minor transaction” under 49 CFR 1180.2(c), and the Board adopts, for the consideration of the BBRR/CSXT application, a 163-day procedural schedule (under which the Board’s final decision will be issued on November 5, 2004, the 163rd day after the day on which the application was filed).

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<sup>1</sup> The Board’s regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of \$250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than \$20 million but less than \$250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of \$20 million or less (in 1991 dollars). See 49 CFR Part 1201, General Instruction 1-1(a).

<sup>2</sup> The 9.1-mile length of the Orange Line is included in the 199.7-mile length of the C&O Line (i.e., the length of the C&O Line without the Orange Line would be 190.6 miles).

**DATES:** The effective date of this decision is **June 25, 2004**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **July 9, 2004**, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **August 24, 2004**. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the BBRR/CSXT application must be filed by **September 23, 2004**. If a public hearing or oral argument is held, it will be held **the week of October 4, 2004**. The Board will issue its final decision on **November 5, 2004**. For further information respecting dates, see Appendix A (Procedural Schedule).

**ADDRESSES:** Any filing submitted in this proceeding must be submitted **either** via the Board's e-filing format **or** in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent to each of the following (any such copy may be sent by e-mail, but only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Keith G. O'Brien (BBRR's representative), Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036; (4) Louis E. Gitomer (CSXT's representative), Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after July 9, 2004 as practicable).

**FOR FURTHER INFORMATION CONTACT:** Julia M. Farr, (202) 565-1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Two CSXT rail lines cross Virginia in a generally east-west direction between Clifton Forge, in the west, and Richmond, in the east. The more northerly of the two lines is referred to as the C&O Line (the line that runs via Staunton, Waynesboro, and Charlottesville). The more southerly of the two lines is referred to as the James River Line (the line that runs via Lynchburg). The BBRR/CSXT application contemplates BBRR's lease of the C&O Line.

BBRR owns and operates a 17-mile line of railroad that runs between Dillwyn, VA, and Brems, VA, and connects with the James River Line at Brems. The interchange between BBRR

and CSXT is actually conducted at Strathmore, VA, a point on the James River Line located 2 miles west of Bremono. BBRR, which was founded in 1989, has increased freight traffic on its Dillwyn-Bremono Line from about 800 carloads per year in 1989 to 2,400 carloads per year during BBRR's best year. BBRR now provides regular scheduled freight service 3 days per week and additional service as requested and needed by its customers. BBRR advises that the Commonwealth of Virginia's Rail Preservation Program as well as profits from operations have enabled BBRR to upgrade track and bridges on the Dillwyn-Bremono Line from Federal Railroad Administration (FRA) excepted classification to FRA class 1 track standards<sup>3</sup> in preparation for a shipper that, when it locates, as anticipated, on the Dillwyn-Bremono Line, will ship 3,000 carloads per year via that line. BBRR adds that it owns and controls 5 locomotives (4 owned, 1 leased), 62 revenue service cars, 4 cabooses, and 11 pieces of self-propelled maintenance-of-way equipment. In addition to rolling stock, BBRR owns a station house and general office building at Dillwyn, a slide table at Dillwyn Yard, and several pieces of equipment used to make intermodal transfers at two points on the Dillwyn-Bremono Line.

The BBRR/CSXT application contemplates the extension of BBRR's operations to CSXT's C&O Line (to which BBRR's Dillwyn-Bremono Line does not connect) and to NS's Orange Line (which branches off from the C&O Line at Gordonsville). The 199.7-mile C&O Line consists of: (1) the 75.1-mile Piedmont Subdivision between AM Junction near Richmond (MP 85.5) and Gordonsville (MP CA 160.6); (2) the 28.5-mile Washington Subdivision between Gordonsville (MP CA 160.6) and Charlottesville (MP CA 180), which includes NS's 9.1-mile Orange Line between Gordonsville (MP CAA 9.1) and South Orange (MP CAA 0.0);<sup>4</sup> and (3) the 96.1-mile North Mountain Subdivision between Charlottesville (MP CA 180) and Clifton Forge (JD Cabin) (MP CA 276.1). The BBRR/CSXT application contemplates that, with the exception of one shipper, Martin Marietta at Verdon (which would continue to be served by CSXT), BBRR would assume the common carrier obligation on the C&O Line and will replace CSXT as the railroad serving local customers on the C&O Line, including customers located at the following points in Virginia (listed in a generally west-to-east order): Goshen, Craigsville, Fordwick, Staunton, Waynesboro, Afton, Crozet, Ivy, Charlottesville, Keswick, Lindsay, Gordonsville, Orange, South Orange, Louisa, Mineral, Pendleton, Frederick Hall, Beaver Dam, Hewlett, Verdon, Doswell, North Doswell, Bear Island, Hanover, Atlee, Ellerson, and Ruffin. The BBRR/CSXT application further contemplates: that

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<sup>3</sup> There are six classes of track typically applicable to rail transportation of freight under the FRA Track Safety Standards. An upgrade from excepted track to class 1, with a maximum allowable speed of 10 miles per hour, removes certain limitations on operations.

<sup>4</sup> The 9.1-mile length of the Orange Line is included in the 28.5-mile length of the Washington Subdivision (i.e., the length of the Washington Subdivision without the Orange Line would be 19.4 miles).

the lease would have a 20-year term, with one mutual 5-year extension option; that BBRR would take over local service (except as respects certain Martin Marietta traffic) and would maintain the line; that, after 2 years, BBRR would also assume the maintenance of the signal system and dispatching on the line; that CSXT would interchange traffic with BBRR (in the west at Clifton Forge, and in the east at Doswell) and would maintain competitive routes and rates for traffic moving from/to points on the C&O Line; that BBRR would pay CSXT annual rent of \$140,000 per year, and also additional rent under certain circumstances when interchange of traffic is with a carrier other than CSXT; and that BBRR would maintain the C&O Line at the present FRA track class standards, and would provide service with two GP-16 locomotives that it currently owns and two GP-40 locomotives that it proposes to acquire.

BBRR indicates that it intends to operate a scheduled railroad based upon interchange times agreed upon with CSXT. BBRR explains that it would operate four round-trip trains per day, 5 days per week (more frequent service than the line's shippers now have). BBRR advises that it would operate from two locations (Doswell in the east, and Staunton in the west); that, at the eastern end of the line, a morning train would operate between Doswell and Ruffin and an evening train would operate between Doswell and Gordonsville; and that, at the western end of the line, a morning train would operate between Staunton and Clifton Forge and an evening train would operate between Staunton and Orange. BBRR further advises that each train would pick up and set out cars for BBRR's customers; and that BBRR would also provide additional service as needed by its customers.

The BBRR/CSXT application contemplates that CSXT would retain limited overhead trackage rights and limited local trackage rights over the C&O line. The retained overhead trackage rights would allow CSXT to conduct westbound overhead movements of empty open-top hopper cars and empty covered hopper cars. These overhead trackage rights would allow CSXT to return these westbound empty trains, including empty coal trains, to their origins. The retained local trackage rights would allow CSXT to move unit aggregate trains from Martin Marietta's quarry at Verdon (about 29.5 miles from the eastern end of the C&O Line) to points on CSXT's lines in the vicinity of Newport News, VA, and would also allow CSXT to move empty unit aggregate trains in the reverse direction. Furthermore, CSXT would enter into a detour agreement with BBRR to detour loaded eastbound coal trains over the C&O Line in case of an emergency or maintenance on the James River Line.

BBRR projects that it would handle about 11,700 carloads annually over the C&O Line, consisting of 6,200 carloads of local traffic, 1,000 carloads for interchange with NS and the Eastern Shore Railroad, Inc., and 4,500 CSXT non-revenue carloads. CSXT projects that it would annually move through its retained overhead trackage rights about 156,000 westbound empty cars and through its retained local trackage rights about 7,900 revenue carloads of rock from the Martin Marietta quarry at Verdon.

Financial Arrangements. CSXT advises that it does not plan any new financial arrangements in connection with the BBRR/CSXT transaction. BBRR advises that, although it does not plan to issue any new securities in connection with the BBRR/CSXT transaction, it does expect to obtain some unsecured short term financing to meet operating capital needs in the early stages of operation.

Passenger Service Impacts. Applicants advise that the BBRR/CSXT transaction would have no impact on commuter operations, because there are no such operations over the C&O Line or over the Orange Line. Applicants note, however, that an Amtrak train (the Cardinal) operates over part of the C&O Line (between Clifton Forge and Gordonsville) and all of the Orange Line (between Gordonsville and Orange). Applicants indicate: that Amtrak operates two trains per day over the line on Sunday, Wednesday, and Friday of each week, one eastbound (Train No. 50) and one westbound (Train No. 51); that both trains stop at Charlottesville, Staunton, and Clifton Forge; and that, to minimize delays, BBRR plans to schedule operations around the scheduled times for Amtrak's trains. Furthermore, applicants indicate that BBRR plans to seek approval from FRA and Amtrak, as necessary, to abandon the Train Control System (TCS, a signal system) currently in place on the North Mountain and Washington Subdivisions between Clifton Forge and Orange; that CSXT would maintain the TCS and would manage train dispatching for the lines covered by the lease for up to 2 years while BBRR seeks such abandonment authority; that, upon approval of the abandonment of the TCS, or 2 years after commencement of the lease, whichever occurs first, BBRR intends to dispatch the line; and that, if the TCS system is not abandoned, BBRR and CSXT would assess the situation to the mutual satisfaction of both parties.

Public Interest Considerations. The C&O Line is paralleled by Interstate Highway 64 and is crossed by Interstate Highway 81, both of which provide major highway access for truck traffic from/to customers on the line and, therefore, according to BBRR, significant competition to railroad traffic, especially intermodal traffic. BBRR advises that it plans to compete fiercely with trucks for traffic moving from/to points on the C&O Line. BBRR contends that it could effectively compete with motor carriers for freight traffic moving from/to points on the C&O Line by providing more frequent rail service and local sales, marketing, and operating personnel. BBRR indicates that it intends to have local people marketing its services to the customers on the line to build a relationship that would encourage the shift of truck shipments to rail.

Applicants contend that, because the BBRR/CSXT transaction would enable BBRR to increase the frequency and quality of rail service on the C&O Line, the BBRR/CSXT transaction would improve the adequacy of transportation service to the shipping public and increase intermodal competition as well as intramodal competition. Applicants further contend that there would not likely be, as a result of the BBRR/CSXT transaction, any lessening of competition,

creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Applicants advise that they expect the BBRR/CSXT transaction to result in operating economies, improved service, and improved financial viability. Applicants explain: that they do not anticipate any changes to routes and rates as BBRR takes over the service; that, rather, BBRR would provide more frequent and responsive service to the local customers; that the additional traffic that BBRR expects to generate would improve BBRR's financial viability; and that the rationalization of the CSXT system would improve CSXT's financial viability, by enabling CSXT to reduce its operating expenses and to save on some capital expenditures. Applicants add that, although they have resolved many specific items, it is difficult to estimate savings until all of the specific terms of the lease are resolved between CSXT and BBRR.

Environmental Impacts. Applicants contend that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Applicants therefore conclude that the BBRR/CSXT application does not require environmental documentation under 49 CFR 1105.6(b)(4) and (c)(2)(i).

Historic Preservation Impacts. Applicants contend that an historic report is not required because BBRR will operate the line and will require further Board approval to discontinue any service, and because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Applicants therefore conclude that the BBRR/CSXT application does not require an historic report under 49 CFR 1105.8(b)(1).

Labor Impacts. CSXT projects that 35 CSXT employees would be affected by BBRR's lease of the C&O Line. CSXT projects, in particular: that 7 trainmen represented by the United Transportation Union would be displaced; that 4 engineers represented by the Brotherhood of Locomotive Engineers would be displaced; that 14 maintenance-of-way employees represented by the Brotherhood of Maintenance of Way Employees would be displaced; and that 7 signal and communications employees represented by the Brotherhood of Railroad Signalmen would be displaced, and an additional 3 such signal and communications employees would be relocated. CSXT explains that the trainmen, the engineers, and the maintenance-of-way employees would be affected because local work now performed by CSXT employees would be performed, post-transaction, by BBRR employees. As respects the signal and communications employees, CSXT explains that it has agreed to continue to maintain the signal system on the C&O Line and to dispatch the line, and to defer displacing employees, for up to 2 years after consummation of the transaction, if approved. CSXT also explains that it might cease maintaining the signal system and dispatching the line at an earlier date if FRA and Amtrak, as necessary, approve the abandonment of the signal system. CSXT adds: that it does not expect any dispatchers to be

impacted by the BBRR/CSXT transaction; that it has not yet obtained any implementing agreements; and that, because CSXT's projections respecting employee impacts are based on conditions prior to the date of the BBRR/CSXT application, those projections may change based upon conditions existing at the time of consummation of the BBRR/CSXT transaction.

BBRR projects that it would hire at least 21 employees and might hire up to 27 employees in connection with its lease of the C&O Line. BBRR explains that it intends to hire, on consummation of the lease, 5 trainmen, 5 engineers, 8 maintenance-of-way employees, 2 mechanical employees, and 1 clerical employee. BBRR adds that, in the interest of operating in the most efficient manner possible, it expects to cross-train many of these employees to perform other functions. BBRR advises that, if the signal system on the line has not been approved for abandonment by FRA and Amtrak, as necessary, 2 years after consummation of the lease, BBRR expects to hire approximately 6 signal and communications employees to operate the signal system. If FRA and Amtrak, as necessary, authorize abandonment of the signal system, BBRR notes that it would not hire any signal and communications employees. BBRR indicates that it plans to consider for employment qualified local CSXT employees whose positions would be abolished as a result of the BBRR/CSXT transaction and who make proper application for employment. Since no existing employees of BBRR would be adversely affected by the BBRR/CSXT transaction, and because all the employees that BBRR would need to operate and maintain the line and equipment would be new hires, BBRR does not intend to enter into any implementing agreements with rail labor. Further, because BBRR's projections are based on conditions prior to the date of the BBRR/CSXT application, BBRR states that its projections may change based upon conditions existing at the time of consummation of the BBRR/CSXT transaction.

CSXT and BBRR contend that, to provide the level of labor protection mandated by 49 U.S.C. 11326, the Board should impose the "Mendocino Coast" labor protective conditions set forth in Mendocino Coast Ry., Inc. — Lease and Operate, 354 I.C.C. 732 (1978), as modified in Mendocino Coast Ry., Inc. — Lease and Operate, 360 I.C.C. 653 (1980), aff'd sub nom. Railway Labor Executives' Ass'n v. United States, 675 F.2d 1248 (D.C. Cir. 1982), as clarified in Wilmington Term. RR, Inc. — Pur. & Lease — CSX Transp., Inc., 6 I.C.C.2d 799, 814-826 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. I.C.C., 930 F.2d 511 (6th Cir. 1991). In support, CSXT and BBRR cite to Portland & Western Railroad, Inc. — Lease and Operation Exemption — Burlington Northern Railroad Company, Finance Docket No. 32766 (ICC served January 5, 1996), a similar type of transaction, in that it involved both the lease by a Class III railroad of lines of a Class I railroad and also the retention by the Class I railroad of the right to conduct certain operations over the leased lines.

**BBRR/CSXT APPLICATION ACCEPTED.** The Board agrees with applicants that the proposed BBRR/CSXT transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board is accepting the BBRR/CSXT application for consideration because it is in

substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. The Board reserves the right to require the filing of supplemental information, if necessary to complete the record in this matter.

**PUBLIC INSPECTION.** The BBRR/CSXT application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. In addition, the application may be obtained from applicants' representatives (Mr. O'Brien for BBRR, and Mr. Gitomer for CSXT) at the addresses indicated above.

**PROCEDURAL SCHEDULE.** The Board has considered applicants' BBRR-3/CSXT-3 petition (filed May 26, 2004) suggesting a 166-day procedural schedule. Under that proposed schedule, the Board would issue its final decision on November 8, 2004, and that decision would become effective on December 8, 2004. Applicants explain that their proposed schedule would allow applicants to close the BBRR/CSXT transaction by December 20, 2004, and would thus allow the changeover in operations to occur before year-end over a non-holiday weekend.

The Board is adopting a 163-day procedural schedule that is essentially the same as applicants' proposed 166-day schedule, except that the Board's schedule provides for the issuance of a final decision on November 5, 2004. The evidentiary proceedings in this matter will be concluded on September 23rd (the due date for filing responses and rebuttal) if neither a public hearing nor an oral argument is held the week of October 4th. Therefore, issuance of the final decision on November 5th will allow the Board to meet the applicable statutory deadline, which requires a final decision no later than the 45th day after the date on which the evidentiary proceedings are concluded.

Under the 163-day procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file, no later than **July 9, 2004**, a notice of intent to participate; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by DOJ and DOT, must be filed by **August 24, 2004**; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the BBRR/CSXT application must be filed by **September 23, 2004**. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, September 23rd), their comments in response to the comments of other parties, and applicants will be allowed to late-file (as quickly as possible) a response to any such comments of DOJ and/or DOT. Under this schedule, a public hearing or oral argument may be held **the week of October 4, 2004**. To allow the Board to meet the applicable statutory deadline, which requires the Board to conclude any evidentiary proceedings by the 105th day after the date of Federal Register publication of notice of the acceptance of the application, a public hearing or oral argument must be held, if at all, no later than October 8th. Furthermore,

under this procedural schedule, the Board will issue its final decision on **November 5, 2004** (the 163rd day after May 26th, the day on which the BBRR/CSXT application was filed with the Board). This schedule would allow applicants to close the BBRR/CSXT transaction by December 20th if the application is approved. For further information respecting dates, see Appendix A (Procedural Schedule).

**NOTICE OF INTENT TO PARTICIPATE.** Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **July 9, 2004**, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and applicants' representatives (Mr. O'Brien for BBRR, and Mr. Gitomer for CSXT).

**SERVICE LIST NOTICE.** The Board will serve, as soon after July 9, 2004, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

**COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT.** All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by DOJ and DOT, must be filed by **August 24, 2004**.

Because the proposed BBRR/CSXT transaction has been determined to be a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the BBRR/CSXT application or the imposition of conditions upon any approval, on the theory that approval (or approval without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. See Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

**RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION; REBUTTAL IN SUPPORT OF THE APPLICATION.**

Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the BBRR/CSXT application must be filed by **September 23, 2004**.

**PUBLIC HEARING/ORAL ARGUMENT.** The Board may hold a public hearing or an oral argument in this proceeding **the week of October 4, 2004**.

**DISCOVERY.** Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

**ENVIRONMENTAL MATTERS.** Under the Council on Environmental Quality (CEQ) and Board regulations, actions whose environmental effects are ordinarily insignificant may be excluded from review under the National Environmental Policy Act of 1969 (NEPA).<sup>5</sup> In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent here, where the eastern portion of the 199.7-mile rail line proposed to be leased is located in an air quality “nonattainment” area, a rail line lease proposal that would not result in operational changes that exceed certain thresholds — generally an increase in rail traffic of at least three trains a day or 50 percent in traffic (measured in gross ton miles annually) — normally requires no environmental review, 49 CFR 1105.6(c)(2)(i).

Applicants state in their application that the traffic increases they project to occur, should this proposal be approved, consist of four round-trip trains per day, 5 days per week. Applicants explain that BBRR would operate morning and evening round-trip trains between various origins and destinations over four distinct line segments. Specifically, over the easternmost segments, a morning train would operate between Doswell and Ruffin (near Richmond), and an evening train would operate between Doswell and Gordonsville. On the westernmost segments, a morning train would operate between Staunton and Clifton Forge, and an evening train would operate between Staunton and Orange (including Gordonsville). Applicants maintain that operating one round-trip train 5 days per week over four distinct rail line segments would allow BBRR to provide efficient service tailored to the needs of its customers.

Because the four round-trip trains would operate over four different line segments and applicants contemplate no increase on any individual line segment beyond one round-trip train per day, the proposed lease does not meet or exceed the Board’s thresholds for environmental documentation established in the Board’s environmental rules at 49 CFR 1105.7(e)(4) or (5), and

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<sup>5</sup> 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). Such activities are said to be covered by a “categorical exclusion,” which CEQ defines at 40 CFR 1508.4.

there is nothing in the application to indicate that the transaction has any potential for significant environmental impacts. The Board's Section of Environmental Analysis (SEA) therefore has concluded that formal environmental review is not warranted in this case, and that this proceeding is "categorically excluded" from environmental review required by NEPA.

Finally, SEA agrees with applicants that the proposed action does not require historic review under the National Historic Preservation Act of 1966 (NHPA) because further approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. 49 CFR 1105.8(b)(1).

**FILING/SERVICE REQUIREMENTS: FORMAT.** Persons participating in this proceeding may "file" with the Board and "serve" on other parties a number of documents, particularly: a notice of intent to participate (due by July 9th); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service list notice (due by the 10th day after the service date of the service list notice); comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application (due by August 24th); and responses to comments, etc., and rebuttal in support of the BBRR/CSXT application (due by September 23rd).

Filing Requirements. Any document filed in this proceeding must be filed **either** via the Board's e-filing format **or** in the traditional paper format. Any person e-filing a document should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any such copy may be sent by e-mail, but only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Keith G. O'Brien (BBRR's representative), Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036; (4) Louis E. Gitomer (CSXT's representative), Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005; and (5) any other person designated as a POR on the service list notice.

**SERVICE OF DECISIONS, ORDERS, AND NOTICES.** The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged either to secure copies of such decisions, orders, and notices via the Board's "www.stb.dot.gov" website

under “E-LIBRARY/Decisions & Notices” or to make advance arrangements with the Board’s copy contractor, ASAP Document Solutions (mailing address: ASAP Document Solutions, Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapmd@verizon.net; telephone number: 301-577-2600), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

**ACCESS TO FILINGS.** An interested person does not need to be on the service list to obtain a copy of the BBRR/CSXT application or any other filing made in this proceeding. The Board’s Railroad Consolidation Procedures provide: “Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order.” 49 CFR 1180.4(a)(3). And the BBRR/CSXT application and other filings in this proceeding will also be available on the Board’s “www.stb.dot.gov” website under “E-LIBRARY/Filings.”

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

It is ordered:

1. The BBRR/CSXT application in STB Finance Docket No. 34495 is accepted for consideration.
2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. This decision is effective on June 25, 2004.

Decided: June 22, 2004.

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

Vernon A. Williams  
Secretary

**APPENDIX A: PROCEDURAL SCHEDULE**

May 26, 2004	BBRR/CSXT application, petition for protective order, and petition to establish procedural schedule filed.
June 25, 2004	Board notice of acceptance of BBRR/CSXT application published in the <u>Federal Register</u> .
July 9, 2004	Notices of intent to participate due.
August 24, 2004	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings of DOJ and DOT, due.
September 23, 2004	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the BBRR/CSXT application due.
Week of October 4, 2004	A public hearing or oral argument may be held the week of October 4, 2004.
November 5, 2004	Date of service of final decision.