

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35522

CSX TRANSPORTATION, INC.—ACQUISITION OF OPERATING EASEMENT—GRAND
TRUNK WESTERN RAILROAD COMPANY

Digest:¹ After reviewing the current record, including the latest submission from CSX Transportation, Inc., concerning its Elsdon Line in the Chicago area, the Board is unable to reach a majority decision on how to proceed. Therefore, no action will be taken at this time.

Decided: December 7, 2018

In 2013, the Board approved an application by CSX Transportation, Inc. (CSXT), to acquire an operating easement over a rail line of the Grand Trunk Western Railway Company located in the Chicago area (Elsdon Line or Line). See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522 et al. (STB served Feb. 8, 2013). The Board reopened this proceeding on June 22, 2016, in response to a petition from the City of Chicago and the Village of Evergreen Park (Chicago Communities) alleging operational problems on the Elsdon Line, including excessive train idling, false gate activations, and blocked crossings. The Board ordered CSXT to provide monthly reports for one year supplying information on a number of key factors, including false gate activations; the location, duration, and cause of crossing blockages exceeding 10 minutes; and the status of operating protocols with other carriers that impact the Elsdon Line. Thereafter, the monthly reporting was extended for six months by decision served on July 27, 2017, and for an additional six months (with some modifications to the reporting requirements) by decision issued on December 14, 2017.

After CSXT filed its last monthly report in July 2018, the Board served a decision on July 27, 2018, noting that, although the blocked crossing counts and durations had decreased from their peak in late 2017, blockage issues remained on the Line. The Board asked CSXT to provide a report on steps it planned to take to improve fluidity on the Line.

CSXT submitted its report on August 23, 2018 (August Report). The report discusses certain actions CSXT intends to take, including working to identify network inefficiencies, exploring capital investments, and continuing implementation of positive train control. CSXT states that many reported blockages of greater than 10 minutes should be discounted because the

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).

train causing the specific blockage was moving at the time. CSXT also claims that the Board's conclusion in its July order that operations need to improve was incorrect, noting that some of the blockages were caused by non-CSXT trains or CSXT trains that were hampered by third-party rail operations. CSXT also states that the only operational step that it could take to reliably and substantially reduce the number of crossings occupied by trains for over 10 minutes on the Elsdon Line would be to reroute CSXT's trains onto other lines.

On October 18, 2018, the Chicago Communities commented that they remain interested in the Board's efforts to monitor CSXT's operations on the Elsdon Line.

After reviewing the current record, the Board is unable to reach a majority decision on how to proceed. Therefore, no action will be taken at this time.

It is ordered:

1. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller. Board Members Begeman and Miller commented with separate expressions.

BOARD MEMBER BEGEMAN, commenting:

I voted to approve the 2013 transaction allowing CSX Transportation, Inc. (CSXT) to acquire an operating easement on the Elsdon Line based on the representations CSXT made that the transaction would result in improved operations in the Chicago Terminal, benefiting not only CSXT, but its rail partners, its customers, and the Chicago community. Since the transaction's approval, however, CSXT has faced many operating challenges on the Line, including false gate activations and a significant number of blocked crossings.

Until now, the Board found it important to formally monitor CSXT's operations on the Line and its efforts to address the challenges. Most recently, starting in 2016, because of the significant number of blocked crossings and equipment failures at at-grade crossings on the Line, CSXT has provided detailed, monthly information about those problems. I supported that oversight because CSXT was not performing in the manner envisioned in its 2013 application. Although the blocked-crossing counts and durations had decreased from their peak late in 2017, blockage issues continued on the Line during the first half of 2018. That is why, in July, the Board asked CSXT to provide a report on steps it planned to take to improve fluidity on the Line.

In its August 2018 report, CSXT defended its performance, noting, for example, that some of the blockages were caused by non-CSXT trains. Yet, the last four monthly reports indicate that approximately two-thirds of the trains causing a blockage exceeding 10 minutes

were CSXT trains and that the number of CSXT trains causing a blockage during this same period was greater than the number of CSXT trains causing a blockage during the first four months of 2017. CSXT also argued that much of the apparent increase in blocked crossings cited by the Board is a function of more precise reporting, not decreased fluidity. But even accounting for CSXT's change in blockage reporting methodology in January 2017, the fluidity on the Line deteriorated between that point and June 2018.

CSXT's report also listed certain actions it intended to take to improve fluidity, including working to identify network inefficiencies, exploring capital investments, and continuing implementation of positive train control. Because operating challenges remain, as demonstrated in the most recently monthly reports, I supported a Board decision requesting that CSXT provide a report updating the Board on its efforts to improve operations on the Line, as discussed in its August report, to learn whether fluidity has improved as a result. I also supported the Board asking CSXT to provide an update in January on the Line's blockages, covering July through December 2018, to determine what, if any, improvements have been achieved. And, to help the Board determine if any fluidity improvements that may have occurred since the August report are being sustained, I supported the Board asking CSXT to provide a report in July 2019 covering the first six months of 2019. The Chicago communities, which commented in October that they remain interested in the Board's efforts to monitor CSXT's operations on the Elsdon Line, would be welcome to comment on CSXT's filings.

Let me be clear: I do not support oversight for the sake of oversight. Indeed, I opposed the Board's December 2014 decision to continue a near decade of oversight in Canadian National Railway Company—Control—EJ&E West Company, Docket No. FD 35087, where I saw no benefit to extending stale, untailored reporting requirements, including on certain insects. In this case, however, the Board has rightly adjusted and refined its reporting requirements over time in light of the data submitted by CSXT. For example, when CSXT demonstrated that false activations on the Line were no longer a significant issue, that item was dropped from the required reports. And the Board altered one of its conditions of the approval—a condition suggested by CSXT—that it would cut certain trains.

It is unfortunate that, at this time, the Board could not reach an agreement on a next action in this proceeding. Because I am not ready to walk away from this important matter, I will ask CSXT officials to provide me with informal updates on the Line's operations and the impacts of CSXT's improvement efforts.

BOARD MEMBER MILLER, commenting:

Although the Board could not reach a consensus on how to move forward in this case, there is little doubt that CSXT's conduct throughout the course of this proceeding has been disappointing. CSXT clearly overpromised when it represented to the Board that it would be

able to move trains over the Elsdon Line in a fluid manner and cut trains for delays exceeding 10 minutes. Then, after requesting CSXT to provide data so that it could monitor the impact that CSXT's operations were having on the Chicago Communities, the Board had to soon issue another decision directing CSXT to provide more specific information because its initial reports lacked detail. Now, asked to explain why the blocked crossing figures have gotten worse, CSXT's main argument is that it was initially undercounting the figures.

Given these circumstances, the idea to require CSXT to submit yet more reports—as was proposed in the draft I voted against—is understandable. However, I ultimately determined that I could not support additional reporting because it is not clear to me that it will have much further benefit. The Board has repeatedly asked CSXT to explain what steps it would take to improve fluidity, and CSXT has responded, having already explained several actions it has taken.¹ Asked by the Board in the July 27, 2018 decision to yet again “establish and provide to the Board a plan detailing additional actions that CSXT will take to improve fluidity of operations and reduce the number and duration of blocked crossings on the Line,”² CSXT responded with a list of actions that even it recognizes would not immediately and dramatically improve fluidity on the Elsdon Line, but stated that “[a]t this point, the only operational step that CSXT could take to reliably and substantially reduce the number of crossings occupied by trains for over 10 minutes on the Elsdon Line would be to reroute CSXT's trains from [the] Elsdon Line onto other lines.” (August Report 31.)

After years of reporting from CSXT, I am generally convinced that it is indeed unlikely that there are additional, realistic actions CSXT could take that would have a significant impact on blocked crossings on the Elsdon Line, aside from rerouting trains off the Elsdon Line—a step that I believe would likely only create rail congestion elsewhere in the Chicago area. While the Board may not like this answer, asking the question again is not going to change it and thus does not warrant requiring yet more reporting simply for the sake of doing something.³

¹ CSXT has stated that, among other things, it spent \$8 million to complete construction of the Hayford Junction Connection (CSXT May 30, 2018 Report 26-27); purchased dispatching equipment that allows Norfolk Southern Railroad dispatchers visual access to parts of the line to improve traffic flow at the Ashburn Junction (August Report 24-25); and rerouted certain trains off the Elsdon Line. (*Id.* at 26.)

² CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, slip op. at 2 (STB served July 27, 2018).

³ The reports to this point have had value, specifically in providing transparency into the situation on the Elsdon Line, helping ensure that CSXT took steps to reduce the number of false gate activations, and prompting CSXT to do a better job of communicating with the local community representatives.

I would note, however, that carriers should be aware that in future transactions in which the Board considers the impacts a proposed transaction would have on local communities—particularly those involving CSXT—I will certainly look upon their representations with more caution.