

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35520

THE NEW BRUNSWICK RAILWAY COMPANY—CONTINUANCE IN CONTROL  
EXEMPTION—MAINE NORTHERN RAILWAY COMPANY

Decided: May 24, 2011

On May 20, 2011, the New Brunswick Railway Company (NBRC) filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323 and 11324 to continue in control of Maine Northern Railway Company (MNRC) once MNRC becomes a Class III rail carrier. The petition stems from an abandonment granted by the Board in Montreal, Maine & Atlantic Railway—Discontinuance of Service and Abandonment—in Aroostook and Penobscot Counties, Me., AB 1043 (Sub-No. 1) (STB served Dec. 27, 2010). In that docket, Montreal, Maine & Atlantic Railway, Ltd. (MMA) had filed an application to abandon approximately 233 miles of rail line in Aroostook and Penobscot Counties, Me.<sup>1</sup>

The State of Maine, by and through its Department of Transportation (State), actively sought to preserve service on the line. To that end, the State, with Board help, reached an agreement to purchase the line from MMA were the Board to grant MMA abandonment authority. Specifically, the State proposed to acquire the line pursuant to the class exemption found in Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982), codified at 49 C.F.R. § 1150.22. The State also proposed to find a new operator. MMA agreed to the State's proposal, agreed to provide interim service until the new operator could begin operations, and requested that the Board issue a modified certificate pursuant to 49 C.F.R. § 1150.22 to allow it to provide the interim service.

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<sup>1</sup> Specifically, the application, as amended, identified the line to be abandoned as comprising: (1) the Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties; (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County; (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County; (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County and; (5) the Houlton Subdivision, running between milepost 0.0 near Oakfield and milepost 17.27 near Houlton in Aroostook County, and including the B Spur.

As noted, the Board granted the application to abandon the line on December 27, 2010. The Board also issued a modified certificate to provide interim service in its decision, but provided that the modified certificate would not become effective until the State acquired the line and MMA provided additional information, including the interim service agreement. On January 18, 2011, MMA filed the requisite data and indicated that it had conveyed the line to the State on January 14, 2011. MMA's modified certificate became effective on January 18, 2011, and it has provided interim service under that authority since that time.<sup>2</sup>

In April 2011, the State selected MNRC, currently a noncarrier, as the new operator. On April 14, MMA filed its 60-day notice to terminate its interim service. MMA noted that the interim service agreement provides that it must end its service by June 14, 2011, and, at that time, the new operator intends to commence service. In furtherance of this plan, MMA has sought trackage rights to connect the two parts of MMA's system separated by a segment of the transferred line.<sup>3</sup>

To facilitate the transition to MNRC operations, MNRC's parent company, NBRC, filed the instant petition on May 20, 2011. NBRC seeks an exemption to continue in control of Eastern Maine Railway (EMR), a Class III carrier that NBRC already controls, and MNRC, once MNRC becomes a Class III carrier.<sup>4</sup> NBRC asks that this exemption be made effective on June 15, 2011, so that there is no lapse in service when MMA halts its service.

Also on May 20, 2011, in Docket Nos. FD 35518 and 35519, MNRC has filed notices of exemption for trackage rights over various MMA lines that would provide MNRC with access to other carriers in the area, including EMR. In its petition, NBRC also asks that the Board expedite the effective date of these exemptions so that they become effective on June 15, 2011, as opposed to the customary 30-day period. The Board will address that request in a separate decision.

NBRC attaches letters supporting its petition from various shippers and the State. Any replies to NBRC's petition for exemption will be due on or before May 27, 2011. This abbreviated period for replies is appropriate here to ensure that there is no disruption of service on the line.

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<sup>2</sup> See Montreal, Me. & Atl. Ry.—Modified Rail Certificate—in Aroostook and Penobscot Counties, Me., FD 35463 (STB served Jan. 26, 2011).

<sup>3</sup> In Montreal, Maine & Atlantic Railway—Trackage Rights Exemption—Eastern Maine Railway, FD 35505, filed on May 11, 2011, MMA sought Board authority for trackage rights being granted to it by the new carrier. By a filing submitted on May 23, 2011, MMA made clear that it sought the trackage rights from MNRC.

<sup>4</sup> NBRC asserts that MNRC will file the requisite modified certificate when the control exemption becomes effective. Filing of the modified certificate would make MNRC a Class III carrier and allow it to commence operations immediately.

It is ordered:

1. Replies to NBRC's petition are due on or before May 27, 2011.
2. This decision will be effective on its service date.

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