

ENTERED
Office of Proceedings
December 9, 2019
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY
-ACQUISITION AND OPERATION-
CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NY

COMMENTS AND REQUEST FOR CONDITIONS
OF PORT OF OSWEGO AUTHORITY

Pursuant to the procedural schedule established by the Board's November 8, 2019 decision in this proceeding, the Port of Oswego Authority (the "Authority") respectfully submits the following comments to the Bessemer and Lake Erie Railroad Company ("B&LE") Application to acquire certain rail lines from CSX Transportation, Inc. ("CSXT"), and request for conditions to alleviate the competitive harms that the Port will suffer as a result of this proposed transaction.

BACKGROUND

A century and a half ago, only a few years after the American Revolutionary War, Oswego was designated by Congress, during the presidency of John Adams, to be the first port of entry into the United States (1799). In the 1800's until the late 1940's the Oswego Harbor and port were the largest and busiest on the Great Lakes. In 1923, the City of Oswego established a Harbor and Dock Commission to oversee port operations within the city limits. In 1955, the Commission was replaced, through New York State legislation, with a new Oswego Port Authority.

The Port is New York State's only port on Lake Ontario, and it is considered to be one of the major ports on the Great Lakes, and the first lake port of call transiting the St. Lawrence Seaway. The Port is a full intermodal center located within 150 miles of over 60 million people. On an annual basis, more than a million tons of product move through the Port, including windmill components, grain, soybeans and aluminum. In 2017, the Port had a documented local impact of over 209 jobs and supported over 27 million dollars in commercial activity in Central New York. In 2019, those numbers have increased to 240 jobs and 31 million dollars, respectively.

It is the Port's understanding that under the proposed transaction, Canadian National Railway Company ("CN") and B&LE will acquire 278.1 miles of rail line from CSXT in the United States and Canada. More specifically, B&LE will acquire the 236.3 miles of rail line (the "Massena Line") located in the United States. According to its Application, BL&E contends that its proposal "is not likely to substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States." However, as explained more fully herein, it is respectfully submitted that the Board should condition its approval on certain measures that are necessary to preserve competition and essential services.

SPECIFIC CONCERNS/ISSUES

1. As part of the proposed transaction, B&LE will acquire CSXT's Fulton Subdivision, on which the Port is located. Assuming the Application is approved, the Port, which has single line CSXT service now, will no longer have direct service. Instead, B&LE will act as an intermediate carrier between the Port and CSXT. This additional interchange will

require coordination and participation of a third carrier, which will lead to reduced operating efficiency, increased costs and increased transit time.

2. The Application provides no protections to the Port following the expiration of its contracts with CSXT. The Port has been advised that the Application includes fixed price commitments for five (5) years on corn, wheat, soybeans, potash, aluminum ingots and Rip Rap. However, the Port is reasonably concerned that upon the expiration of that five-year commitment, prices will rise due to the introduction of another interline carrier to the route. Furthermore, any commodities that are not expressly named in the Application are presumably not subject to the fixed price commitment. Thus, any such commodities that the Port may ship will immediately be subject to new (presumably, higher) rates that reflect CN's participation.

3. The acquisition will result in the loss of a potential lower cost rail option to service Novelis, a large aluminum ingot receiver – located 4 miles from the Port. Although, both the Port and Novelis are adjacent to the Fulton Subdivision, they have not yet been able to establish service between themselves and CSXT. Therefore, the Port currently receives these ingots by water from the Saguenay region of Quebec and trucks the ingots to Novelis. However, the Port would prefer establishing a rail connection, in addition to barge and trucks. Assuming the Application is approved, a more efficient rail service may become unavailable to the Port because CN (B&LE's parent company) directly competes with the Port through its transloading facility in Brockville, ON where the ingots are forwarded by truck to Novelis. In other words, by helping to establish a rail connection between the Port and Novelis, CN would be competing with itself.

4. The Port has committed to a \$15 million expansion in 2020 that will double fertilizer and grain storage capacity, along with handling improvements on behalf of New York farmers for importing fertilizer and exporting grain (currently soybeans). This significant investment is being made due to ongoing commitments by various shippers to consolidate certain operations at the Port. The Port is justifiably concerned that competing grain products moved by CN from Canada will have a negative economic impact on the business model in place due to currency exchanges between the United States and Canadian dollar.

5. There were prior discussions between the Port and CSXT regarding the potential for a corn shuttle via rail between the Port and Attis on the Fulton Subdivision. However, CSXT showed little willingness to allow such a shuttle, and in fact, introduced pricing and other entry barriers. Since the Application provides that the “operating plan” would be the same on the Fulton Subdivision, the Port reasonably believes CN would seek to impose similar entry barriers to providing corn to Attis.

6. The Port has collaborated with CSXT to get the Fulton Subdivision designated as an Intermodal line between the Port, Novelis and Woodward. These efforts were aimed at creating more efficient movement of scrap and finished aluminum products for handling, loading and unloading. The Port is not aware of any vertical restriction between these three points, or any weight limitation for 286-K car movements between these three points. Upon information and belief, the only horizontal restrictions preventing such a designation is on the Port Industrial Lead from MP 34.80 to the Port where discussions with CSXT have been held to correct the deficiencies.

PROPOSED CONDITIONS

1. The Port has been in discussions with Finger Lakes Railway Corp. (“FGLK”) with respect to FGLK becoming the rail operator at the Port, and regarding the aforementioned concern that if this proposed transaction is approved, the Port will be unlikely to establish rail service with Novelis. Since the Port requires rail “shuttle” service to Novelis, which is only a 4-mile haul on specialty rail cars designed to efficiently handle ingots, and requires an available locomotive 24 hours per day/7 days per week, it is unlikely that CN will be interested in providing that service. Furthermore, Novelis has specific service needs requiring service to certain unloading points at their plant and multiple plant locations for each railcar. The Port believes that based on its vast experience – including its experience in dealing with weather-related issues specific to this region - FGLK would be the ideal partner to assist with establishing rail service with Novelis. Indeed, FGLK already operates a similar 3-mile shuttle between an online paper mill and box plant. FGLK has locomotives nearby in Fulton, and FGLK already has experience operating single-person train crews. Therefore, the Port requests that the Board condition approval of the Application on granting FGLK trackage rights between the Port and Novellis.

2. As a result of the transaction, B&LE will be inserted on the Fulton Subdivision, and the Port will no longer receive direct service from CSXT. The Port believes this will eventually cause an increase in prices and will result in operating inefficiencies. Therefore, the Port requests that CN not be permitted to erect artificial barriers to entry regarding the shipment of corn between the Port and Attis (Fulton, NY) by railcars. More specifically, it is respectfully requested that the Board condition approval of the Application on granting FGLK trackage rights

over the Fulton Subdivision to provide expanded switching access between the Port and CSXT. This condition including similar rights for Attis, would streamline operations on the Fulton Subdivision from Attis to the Solvay interchange by eliminating an interline carrier from the move and it would provide the Port with efficient affordable rail service to compete with other transportation facilities located in Canada.

3. It is respectfully requested that the Board condition approval of the Application on current pricing being maintained on all commodities listed in the Application for a period of five (5) years. In addition, it is requested that the Board impose a fixed rate of \$600/freight car including track spot placement on all new commodities shipped by the Port for a period of five (5) years.

4. It is respectfully requested that the Board condition approval of the Application on a requirement that CN work with the Port to correct any deficiencies on the Port Industrial Lead between MP 34.80 and the Port, as well as designate the Fulton Subdivision as an Intermodal Line.

5. Finally, the Port requests that the Board condition approval of the Application on a prohibition of Canadian Grain Imports into the Port whenever the exchange rate of \$1.00/CA is greater than \$0.80/US.

CONCLUSION

Based on the foregoing reasons, the Port of Oswego Authority respectfully requests that if the Board were to approve the proposed transaction, that it impose the requested conditions.

Dated: December 9, 2019

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: /s/ Daniel J. Pautz
Daniel J. Pautz, Esq.
Kattie M. Chmielowiec, Esq.
One Lincoln Center
Syracuse, New York 13202
Telephone: 315-218-8153
dpautz@bsk.com

Counsel for the Port of Oswego Authority

VERIFICATION

I, William W. Scriber, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 9, 2019.



[William W. Scriber]
[Executive Director- CEO]
Port of Oswego

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2019, I served a copy of the foregoing
Comment and Request for Conditions on the following persons by the method indicated:

By email:

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
Lou@lgrailaw.com

Eric Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
ehocky@clarkhill.com

Claire M. Maddox
Dentons US LLP
1900 K Street, NW
Washington, DC 20006
claire.maddox@dentons.com

Peter F. Young
Vermont Rail System
One Railway Lane
Burlington, VT 05401
pyoung@vrs.us.com

Keith D. Martin
NYS Department of Transportation
Office of Counsel, 6th Floor
50 Wolf Road
Albany, NY 12232
keith.martin@dot.ny.gov

Jeffrey A. Bartos
Guerrieri Bartos & Roma, PC
1900 M Street, NW, Suite 700
Washington, DC 20036
jbartos@geclaw.com

Richard J. Dreger
Richard J. Dreger, Attorney at Law, PC
2101 Macy Drive
Roswell, GA 30076
rick@rdregerlaw.com

Erika A. Diehl-Gibbons
United Transportation Union
24950 Country Club Blvd., Suite 340
North Olmsted, OH 44070
ediehl@smart-union.org

Raziya Brumfield
Guerrieri Bartos & Roma, PC
1900 M Street, NW, Suite 700
Washington, DC 20036
rbrumfield@geclaw.com

By U.S. mail, postage prepaid:

James D. Phillips
Canadian/American Border Trade Alliance
PO Box 929
Lewiston, NY 14092

Bethann Rooney
The Port Authority of New York and
New Jersey
4 World Trade Center
150 Greenwich Street, 17th Floor
New York, NY 10007

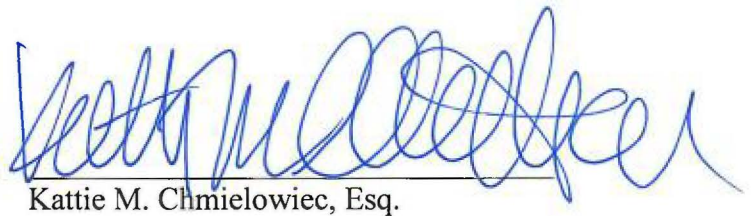
Richard S. Edelman
Mooney Green Saindon Murphy
& Welch, PC
1920 L Street, NW, Suite 400
Washington, DC 20036

Attorney General of the United States
c/o Assistant Attorney General,
Antitrust Division, Room 3109
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, DC 20036

Garry Douglas
North Country Chamber of Commerce
PO Box 310
7061 Route 9
Plattsburgh, NY 12901

Secretary of Transportation
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590



Kattie M. Chmielowiec, Esq.