

SERVICE DATE – MAY 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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, N.Y.

Decision No. 5

Digest:¹ This decision postpones the effective date of the authority granted in Decision No. 4 to June 12, 2020, and extends certain filing deadlines.

Decided: May 8, 2020

On April 6, 2020, the Board issued Decision No. 4, authorizing Bessemer and Lake Erie Railroad Company (B&LE) to acquire from CSX Transportation, Inc. (CSXT), and operate 236.3 miles of rail line in New York. The Board's authorization was subject to conditions, including, as relevant here, a condition that B&LE and CSXT modify or eliminate section 5.14(b) in the Purchase & Sale Agreement (PSA) governing the transaction. Proposed changes to section 5.14(b) were due to the Board by May 6, 2020. Decision No. 4 is scheduled to become effective on May 21, 2020, and petitions for reconsideration are due May 18, 2020.²

On May 6, 2020, B&LE and CSXT jointly filed a letter requesting an extension of the deadline for submitting proposed changes to section 5.14(b), from May 6, 2020, to May 18, 2020, stating that B&LE and CSXT have thus far been unable to agree upon a submission. B&LE and CSXT also request that the effective date of Decision No. 4 be extended from May 21, 2020, to June 5, 2020, to provide the Board a reasonable time to consider their submission.

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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On April 27, 2020, B&LE and CSXT jointly filed a request to extend the deadline for petitions for reconsideration from April 27, 2020, to May 18, 2020. The Board granted the request by decision served the same day. See Bessemer & Lake Erie R.R.—Acquis. & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Ctys., N.Y., FD 36347 (STB served Apr. 27, 2020).

On May 7, 2020, Finger Lakes Railway Corp. (FGLK) filed a letter, asserting that it and other parties would be prejudiced if they are not given sufficient time to review and evaluate the proposed changes to section 5.14(b) before determining whether to seek reconsideration. Accordingly, FGLK states that it does not object to the proposed extension for submitting changes to May 18, 2020, provided that the deadline for petitions for reconsideration is further extended until May 28, 2020, and the effective date of Decision No. 4 is extended until June 12, 2020.

The request to extend the deadline for proposed changes to section 5.14(b) to May 18, 2020, will be granted. The deadline for petitions for reconsideration will be further extended to May 28, 2020. Requests for stay will now be due by June 4, 2020. Decision No. 4 will be effective June 12, 2020.

It is ordered:

1. B&LE and CSXT must submit proposed changes to section 5.14(b) to the Board by May 18, 2020, for review.
2. Petitions for reconsideration of Decision No. 4 must be filed by May 28, 2020. Requests for stay must be filed by June 4, 2020.
3. Decision No. 4 will be effective on June 12, 2020.
4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman. Board Member Fuchs commented with a separate expression.

BOARD MEMBER FUCHS, commenting with a separate expression:

Though I continue to disagree with the section 5.14(b) condition, I agree with the deadline changes, which are based on reasonable requests from parties in this proceeding.