

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35804 (Sub-No. 1)

CSX TRANSPORTATION, INC., THE BALTIMORE & OHIO CHICAGO TERMINAL
RAILROAD COMPANY, AND NORFOLK SOUTHERN RAILWAY COMPANY—
JOINT RELOCATION PROJECT EXEMPTION—GARY-CHICAGO INTERNATIONAL
AIRPORT AUTHORITY

Digest:¹ This decision allows CSX Transportation, Inc., to obtain trackage rights over Norfolk Southern Railway Company's Gary Branch subject to standard employee protective conditions.

Decided: August 14, 2014

CSX Transportation, Inc. (CSXT), The Baltimore & Ohio Chicago Terminal Railroad Company (BOCT), and Norfolk Southern Railway Company (NSR) are participating in a joint relocation project that would foster improvements to the Gary-Chicago International Airport Authority (Gary Airport) in Indiana. CSX Transp., Balt. & Ohio Chi. Terminal Co., & Norfolk S. Ry.—Joint Relocation Project Exemption—Gary-Chi. Int'l Airport Auth., FD 35804 (STB served May 21, 2014). The joint relocation project involves multiple components, including allowing CSXT to transfer approximately 1.9 miles of its existing Fort Wayne Line to Gary Airport and to acquire the portion of NSR's Gary Branch between milepost TC 244.9 and milepost TC 246.6 (the Gary Branch). Id. at 2.

On August 7, 2014, CSXT filed a petition for exemption, seeking trackage rights over the Gary Branch. CSXT states that it has requested, and NSR has agreed to grant, these trackage rights. CSXT explains that granting the petition would permit CSXT and NSR to partially consummate the joint relocation project expeditiously and would enable Gary Airport to meet legislatively imposed deadlines. Accordingly, CSXT seeks expedited review and asks that the exemption, if granted, become effective on August 14, 2014.²

¹ 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).

² On August 8, 2014, Wisconsin Central Ltd. (WCL) filed a letter supporting CSXT's request. Although not a party to this or the related proceeding, WCL states that it is also affected by the Gary Airport expansion and is working with the Gary Airport on a related line relocation.

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 11323(a)(6), prior Board approval is required for a rail carrier to acquire trackage rights over a railroad line owned or operated by another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Detailed scrutiny of this petition for trackage rights is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. As CSXT notes, granting the petition will help facilitate the timely completion of the Gary Airport expansion project. CSXT states that the trackage rights will have no adverse impact on competition and will not result in higher rates, or worsened or disrupted service. Furthermore, CSXT submits that the trackage rights will have no adverse horizontal effects on competition, will not result in any vertical foreclosure of competition in the transportation corridors served by the individual carriers, and will not diminish service options available to shippers. Indeed, the portion of track to which CSXT seeks access is track that will be transferred to CSXT upon completion of the project. Therefore, the exemption would ensure the development and continuation of a sound rail transportation system and would foster sound economic conditions in accordance with 49 U.S.C. §§ 10101(4) and (5). Other aspects of the rail transportation policy would not be adversely affected by use of the exemption process.

Regulation is not needed to protect shippers from the abuse of market power. The trackage rights agreement will not disrupt service to shippers or expand service into new territory.³

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions established in Norfolk & Western Railway—Trackage Rights—Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

This transaction is exempt from environmental review under 49 C.F.R. § 1105.6(c)(2)(i) because it would not result in a significant change in carrier operations. Similarly, because the transaction involves trackage rights only, it is exempt from the historic review process under 49 C.F.R. § 1105.8(b)(1).

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

³ Given our market power finding, we need not determine whether the transaction is limited in scope.

It is ordered:

1. Under 49 U.S.C. § 10502, the transaction between CSXT and NSR regarding trackage rights over the Gary Branch is exempted from the prior approval requirements of 49 U.S.C. §§ 11323-25, subject to the employee protective conditions in Norfolk & Western Railway—Trackage Rights—Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

2. Notice will be published in the Federal Register on August 19, 2014.

3. The trackage rights exemption sought in this proceeding will be effective on August 14, 2014.

4. Petitions to reopen must be filed by September 3, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.