

SERVICE DATE – NOVEMBER 10, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36544

COMMONWEALTH OF VIRGINIA—ACQUISITION EXEMPTION—CERTAIN ASSETS  
OF CSX TRANSPORTATION, INC.

Decided: November 9, 2021

On September 28, 2021, the Commonwealth of Virginia, acting by and through its Virginia Passenger Rail Authority (VPRA), filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10901 to acquire certain real property and trackage on approximately 164.22 miles of rail line currently owned by CSX Transportation, Inc. (CSXT), located between approximately milepost 276.0 in the town of Clifton Forge in Allegheny County and milepost 111.78 in the town of Doswell in Hanover County, all in the Commonwealth of Virginia.<sup>1</sup> Concurrently, VPRA filed a motion to dismiss the petition, contending that the proposed transaction does not require Board authorization under Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C.2d 835 (1991).

According to the petition, VPRA and CSXT have reached an agreement pursuant to which CSXT would convey to VPRA all its right, title, and interest in Segment 3 by quitclaim deed (Segment 3 Sale). (Pet. 3.) VPRA states that Buckingham Branch Railroad Company (BBRC), a Class III carrier, has leased a rail line, which includes Segment 3, from CSXT since 2004, subject to CSXT's retention of limited overhead trackage rights on the leased line. (Id. at 2-3); see also Buckingham Branch R.R.—Lease—CSX Transp., Inc., FD 34495 (STB served Nov. 5, 2004). VPRA states that, prior to closing on the Segment 3 Sale, CSXT and BBRC plan to convert BBRC's leasehold interest to a permanent easement (Segment 3 BBRC Freight Easement).<sup>2</sup> (Pet. 3.) VPRA further states that the BBRC lease would be terminated with respect to Segment 3 upon consummation of the Segment 3 BBRC Freight Easement transaction, at which point a new CSXT-BBRC operating agreement governing BBRC's operations on Segment 3 (Segment 3 Operating Agreement) would take effect. (Id.)

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<sup>1</sup> The real property rights and trackage are referred to as "Segment 3" in VPRA's filings.

<sup>2</sup> BBRC was authorized to acquire the Segment 3 BBRC Freight Easement in Buckingham Branch Railroad—Acquisition & Operation Exemption with Interchange Commitment—CSX Transportation, Inc., FD 34495 (Sub-No. 1) (STB served Sept. 17, 2021).

According to VPRA, after closing, operations on Segment 3 also would be governed by the Joint Operating and Maintenance Agreement (JOMA) between CSXT and VPRA and the Comprehensive Rail Agreement between CSXT and VPRA. (*Id.* at 4.)

According to VPRA, BBRC has dispatched Segment 3 under the lease with CSXT, and, under the Segment 3 Operating Agreement, BBRC would continue to dispatch Segment 3 unless and until BBRC and VPRA agree to a different dispatching arrangement. (Mot. to Dismiss 5 & n.16 (citing section 8(b) of the Segment 3 Operating Agreement).) VPRA states that if it were to assume responsibility for dispatching Segment 3, that dispatching would be subject to the Dispatch Protocols in the JOMA, specifically citing sections 5.5 and 5.2.1 of the JOMA. (Mot. to Dismiss 5-6 & n.17.)

Under the draft Segment 3 Operating Agreement filed as Exhibit E to VPRA's motion to dismiss, "[BBRC] shall dispatch Segment 3 at its sole cost and expense, provided however, in the event that the Segment 3 Sale is consummated, the responsibility for dispatching of Segment 3 after such Segment 3 Sale shall be the same except as may be mutually agreed by [BBRC] and [VPRA] (or its designee)." (Mot. to Dismiss, Ex. E § 8(b).) However, section 5.5 of the JOMA that VPRA submitted (Exhibit C to the motion to dismiss) does not refer to Segment 3, and the JOMA does not contain a section 5.2.1. Instead, it appears that section 5.7, which provides as follows, applies to Segment 3:

**5.7** BBRC presently dispatches Segment 3, pursuant to the BBRC Lease Agreement. It is intended that until and after [the Segment 3 Sale], BBRC will continue to [dispatch] pursuant to the BBRC Lease Agreement or the Segment 3 Easement and Segment 3 Operating Agreement, as applicable. Upon any cessation of dispatch of Segment 3 by BBRC, then, prior to [the Segment 3 Sale], CSXT shall have the right and obligation to do so, and, after [the Segment 3 Sale], at the request of [VPRA], CSXT will assume dispatch for a transition period not to exceed two (2) years on terms and conditions mutually agreed by the Parties, acting reasonably.

(Mot. to Dismiss, Ex. C § 5.7.)

Given the foregoing, VPRA will be directed to clarify the contractual provision(s) addressing the circumstances under which VPRA could assume dispatching over Segment 3 and the protocols or other provisions that would govern VPRA's dispatching of Segment 3 if it were to exercise such responsibility. The requested clarification is relevant to the Board's analysis, under State of Maine, of whether the proposed transaction would protect the continuation of common carrier freight service on Segment 3 from undue interference. See State of Maine, 8 I.C.C.2d at 836-37; see also Santa Cruz Cnty. Reg'l Transp. Comm'n—Pet. for Declaratory Ord., FD 36213, slip op. at 2-3 (STB served Oct. 24, 2018).

It is ordered:

1. VPRA shall provide the requested clarification, as described above, by November 15, 2021.

2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.