

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION—ACQUISITION EXEMPTION—  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

Decided: January 6, 2010

The notice of exemption under 49 CFR 1150.31 for Florida Department of Transportation (FDOT), a noncarrier, to acquire from CSX Transportation, Inc. (CSXT) certain physical assets and associated right-of-way, including approximately 61.5 miles of rail line in Poinciana, Volusia, Seminole, Orange, and Osceola Counties, FL, was served and published on April 17, 2009 (74 FR 17896-97). Together with the notice of exemption, FDOT filed a motion to dismiss the notice of exemption on the ground that the Board lacks jurisdiction over the acquisition because CSXT would retain an exclusive, permanent rail freight easement and FDOT would not obtain the right to provide freight service over the rail line. Replies to the motion to dismiss were due by May 7, 2009.<sup>1</sup>

On May 7, 2009, FDOT filed a letter to withdraw its previous request for expedited consideration of its motion to dismiss and requested that the Board hold this proceeding in abeyance. FDOT stated that the Florida legislature did not pass the legislation required for the proposed transaction to proceed and that the implications of this development are under review. FDOT stated that it would advise the Board of its intentions within 30 days. By decision served on May 14, 2009, the Board held the proceeding in abeyance until June 8, 2009. By decisions served on June 19, 2009, and August 7, 2009, the Board granted additional requests to continue to hold this proceeding in abeyance until December 31, 2009.

In a letter filed on December 30, 2009, FDOT requests that the Board continue to hold this proceeding in abeyance an additional 90 days, until March 31, 2010. FDOT states that the enabling legislation necessary for the proposed transaction was passed by the Florida legislature on December 8, 2009, and signed into law by Governor Crist on December 16, 2009. FDOT, however, states that the additional time is necessary for the parties to enter into certain amendments to the agreements that were submitted in support of FDOT's motion to dismiss. FDOT also states that funding agreements with local governmental entities will need to be updated during the 90-day period. Accordingly, because the request is reasonable, the Board

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<sup>1</sup> On May 5, 2009, The Brotherhood of Railroad Signalmen filed a motion requesting an extension of time until May 22, 2009, to respond to FDOT's motion to dismiss the notice of exemption. In a decision served on May 7, 2009, that request was granted.

will continue to hold this proceeding in abeyance to give FDOT time to complete and submit the necessary amendments and update the funding agreements.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding will be held in abeyance until March 31, 2010.
2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.