

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35110

FLORIDA DEPARTMENT OF TRANSPORTATION—ACQUISITION EXEMPTION—
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

Decided: April 26, 2010

This decision grants the Florida Department of Transportation's (FDOT) request that the Board establish a procedural schedule and resume its consideration of the motion to dismiss FDOT's notice of exemption filed under 49 C.F.R. § 1150.31. In that notice, FDOT sought to acquire from CSX Transportation, Inc. (CSXT), certain physical assets and associated right-of-way, including approximately 61.5 miles of rail line in Poinciana, Volusia, Seminole, Orange, and Osceola Counties, Fla. The notice was served and published on April 17, 2009 (74 Fed. Reg. 17896-7). Together with the notice of exemption, FDOT filed a motion to dismiss the notice of exemption on the ground that FDOT would not obtain the right to provide freight service over the rail line.

On May 5, 2009, The Brotherhood of Railroad Signalmen (BRS) filed a motion requesting an extension of time until May 22, 2009, to respond to FDOT's motion to dismiss the notice of exemption. In a decision served on May 7, 2009, that request was granted. On May 7, 2009, FDOT filed a letter to withdraw its previous request for expedited consideration of its motion to dismiss and requested that the Board hold this proceeding in abeyance.¹ By a series of decisions, the Board held the proceeding in abeyance until March 31, 2010.

In a letter filed on March 31, 2010, FDOT requests that the Board resume its consideration of this matter and adopt FDOT's proposed procedural schedule. FDOT states that the enabling legislation necessary for the proposed transaction was passed by the Florida legislature on December 8, 2009, and signed into law by Governor Crist on December 16, 2009. FDOT states that in order to implement the legislation it has entered into amendments to the Contract for Sale and Purchase and the Transition Agreement with CSXT, and executed a revised Central Florida Operating and Management Agreement. FDOT states that it has conferred with counsel for BRS and agreed on a procedural schedule whereby BRS' comments on the motion to dismiss will be due on April 30, 2010, and FDOT's reply to BRS' comments will be due on May 17, 2010.

¹ FDOT stated that the Florida legislature did not pass the legislation required for the proposed transaction to proceed.

On April 6, 2010, the National Passenger Railroad Corporation (Amtrak) replied to FDOT's request. Amtrak objects to FDOT's proposed procedural schedule limiting the filing of comments to only BRS. Amtrak requests that any interested party be allowed to file comments on the motion to dismiss by April 30, 2010. In a letter filed on April 8, 2010, FDOT states that it does not object to Amtrak's request to be allowed to file comments.

Having addressed the only objection to FDOT's suggested procedural schedule, it will be adopted. Accordingly, the following dates apply to this proceeding:

April 30, 2010	Comments on motion to dismiss due
May 17, 2010	Replies to comments on motion to dismiss due

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

It is ordered:

1. FDOT's requests that the Board resume consideration of its motion to dismiss the notice of exemption and establish a procedural schedule are granted.
2. Amtrak's request that it and other interested parties be allowed to file comments is granted.
3. The procedural schedule set forth above is adopted.
4. This decision is effective on the date of service.

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