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SERVICE DATE – MARCH 13, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35805

CENTRAL MAINE & QUEBEC RAILWAY US INC.—ACQUISITION AND OPERATION  
EXEMPTION—MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.32(e)]

Digest:<sup>1</sup> This decision allows Central Maine & Quebec Railway US Inc., a noncarrier, to proceed with a notice of exemption to acquire and operate the assets of the bankrupt Montreal, Maine & Atlantic Railway, Ltd. without giving employees the full 60-day advance notice of the transaction because such notice is unnecessary in this case and could result in a temporary suspension of rail service.

Decided: March 12, 2014

On February 14, 2014, Central Maine & Quebec Railway US Inc. (CMQR) filed a request for a waiver of the 60-day notice period provided by our regulations.<sup>2</sup> The waiver request is related to the bankruptcy of the Montreal, Maine & Atlantic Railway, Ltd. (MMA) and MMA's Canadian counterpart, Montreal, Maine & Atlantic Railway Canada Co. (MMA Canada). The waiver request will be granted.

BACKGROUND

MMA and MMA Canada filed bankruptcy petitions with the United States Bankruptcy Court for the District of Maine and the Superior Court for the Province of Quebec, District of Montreal, respectively, on August 7, 2013. Since that time, the rail business of MMA and MMA Canada has been operated under the oversight of Robert J. Keach, the Chapter 11 Trustee in the MMA bankruptcy proceeding.

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<sup>1</sup> 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).

<sup>2</sup> CMQR petitions for a waiver of the 60-day notice period at 49 C.F.R. § 1150.42(e). This notice requirement applies to existing rail carriers. Because CMQR is currently a noncarrier, the notice requirements at § 1150.32(e) apply. To expedite this transaction, we will treat CMQR's petition as a request for waiver of § 1150.32(e), which also requires a 60-day notice period.

By order entered on January 24, 2014, the U.S. Bankruptcy Court, District of Maine, approved the sale of MMA's U.S. rail assets to CMQR's parent, Rail Acquisition Holdings LLC (RAH).<sup>3</sup> RAH is, in turn, indirectly owned and controlled by Fortress Worldwide Transportation and Infrastructure General Partnership, an investment fund managed by an affiliate of Fortress Investment Group LLC (Fortress Investment).

To obtain the necessary Board authority for the sale transaction in this docket, CMQR filed a verified notice of exemption to acquire and operate the MMA rail lines in the United States, and Fortress Investment filed a verified notice of exemption in Docket No. FD 35806 to continue in control of CMQR upon CMQR's becoming a carrier. CMQR and CMQR Canada would provide rail service over the entire pre-bankruptcy rail network of MMA and MMA Canada.

CMQR filed the waiver petition to expedite the transfer of MMA assets and operations. Because CMQR certified in its notice that its projected annual revenues as a result of this transaction would exceed \$5 million, Board rules provide that it send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so at least 60 days before its acquisition exemption becomes effective.<sup>4</sup> Because CMQR filed its certification of compliance on February 14, 2014, it could not consummate the sale transaction until April 15, 2014, without a waiver of § 1150.32(e). In its request for waiver here, CMQR asserts that expedited consummation is critical because the Certificate of Fitness issued by the Canada Transportation Agency authorizing MMA Canada to continue operating its lines in Quebec is set to expire on April 1, 2014, and MMA Canada's insurance is set to expire on March 31, 2014, thus bringing into question the Trustee's ability to maintain rail service over the MMA/MMA Canada rail network beyond that time. The U.S. Bankruptcy Court also emphasizes the need for expedited action in its January 24 order.

## DISCUSSION AND CONCLUSIONS

CMQR's request for waiver of the 60-day notice period is reasonable and will be granted. The purpose of 49 C.F.R. § 1150.32(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.<sup>5</sup> The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case. Indeed, not granting a waiver here might result in a suspension of service because of the March 31, 2014, and April 1, 2014, expiration dates mentioned above. An interruption would not only harm rail customers, but also those MMA employees who are

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<sup>3</sup> The Quebec Superior Court entered a similar order concerning the sale of the Canadian assets to RAH on January 23, 2014. RAH will assign its rights to acquire the Canadian assets to its Canadian subsidiary, Central Maine & Quebec Railway Canada (CMQR Canada).

<sup>4</sup> See 49 C.F.R. § 1150.32(e).

<sup>5</sup> See Acquis. of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997).

currently working on the lines. Furthermore, employees and unions have had ample notice of the potential sale. MMA filed for bankruptcy on August 7, 2013, and, since that time, there has been extensive media coverage of the bankruptcy proceeding and the potential sale. Finally, the record indicates that consummation of the sale could potentially result in an increase in jobs for MMA employees as previously furloughed employees return to work on the lines.

Accordingly, we are granting CMQR's petition for waiver of the 60-day notice period. By granting this waiver request, the earliest date that this transaction may be consummated will be March 16, 2014, rather than April 15, 2014.

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

It is ordered:

1. CMQR's request that the Board waive the 60-day notice period of 49 C.F.R. § 1150.32(e) is granted as set forth in this decision.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott and Vice Chairman Begeman.