

SERVICE DATE – APRIL 8, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36220

CSX TRANSPORTATION, INC.—LEASE—WESTERN AND ATLANTIC RAILROAD

Digest:¹ This decision allows CSX Transportation, Inc., to continue to lease approximately 137.33 miles of rail line of the Western and Atlantic Railroad from the State of Georgia, subject to standard employee protective conditions.

Decided: April 5, 2019

By application filed on October 22, 2018, CSX Transportation, Inc. (CSXT), seeks Board approval under 49 U.S.C. § 11323 to continue to lease from the State of Georgia, acting by and through the State Properties Commission (Georgia), approximately 137.33 miles of rail line of the Western and Atlantic Railroad (W&A), a non-operating carrier owned by Georgia, between milepost 0 at Central Avenue in Atlanta, Ga., and milepost 137.28 at the centerline of Interstate 24 in Chattanooga, Tenn. (the Line). On November 2, 2018, Georgia filed a letter in support of CSXT's application.

By decision served on November 21, 2018, the Board found that the proposed transaction (the Lease) qualifies as a "minor transaction" under 49 C.F.R. § 1180.2(c), found that the application was complete, and adopted a procedural schedule under which the Board's final decision would be expected to be issued by April 19, 2019.

The Board now approves CSXT's lease application, subject to standard employee protective conditions.

BACKGROUND

CSXT is a Class I railroad, and W&A is a non-operating Class III railroad that is owned by Georgia. (Appl. 3, 5.) According to CSXT, it and its predecessors have leased the Line since 1890 and have been the only railroads operating the Line since that time. (*Id.* at 4.) CSXT states that it provides overhead and local service over the Line; that the Norfolk Southern Railway Company (NSR) intersects with the Line in Chattanooga, Tenn., and Dalton, Ga.;² and that

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 CSXT does not indicate whether it interchanges traffic with NSR at these locations.

CSXT interchanges traffic in Elizabeth, Ga., with the Georgia Northeastern Railroad Company, Inc. (GNRR). (*Id.*) CSXT further states that the current lease expires on December 31, 2019, and that the new lease is for an additional 50 years. (*Id.* at 14, 17.) According to CSXT, it will retain responsibility for dispatching, track maintenance, capital improvements, and serving shippers under the Lease. (*Id.* at 14.)

CSXT states that it expects the transaction to be competitively neutral and that it will not result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. (Appl. 9.) In support, CSXT states that competition with NSR between Atlanta and Chattanooga will be maintained at the current level and that the Lease will not impact motor carriers operating between Atlanta and Chattanooga on Interstate 75 or intermodal competition at intermediate points. (*Id.*) According to CSXT, the number of rail carriers serving each shipper on the Line will remain the same, and no shipper now being served by two railroads would have its service limited to one railroad. (*Id.*) CSXT states that the Lease requires CSXT to execute an interchange agreement with each connecting railroad. (*Id.* at 10 (citing *id.* at Ex. 2, Lease, § 8.01).) Additionally, CSXT states that “essential services” provided by other carriers will not be affected by the Lease. (*Id.*)

According to CSXT, the Lease will maintain the status quo regarding the transportation services to rail customers now served by CSXT, as CSXT will continue to serve shippers as it does today. (Appl. 10.) CSXT states that it will continue to provide essential transportation services as it and its predecessors have done since 1890. (*Id.*)

As a condition to the Lease, CSXT has agreed to seek authority to abandon two lines that are not part of the Line to allow Georgia to expand its Silver Comet recreational trail: (1) a 2.32-mile line between milepost S.G. 579.29 and milepost S.G. 581.61 in Cobb County, Ga.; and (2) an approximately 4.3-mile line between milepost S.G. 579.29 and milepost 575.00 in Cobb County, Ga. (Appl. 18; *see also id.* at Ex. 2, Lease, § 11.03.) On October 15, 2018, CSXT filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon the first of the two lines in Docket No. AB 55 (Sub-No. 784X), CSX Transportation, Inc.—Abandonment Exemption—in Cobb County, Ga. The exemption became effective on December 2, 2018. As of the decided date of this decision, CSXT has not filed for abandonment authority for the second of the two lines³

CSXT states that, under the Lease, Georgia has reserved rights that may require the relocation of track, but CSXT is confident that its ability to provide adequate transportation service is protected by the Lease, which states that any track relocation will not “unreasonably interfere with the use by [CSXT] of the [l]eased [p]roperty, or unreasonably reduce [CSXT’s] operating capacity.” (Appl. 10 (citing *id.* at Ex. 2, Lease, § 1.04(c)).) Additionally, CSXT states that Georgia has reserved the right to institute passenger rail service over the Line

³ CSXT states that, under the Lease, it has granted Georgia or its Department of Transportation a first right of refusal to acquire the approximately 4.3-mile line, which must be exercised within three years of CSXT obtaining abandonment authority. (Appl. 18.)

“subject to the mutual agreement of [Georgia] and [CSXT] with respect to the impact any such passenger rail may have upon the safety and capacity of, compensation for, and liability in connection with the [Line].” (*Id.* at 11 (citing *id.* at Ex. 2, Lease, § 11.01).)

DISCUSSION AND CONCLUSIONS

Statutory Criteria

Under 49 U.S.C. § 11323(a)(2), a purchase, lease, or contract to operate property of one rail carrier by another rail carrier requires prior Board approval under 49 U.S.C. § 11324. Because the proposed transaction here does not involve the merger or control of two or more Class I railroads, it is governed by § 11324(d), which directs the Board to approve the application unless the Board finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. The Board must consider whether there would be adverse competitive impacts that are both likely and substantial, and if so, whether the anticompetitive impacts would outweigh the transportation benefits or could be mitigated through conditions. See CSX Transp., Inc.—Joint Use—Louisville & Ind. R.R., FD 35523, slip op. at 5 (STB served Apr. 10, 2015.)

Rail Transportation Analysis

Based on the record, the Board concludes that the transaction is not likely to cause a substantial lessening of competition or to create a monopoly or restraint of trade. Renewal of the lease is competitively neutral because it leaves CSXT in the same position that CSXT and its predecessors have occupied for more than a century. Nothing in the record indicates that existing transportation options for shippers and carriers would be reduced, or that any shipper would lose a competitive rail option. The record indicates that, not only would CSXT continue to operate over the Line, but that the lease does not reduce or limit existing rights of NSR and GNRR.⁴ (*See* Appl. 6.) The record demonstrates that CSXT will continue to provide transportation services as it and its predecessors have done since 1890, and that the ability of other carriers to provide “essential services” will not be impaired by the Lease. (*See id.* at 10.) Additionally, the Lease sufficiently protects CSXT’s ability to provide transportation services over the Line in the event Georgia exercises its right to relocate track or institute passenger service. Accordingly, the Board finds that the proposed Lease will have no likely and substantial anticompetitive effects, and therefore need not weigh such effects against the public interest.

The two abandonments contemplated by the Lease do not alter this conclusion. CSXT’s ability to obtain abandonment authority for other lines is independent of the analysis for this particular transaction. As noted above, CSXT’s authority to abandon the first line became effective on December 2, 2018. See CSX Transp., Inc.—Aban. Exemption—in Cobb Cty., Ga.,

⁴ Neither NSR nor GNRR opposed CSXT’s application.

AB 55 (Sub-No. 784X) (STB served Nov. 2, 2018). Whether the second line would qualify for abandonment authority under the applicable legal standard is a determination that would be made separately if CSXT were to request that authority from the Board in the future.

Labor Protection

CSXT requests that the Board impose the labor protective conditions in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980), as clarified in Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-826 (1990). CSXT states that there will be no impact on its employees because CSXT does not plan to change operations on the Line and that there will be no impact on the employees of W&A because there are no W&A employees on the Line. The Board finds that the standard labor protective conditions set forth in Mendocino Coast Railway and Wilmington Terminal are appropriate here.

Environmental Issues

The change in traffic levels involved in the proposed lease transaction fall below the Board's thresholds for environmental review in 49 C.F.R. § 1105.7(e)(4) and (5). (See Appl. 15-16.) Therefore, this transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(1), and no environmental review is necessary or required. Furthermore, this Lease does not require historic review under 49 C.F.R. § 1105.8(b)(1). (See Appl. 17.)

It is ordered:

1. CSXT's application to continue to lease the Line is approved.
2. Approval of the transaction is subject to the employee protective conditions set out in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980), as clarified in Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-826 (1990).
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.