

42693
DO

SERVICE DATE – LATE RELEASE OCTOBER 16, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35675

NATIONAL RAILROAD PASSENGER CORPORATION
AND CSX TRANSPORTATION, INC.
—PETITION FOR DECLARATORY ORDER

Decided: October 16, 2012

On September 12, 2012, the National Railroad Passenger Corporation (Amtrak) and CSX Transportation, Inc. (CSXT) (together, Petitioners) filed a petition for declaratory order asking the Board to find that it does not have regulatory authority over Amtrak's proposed lease of 94.07 miles of rail line and certain facilities (the Hudson Line or Line) owned by CSXT. Petitioners assert that the lease does not require Board approval because the proposed transaction comports with the terms and conditions set out in Maine, Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C. 2d 835 (1991) and its progeny. Petitioners also point out that the Board generally lacks regulatory authority over Amtrak itself and over persons entering agreements with Amtrak (49 U.S.C. § 24301(c) and (j)).

On October 4, 2012, the Brotherhood of Maintenance of Way Employees Division/IBT and the Brotherhood of Railroad Signalmen (together, the Unions) filed a reply to the petition. While the Unions do not oppose the outcome sought by Petitioners' request for a declaratory order, they do oppose a declaration that the Board lacks regulatory authority over this lease transaction under State of Maine and its progeny. In any event, the Unions assert that the Board need not consider the applicability of State of Maine here, as it already lacks regulatory authority over leases of railroad lines to Amtrak under 49 U.S.C. § 24301(c). Petitioners filed a response to the Unions' reply on October 10, 2012.

The Board has discretionary authority under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. As discussed below, because there is no controversy here, the Board will not institute a declaratory order proceeding.

BACKGROUND

In 1998, CSXT acquired the Hudson Line from Consolidated Rail Corporation. CSX Corp. et al.—Control—Conrail, Inc. (Conrail), 3 S.T.B. 196 (1998). As part of the transaction, the Board in Conrail required CSXT to grant trackage rights to the Delaware and Hudson Railway Company, Inc. (D&H) over much of the Hudson Line. CSXT and D&H subsequently

entered into a joint use agreement for the Line, and, as a result, the freight cars from the two trains D&H operated weekly over the Line are now moved in CSXT trains. Amtrak operated passenger service on the Line prior to the CSXT acquisition and continues to do so.

By this transaction, Amtrak seeks to lease a total of 94.07 miles of the Hudson Line from CSXT for the purpose of providing improved passenger rail service on the Line. The Hudson Line is composed of two segments: (1) a line owned by CSXT between the westbound signal at Hoffmans, N.Y., milepost 169.77, and Poughkeepsie, N.Y., milepost 75.7, exclusive of certain defined properties, e.g., the freight yard in Hudson, N.Y., and sidetracks; and (2) all facilities of CSXT that are used in the operation of the Amtrak-owned "Post Road" line of railroad between approximately milepost 187.4 in Niverville, N.Y., and milepost 199.5 in Rensselaer, N.Y.

Amtrak plans to lease the Line from CSXT through the Hudson Line Operating, Management and Land and Track Lease Agreement (the Lease Agreement). Petitioners state that, under the Lease Agreement, the Hudson Line would be used for the conduct of passenger and freight rail service as is done today, and that CSXT would retain ownership of the Line and the common carrier freight obligation with respect to the Line. Petitioners further state that, subject to the rights of D&H, CSXT would have the exclusive right to use the Hudson Line for the provision of freight rail service and Amtrak would have the exclusive right to use the Hudson Line for the provision of passenger rail service and all other functions Amtrak may lawfully perform.¹ Petitioners state that, under the terms of the Lease Agreement, Amtrak will manage, direct, dispatch, and control the occupation and use of, and access to, the Line for 25 years, with the option for one additional 23-year term.

DISCUSSION AND CONCLUSIONS

The only issue here is whether this transaction requires Board approval, i.e., whether the Board has regulatory authority over it. Amtrak, CSXT, and the Unions all take the position that, pursuant to the provisions of 49 U.S.C. § 24301, the transaction does not require such approval. Under the facts presented here, the Board has no reason to disagree. The Board does not have regulatory authority over this transaction. Therefore, there is no controversy to resolve here, and no need to institute a declaratory order proceeding.

Further, given the request for expedited consideration, any appeal of this decision is due by October 22, 2012.

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

¹ These include transportation of mail and Amtrak Express shipments, installation of a Positive Train Control System, and operating passenger service at speeds to be determined by Amtrak (as long as track conditions do not adversely affect freight service).

It is ordered:

1. The petition for declaratory order is denied as discussed above.
2. Any appeal of this decision is due by October 22, 2012.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.