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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35804]

CSX Transportation, Inc., The Baltimore & Ohio Chicago Terminal Railroad Company, and Norfolk Southern Railway Company—Joint Relocation Project Exemption—Gary-Chicago International Airport Authority

On May 5, 2014, CSX Transportation, Inc. (CSXT), The Baltimore & Ohio Chicago Terminal Railroad Company (BOCT), and Norfolk Southern Railway Company (NSR) (collectively, applicants)¹ jointly filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(5) to participate in a joint relocation project that would foster improvements to the Gary-Chicago International Airport Authority (Gary Airport) in Indiana.

The purpose of the joint relocation project is to facilitate activities necessary to permit the relocation of various rail lines and facilities to accommodate the expansion of Gary Airport's existing Runway 12-30, and to preserve the operation, capacity, and utility of the freight lines of Elgin, Joliet and Eastern Railway Company (EJ&E), CSXT, and NSR in the vicinity of Gary Airport.

¹ Applicants state that BOCT is a Class III railroad that is a wholly owned subsidiary of CSXT.

According to applicants, the relocation project involves multiple components. First, CSXT and NSR would construct the following connections: (1) at Clarke Junction, Ind., at or near milepost DC 0.4, connecting NSR's Fort Wayne Line with BOCT's Barr Subdivision and the relocated CSXT Fort Wayne Line, which would be located between milepost TC 244.9 and milepost TC 246.6 of what is currently NSR's Gary Branch; (2) between CSXT's Fort Wayne Line at milepost QF 443.8 and NSR's Gary Branch at milepost QF 244.9; (3) near Tolleston, Ind., between CSXT's Fort Wayne Line at milepost QF 442.0 and CSXT's Porter Branch at milepost QFP 256.1 to allow NSR to serve Indiana Sugars, Inc. (Indiana Sugars) from CSXT's Porter Branch; and (4) between CSXT's Porter Branch at milepost QFP 255.4 and NSR's Gary Branch at milepost TC 241.4 to allow NSR to continue to serve Indiana Sugars. Second, CSXT would acquire the portion of NSR's Gary Branch between milepost TC 244.9 and milepost TC 246.6. Third, CSXT would abandon an approximately 1.9-mile portion of its Fort Wayne Line between milepost QF 443.8 and milepost QF 445.7, and transfer substantially all of the property to Gary Airport for the runway expansion. Fourth, CSXT would relocate its operations between milepost QF 443.8 and milepost QF 445.7 to the Gary Branch between milepost TC 244.9 and milepost TC 246.6. Fifth, NSR would discontinue service over its Gary Branch Line between milepost TC 244.9 and milepost TC 241.4. Sixth, NSR would abandon common carrier service and reclassify as spur track the portion of the Gary Branch Line between milepost TC 241.4 and milepost TC 240.3 (the Indiana Sugars Industrial Track) in order to continue to serve Indiana

Sugars via trackage rights over CSXT's Porter Branch. Seventh, existing trackage rights agreements would be amended to reflect the relocated track.²

Applicants state that the proposed joint relocation project would not disrupt service to shippers or expand service into new territory. According to applicants, the only named active shipper on the lines, Indiana Sugars, would continue to receive service.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. See City of Detroit v. Canadian Nat'l Ry., 9 I.C.C. 2d 1208 (1993), aff'd sub nom. Detroit/Wayne Cnty. Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio, FD 34108 (STB served Nov. 15,

² According to applicants, four existing trackage rights agreements would be amended as follows: (1) NSR's rights to operate over CSXT's Fort Wayne Line would be amended to allow NSR to operate over the new connection between CSXT's Fort Wayne Line and CSXT's Porter Branch in the northeast quadrant at Tolleston, as well as the continued right to enter and exit CSXT's Fort Wayne Line at the existing connection to the Central Railroad of Indianapolis d/b/a Chicago, Fort Wayne & Eastern (CFER) leased portion of the CSXT Fort Wayne Line in the southwest quadrant at Tolleston; (2) NSR's rights to operate over CSXT's Porter Branch would be amended to allow NSR to operate between: (i) the new connection to CSXT's Fort Wayne Line in the northeast quadrant at Tolleston; (ii) the existing connection to the CFER leased portion of the CSXT Fort Wayne Line in the southwest quadrant at Tolleston; and (iii) the new connection to the portion of the Gary Branch to be re-classified as the Indiana Sugars Industrial Track, at or near milepost QFP 255.4; (3) NSR's rights to operate over BOCT's Barr Subdivision would be amended to allow NSR to enter or exit BOCT's Barr Subdivision between Clarke Junction, at or near milepost DC 0.4, to access both the NSR Fort Wayne Line and the CSXT Fort Wayne Line; and (4) CSXT's rights to operate over NSR's Fort Wayne Line would be amended to allow CSXT to enter and exit the NSR Fort Wayne Line at: (i) the connection to NSR's Chicago Line at CP501, Buffington, Ind.; and (ii) the new connection to BOCT's Barr Subdivision at Clarke Junction.

2001). Line relocation projects may embrace trackage rights transactions such as those involved here. See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Washington Court House & Greggs, Ohio—Exemption, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components of this relocation project require no separate approval or exemption because the relocation project would not disrupt service to shippers, expand CSXT’s, BOCT’s, or NSR’s service into a new territory, or alter the existing competitive situation, and thus, this joint relocation project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5).

As a condition to this exemption, any employees affected by the joint relocation project will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980) (“N&W Conditions”).³

The transaction may be consummated on or after June 4, 2014, the effective date of the exemption (30 days after the exemption was filed). Applicants explain that once the exemption becomes effective, or shortly thereafter, CSXT and NSR would commence constructing the connections. Once the connections required for NSR to serve Indiana Sugars via a portion of CSXT’s Porter Branch are completed and operational, NSR would transfer the previously mentioned portion of NSR’s Gary Branch to CSXT, and CSXT would transfer its 1.9-mile portion of the Fort Wayne Line to Gary Airport. Applicants

³ By letter filed on May 16, 2014, applicants amended their notice of exemption to clarify that the N&W Conditions are applicable to this transaction and should be imposed here.

state that, as the track connections described above are completed, the amended trackage rights would take effect.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 28, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35804, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204 (CSXT's and BOCT's representative) and William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037 (NSR's representative).

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Decided: May 16, 2014.

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