

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35522

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

Digest:¹ This decision requires CSX Transportation, Inc. (CSXT) to provide more detailed information in the monthly reports it files pursuant to the Board's June 22, 2016 decision. Board staff also will begin monthly telephone calls with appropriate CSXT personnel to discuss the railroad's progress in addressing any blockages and false activations reported. Appropriate CSXT staff shall also participate in a technical conference with Board staff, details of which will be announced in a subsequent decision.

Decided: October 7, 2016

In a decision served on February 8, 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 in the Chicago area (Elsdon Line or Line) subject to environmental conditions, including extensive voluntary mitigation proposed by CSXT, and a standard labor protective condition.² See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R. (Elsdon Decision), FD 35522, et al. (STB served Feb. 8, 2013). As described in the Board's decision served June 22, 2016, slip op. at 1-2, Board Members and staff have continued to monitor CSXT's efforts to address problems that have arisen on the Line since the agency approved the acquisition.

On February 12, 2016, the City of Chicago and the Village of Evergreen Park (Chicago Communities) jointly petitioned the Board to reopen the acquisition proceeding and impose sanctions and operational limitations on CSXT, alleging an unacceptably high number of street blockages stemming from CSXT's operations and equipment failures at at-grade crossings. The Chicago Communities provided evidence that despite CSXT's efforts to address the problem, street blockages exceeding 10 minutes on the Elsdon Line had resulted from stopped trains, slow moving or idling trains, and malfunctioning gates. The Chicago Communities also argued that the length of these

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

² In the same decision, the Board also permitted two related trackage rights exemptions to become effective.

blockages on major thoroughfares had been substantially in excess of the approximately three-minute delays anticipated in 2013 when the Board approved CSXT's application. The Board also received letters from citizens and community organizations raising similar concerns. CSXT filed responses to the various filings, stating that it was making efforts to address those problems.

Based on these showings, the Board reopened the proceeding on June 22, 2016, and ordered CSXT to comply with the representation it had made in its 2012 application that it would not start a train over the Elsdon Line unless the Line was clear and the point of exit was clear, or to show cause why it is unable to do so. The Board also required CSXT to file monthly reports for one year providing detailed information about at-grade crossings on the Line, blockages of those crossings exceeding 10 minutes, and the status of operating protocols with third-party carriers, to assist the Board in monitoring the situation and assess CSXT's claims that the blockages and other problems along the Elsdon Line are being addressed. On July 20, 2016, CSXT stated that it was complying with the Board's directive not to allow a train to enter the Elsdon Line unless the Line is clear and would not seek to show cause why it could not comply.

Before the first monthly report was filed, the Chicago Communities notified the Board about a lengthy blockage in an August 1, 2016 letter. Based on this incident, the Chicago Communities renew their request that the Board fine CSXT or take other steps to ensure the carrier abides by its obligations. On the same day, CSXT indicated that its August 15 report would include the train referenced in the Chicago Communities' letter.

CSXT has now submitted its first two monthly reports, and based on the information in the reports, the situation on the Elsdon Line remains troubling. On August 15, 2016, CSXT filed its first monthly report, covering the month of July, in which it identifies numerous instances of street crossing blockages exceeding 10 minutes as well as various instances of signal malfunctions.³ In its second monthly report, filed on September 15, 2016, CSXT again indicates numerous lengthy street blockages and gate malfunctions. The reports also show that, despite voluntarily agreeing to a condition requiring it to cut trains where a blockage exceeds 10 minutes, see Elsdon Decision, slip op. at 12 and 16, CSXT had not cut a single train, even in instances where the blockage lasted hours.

In addition, CSXT's reports do not contain certain details that would allow the Board to adequately monitor the situation and assess CSXT's progress. For example, in its September 15 report, CSXT lists for each false activation the amount of time elapsed from receipt of the notification of an activation until CSXT closed out the work order.

³ Although CSXT's August 15 report notes, with respect to false crossing activations, that once a signalman reaches the location of a failed gate in the down position that gate will be raised while repairs are being made, a police report subsequently submitted by the Chicago Communities appears to reflect at least one instance in which a gate remained down nearly two hours after CSXT personnel arrived at the scene. See attachments to Chicago Communities' letter filed September 8, 2016.

Only for some of these activations, however, does the report indicate the amount of time the gate was actually in the down position and hence blocking traffic.

With respect to any blockages exceeding 10 minutes caused by stopped trains, CSXT only provides a conclusory assertion that the delay from cutting a train would exceed the delay from resolving the underlying problem, providing no details about the particular circumstances at issue. The underlying problems are also not explained. The fact that CSXT is not cutting the trains, despite the fact that it was CSXT itself that proposed this as a mitigation condition,⁴ is concerning. It raises the question of whether CSXT made a representation that it knew or should have known it could not meet. The Board needs more detailed explanations as to why CSXT is not cutting trains, especially when long blockages occur. Accordingly, we are modifying the reporting requirement to obtain this information.

Moreover, while CSXT states in its latest report that it has now entered into operating protocols with other carriers, it provides no information on the protocols themselves nor about what the effect of these protocols has been. As such, CSXT's report gives the Board no basis to determine whether the operating protocols are accomplishing what was intended—avoiding potential interference with trains of other carriers on lines that cross the Elsdon Line—or whether, if that is not the case, CSXT is assessing further steps to improve the situation. If the protocols are working as intended, yet delays are still occurring because of trains from other carriers, then it again raises the question of whether CSXT made a representation that it now appears it cannot meet.

To better understand the problems on the Elsdon Line and what is being done to address them, CSXT will be directed to provide in its future monthly reports the following information in addition to the information already required. Furthermore, it may be that CSXT and the Chicago Communities could work together to develop additional feasible steps that could be taken to improve the situation on the Elsdon Line. Therefore, we will require CSXT to keep the Board apprised of any community outreach efforts in its future monthly reports.

False Activations

1. Duration in minutes from the time the crossing was activated and traffic became impeded to the time a signal maintainer arrived and raised the gate.
2. Detailed explanation of the cause of the activation and what the signal maintainer did to repair the false activation.

⁴ See Elsdon Decision, slip op. at 19 (“a public crossing must not be blocked longer than 10 minutes unless it cannot be avoided,” and “[i]f [a] blockage is likely to exceed this time frame, then the train *shall then be promptly cut* to clear the blocked crossing or crossings.”) (emphasis added).

Grade Crossings Blockages Lasting More than 10 Minutes

1. For each blockage caused by a stopped train where the train was not cut, a detailed narrative explanation for why the train was not cut, to allow the Board to assess whether the failure to cut was operationally justified.
2. Under “cause,” a narrative explanation in lieu of “proper train handling.”
3. If “track speed restriction” is a cause, an explanation of the actual track speed restriction and milepost of the restriction.
4. If “train waiting to get permission to move through MOW work limits” is a cause, an explanation of the MOW work being done and the milepost where it occurred.
5. If “slow order due to track” is listed as a cause, an explanation of the reason for the slow order and the milepost where it is located.
6. For any cause such as “holding for cross traffic, waiting to enter BRC Yard, or CN Train being held out,” a detailed narrative explanation of why those circumstances resulted in a blockage exceeding 10 minutes.
7. A summary sheet listing, for each crossing: (a) the total number of blockages exceeding 10 minutes during the month, (b) the total number of minutes of all the blockages exceeding 10 minutes combined, and (c) the average number of minutes of each blockage exceeding 10 minutes (i.e., the total number of minutes divided by the number of blockages.)
8. The total number (not a list) of all CSXT train crossing occurrences for the month, regardless of duration (i.e., the total number of times any CSXT train crossed any at-grade crossing on the Elsdon Line during the month).

Additional Information Concerning Operating Protocols and Community Outreach

1. CSXT shall provide the Board with information on the effect of all Operating Protocols that it has with other rail carriers with respect to the Elsdon Line, documenting whether the Operating Protocols have reduced train idling and slow speeds and allowed trains to more often operate as anticipated when the Board authorized the acquisition.
2. CSXT shall document in each monthly report any community outreach efforts with respect to the Elsdon Line during the month.

Monthly Conference Call with STB Staff

Board staff will also hold a monthly telephone call with the appropriate CSXT division superintendent and division signal manager to discuss the blockages and false activations and resolve any questions that might arise regarding how information is included in the reports. These conference calls will take place as soon as possible after each report is filed with the Board. Board staff will contact CSXT to make further arrangements for these calls.

Technical Conference with STB Staff

As noted, it appears that the CSXT monthly reports and the Chicago Communities’ observations regarding operational realities on the Elsdon Line cannot be

reconciled with the expectations CSXT created during the acquisition process (e.g., CSXT represented that it would send trains at 40 mph and only when the entire Line was clear and the train could be sent without stopping; that if a public crossing is likely to be blocked longer than 10 minutes, the train shall be cut). The Board will, under separate Director's Order, direct representatives of CSXT to meet with Board staff in a technical conference at the Board's headquarters in Washington, D.C., to discuss CSXT's reporting and its efforts to address the operational issues on the Elsdon Line. Representatives of the Chicago Communities may participate in that conference. The attendees will discuss how CSXT will ensure that the Elsdon Line is clear before entering the Line, the methods by which CSXT will expeditiously handle gate malfunction reporting and repairs, the Operating Protocols CSXT has with other carriers relating to the Elsdon Line, CSXT's refusal to cut trains blocking a public crossing for more than 10 minutes, and CSXT's timeline and plans for improving operations on the Elsdon Line. The Board expects CSXT to use this meeting as an opportunity to communicate a clear, timely, and accountable approach towards addressing the operational problems on the Elsdon Line. Board staff will report the conference results to the Board. The Director's Order further addressing the technical conference will be issued shortly.

The Board will continue to closely examine CSXT's reports and performance and stands ready to take additional steps as circumstances warrant.

It is ordered:

1. CSXT shall provide the data described above when filing the reports required by the June 22, 2016 decision, beginning with the report due in October 2016.
2. Appropriate CSXT staff shall participate in the monthly conference call.
3. Appropriate CSXT staff shall participate in a technical conference set to occur no later than October 21, 2016, further information as to which will be announced by separate Director's Order. Representatives of the Chicago Communities may participate in the technical conference.
4. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Commissioner Begeman commented with a separate expression.

COMMISSIONER BEGEMAN, commenting:

The Board has been monitoring the persistent problems associated with operations on the Elsdon Line since approving the acquisition in February 2013. Board Members and staff have seen first-hand the challenges the Elsdon Line poses and, in 2014 and 2015, met with representatives from CSXT and the Chicago Communities about the ongoing operational issues and impacts (e.g., street blockages as a result of stopped

trains, slow-moving trains, and malfunctioning gates). So when the City of Chicago and the Village of Evergreen Park jointly petitioned the Board to reopen the acquisition in February 2016 because of continued operational problems, I recommended that the Board hold a hearing in Chicago to allow us to receive a comprehensive update in person about the outstanding issues on the Line. I believed these ongoing problems deserved our prompt attention and in a format that would allow the Members to directly ask CSXT and Community officials questions. My objective was to help the Board and the Communities get answers from the carrier as quickly as possible, rather than communicate through continued written filings, which don't allow us to ask questions directly or to readily engage in back and forth exchanges with the parties. A hearing, in my view, could have helped ensure accountable progress and, ultimately, expedite a final resolution of the remaining operational problems.

Unfortunately, there was not majority support for holding a hearing. In fact, I was informed that if the Board held such a hearing, doing so could delay a Board decision on the Community's petition until the fall. Because timely Board action was one of my foremost concerns, I had to give up on the idea of a spring hearing. I instead worked to ensure the Board issued a strong decision (finally issued in June), in the hope that the result of the directives issued would inform the Board and the Communities of CSXT's plan to finally resolve all outstanding problems on the Line. Yet here it is, fall, and we still don't have a clear indication of how or when the operational issues will be remedied.

I am pleased this decision includes my suggestion that the Board hold a technical conference to help home in on particular questions with CSXT's monthly reports and other concerns (although I first suggested it in August after reviewing CSXT's first report). I think the Board simply must take a more hands-on approach in addressing the Elsdon Line's challenges. Today's action is a welcome step in that direction.