

the Alliance of Automobile Manufacturers (Alliance). The Alliance offered detailed comments on the collection of information and the associated experiments. An extensive discussion of the Alliance comments and the changes NHTSA has made to the information collection and ICR package as a result can be found in the supporting statement that will be placed in the docket for this notice.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012-22477 Filed 9-11-12; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35522]¹

CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.

SUMMARY: CSX Transportation, Inc. (CSXT) and Grand Trunk Western Railroad Company (GTW) have agreed to exchange perpetual rail operating easements over certain parts of each other's lines. GTW has agreed to grant CSXT an easement over a GTW line between Munster, Ind., and Elsdon, Ill. (Elsdon Line), over which GTW would retain local and overhead trackage rights. CSXT also has agreed to convey local and overhead trackage rights over that line to various GTW affiliates and a CSXT affiliate. In exchange for that easement, CSXT has agreed to grant GTW an easement over a CSXT line between Leewood, Tenn., and Aulon, Tenn., over which CSXT would retain local and overhead trackage rights.

In this docket, CSXT has filed an application for authority to acquire an easement from GTW, and in the embraced Docket Nos. FD 35522 (Sub-No. 1) and (Sub-No. 2), the CSXT affiliate and the various GTW affiliates, respectively, seek authority to acquire trackage rights over that line.

In this decision, the Surface Transportation Board (Board) accepts for consideration CSXT's application and the filings in the two embraced subdockets, finds that the transaction proposed in CSXT's application qualifies as "minor," and adopts a procedural schedule to govern this proceeding and the embraced trackage rights proceedings.

GTW's acquisition of an easement from CSXT will be adjudicated in a separate docket, Docket No. FD 35661, and is the subject of a separate Board decision being served in that docket today. The Board intends to adjudicate both easement acquisitions on parallel schedules, concluding with a final Board decision in both dockets on February 8, 2013.

DATES: The effective date of this decision is September 12, 2012. Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than September 26, 2012. All comments, protests, and requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by November 9, 2012. Comments on the Board's Draft Environmental Assessment (Draft EA) also must be filed by November 9, 2012. Responses to comments on the merits of the application and rebuttals in support of the application must be filed by November 29, 2012. The Board expects to issue a Final EA completing the environmental review process on or before January 14, 2013, and a final decision on February 8, 2013. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at www.stb.dot.gov at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and ten paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) Attorney General of the

United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street J-150, Jacksonville, FL 32202; (4) Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204; and (5) any other person designated as a POR on the service list notice (to be issued as soon after September 26, 2012, as practicable).

FOR FURTHER INFORMATION CONTACT:

Scott M. Zimmerman, (202) 245-0386. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: CSXT owns and operates about 21,000 miles of railroad in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Quebec. GTW owns and operates about 642 miles of railroad in Illinois, Indiana, Michigan, and Ohio and the Province of Ontario. GTW is directly controlled by Grant Trunk Corporation, which is controlled by Canadian National Railway Company (CN).

CSXT and GTW have entered an Agreement for Exchange of Perpetual Easements dated as of August 13, 2012. To obtain the required Board authority to carry out their agreement, CSXT and GTW have filed various requests for authority in this docket and Docket No. FD 35661 as follows:

Docket No. FD 35522

In Docket No. FD 35522, CSXT has filed an application pursuant to 49 U.S.C. 11323(a)(2) and 49 CFR pt. 1180 seeking approval for the carrier to acquire a proposed easement (Acquisition). Specifically, CSXT wishes to acquire an exclusive, perpetual, non-assignable railroad operating easement over 22.37 miles of GTW track on the Elsdon Subdivision between the connection with CSXT at Munster, Ind., milepost 31.07, and Elsdon, Ill., milepost 8.7, which connects to the southern end of the BNSF Railway Company's Corwith Yard. GTW will retain local and overhead trackage rights over the Elsdon Line.² Currently, CSXT already operates

¹ This decision also embraces *Baltimore & Ohio Chicago Terminal Railroad Co.—Trackage Rights Exemption—CSX Transportation, Inc.*, FD 35522 (Sub-No. 1) and *Chicago, Central & Pacific Railroad Co., Elgin, Joliet & Eastern Railroad Co., Illinois Central Railroad Co., and Wisconsin Central Ltd.—Trackage Rights Exemption—CSX Transportation, Inc.*, FD 35522 (Sub-No. 2).

² Under the agreement concerning GTW's retained trackage rights, GTW (referred to in the

over the Elsdon Line pursuant to trackage rights.³

CSXT seeks to effectuate the Acquisition to improve the efficiency of its operations in and through the Chicago, Ill., area (Chicago Terminal). Pursuant to the Acquisition, CSXT would assume responsibility for the maintenance, dispatching and capital improvements on the Elsdon Line. CSXT notes that the Chicago Terminal has the densest concentration of railroad lines in the United States. The carrier currently operates over several rail lines that are owned by other railroads and where the maintenance, dispatching, and capital improvements are controlled by those railroads. In becoming the operator of the Elsdon Line, CSXT claims that it would be able to reduce congestion on the other lines that it uses to operate through the Chicago Terminal, increase the efficiency of the operations in the Chicago Terminal, and generate savings in excess of \$2 million per year.⁴

Embraced trackage rights. In Docket No. FD 35522 (Sub-No. 1), CSXT has agreed to grant its subsidiary, Baltimore & Ohio Chicago Terminal Company (B&OCT), local and overhead trackage rights over the Elsdon Line. With its application in Docket No. FD 35522, CSXT includes a notice of exemption from B&OCT seeking an exemption for those trackage rights.

In Docket No. FD 35522 (Sub-No. 2), CSXT has agreed to grant several GTW affiliates—Chicago, Central & Pacific Railroad Company, Elgin, Joliet and Eastern Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd.—local and overhead trackage rights over the Elsdon Line. These GTW affiliates currently have trackage rights over the line granted by GTW. GTW and CSXT have agreed that CSXT would not be assigned those existing agreements; instead, CSXT would grant new local and overhead trackage rights over the Elsdon Line to the GTW affiliates to ensure that these carriers continue to have access to

the line after the proposed CSXT Acquisition.⁵ CSXT includes this notice of exemption with its application in Docket No. FD 35522.

Docket No. FD 35661

In exchange for obtaining the easement over the Elsdon Line, CSXT has agreed to grant GTW an exclusive, perpetual, non-assignable railroad operating easement over approximately 2.1 miles of CSXT's Memphis Terminal Subdivision, between Leewood, Tenn., milepost 00F371.4, and Aulon, Tenn., milepost 00F373.4 (the Leewood-Aulon Line). The Leewood-Aulon Line is currently owned by CSXT; Illinois Central Railroad Company (IC), a GTW affiliate, operates over the line pursuant to a trackage rights agreement.⁶ CSXT would retain local and overhead trackage rights over the line.⁷ According to GTW, it would assume responsibility for dispatching, track maintenance, and capital improvements on the Leewood-Aulon Line, including all interlockings, control points, and connections, including those at Leewood and Aulon themselves. Although GTW, as owner of the easement, would have the legal right to operate over the line, it expects rail operations to be continued to be provided by IC. According to GTW, this easement would allow GTW and its affiliates greater control over their north-south trains running between the Gulf of Mexico and Chicago.

To obtain authority for this easement acquisition, on August 13, 2012, GTW filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements at 49 U.S.C. 11323–25. The Board today is issuing a separate decision in Docket No. FD 35661 beginning a proceeding to consider GTW's petition for exemption and setting a procedural schedule for that proceeding, which largely will parallel the schedule established in this decision for Docket No. FD 35522.

Financial Arrangements. CSXT is acquiring from GTW the permanent exclusive railroad easement over the Elsdon Line, and in return, GTW is acquiring from CSXT a similar easement over the Leewood-Aulon Line. CSXT and GTW have determined that the two

easements are of equivalent value and thus the grant of each easement is essentially the entire consideration for the other. CSXT would not incur any fixed charges as a result of the Acquisition.

Passenger Rail Service Impacts. CSXT does not expect the acquisition of its easement over the Elsdon Line to cause adverse impacts on commuter or other passenger rail service. No lines would be downgraded, eliminated, or operated on a consolidated basis. CSXT expects that the transaction will help remove freight trains from a portion of the Chicago to Indianapolis to Washington, DC Amtrak route.

Discontinuances/Abandonments. CSXT does not anticipate discontinuing service over or abandoning any of its rail lines as a result of the Acquisition.

Public Interest Considerations. CSXT states that, once in the Chicago Terminal, CSXT must currently use a combination of its own lines and other carriers' lines to move traffic to and from yards and terminals. It notes that the significant freight and passenger rail activity in the Chicago Terminal affects the speed at which freight moves through the Chicago Terminal. CSXT claims that, by acquiring the easement over the Elsdon Line, it would acquire a route that is not encumbered by the control of another rail carrier and with it the need of that other rail carrier to balance the competing priorities of multiple route users, including the ability to dispatch the route. CSXT anticipates being able to operate into, out of, and through the Chicago Terminal on a more consistent basis, which in turn would yield a more efficient and reliable service to the CSXT shippers. And, because CSXT would be able to remove traffic from those other rail carriers' lines, those carriers would also benefit from the proposed Acquisition.

Additionally, CSXT claims that the Acquisition would also further the goals of the Chicago Regional Environmental and Transportation Efficiency (CREATE) program, a public-private partnership among the U.S. Department of Transportation, the State of Illinois, City of Chicago, Metra commuter rail and Class I railroad companies. The primary objective of CREATE is to increase the efficiency of the Chicago-region's rail infrastructure by reducing train delays and congestion through the area.

CSXT claims that the Acquisition would not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight in any region of the United States. According to CSXT, it would not result in a reduction in the number of rail

agreement as CN) agrees that its traffic shall not be limited over the line, except that the total number of CN/Union Pacific Railroad Company interchange trains using the Elsdon Line between Blue Island (at or near milepost 19.3) and Munster (Milepost 31.07) is limited to two trains in each direction per day. See CSXT's Application, vol. 2, Exh. E of Exh. E, 3.2 (filed Aug. 13, 2012). The agreement in Docket No. 35522 (Sub-No. 2) in which CSXT grants trackage rights to the GTW affiliates includes a similar limit to two trains in each direction per day. See CSXT's Application, vol. 2, Exh. F of Exh. E, 3.2 (filed Aug. 13, 2012).

³ See CSX Transp., Inc.—Trackage Rights Exemption—Grand Trunk W. R.R., FD 35346 (STB served Feb. 12, 2010).

⁴ See CSXT's Application, vol. 1, p. 4, August 13, 2012.

⁵ See *id.*

⁶ According to GTW's petition, although IC (as opposed to GTW) currently operates over the Leewood-Aulon Line, the parties are structuring the transaction as a grant to GTW (rather than IC) so that the easement exchange would qualify as a like-kind exchange under the Internal Revenue Code.

⁷ Under the agreement concerning CSXT's retained trackage rights, CSXT may operate 16 trains per day over the line, but the parties may agree to increase that number. See CSXT's Application, vol. 2, p. 2 and Exh. E of Exh. F, 3.2 (filed Aug. 13, 2012).

carriers serving any shipper. CSXT asserts that all of the railroads operating in the Chicago Terminal would continue to serve that area. CSXT notes that GTW and the GTW affiliates would be able to continue to jointly use the Elsdon Line via trackage rights and other railroads would continue to be able to use their own routes.⁸

Time Schedule for Consummation.

The transaction is scheduled to be consummated in the first quarter of 2013.

Environmental Impacts. The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 (NEPA), requires that the Board take environmental considerations into account in its decisionmaking. Environmental review under NEPA will be required here because the projected increases in train traffic on some segments of the Elsdon Line (19.5 more trains per day on one segment and approximately 10 more trains per day on two others) exceed the thresholds in the Board's environmental rules (generally an increase of 3 or 8 trains per day). Consistent with those rules, the Board's Office of Environmental Analysis (OEA) currently is preparing a Draft EA. OEA anticipates issuing its Draft EA on October 5, 2012. Parties interested in commenting on the Draft EA must file comments by November 9, 2012. OEA anticipates issuing a Final EA on or before January 14, 2013.

Historic Preservation Impacts. In accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 (NHPA), the Board is required to determine the effects of its licensing action on cultural resources.⁹ Based on OEA's consultations with state historic preservation officers, it appears that no historic properties would be affected by the Acquisition because no historic sites or structures would be altered, the Elsdon Line would continue to be operated, and Board approval would be required should CSXT seek to abandon the Elsdon Line in the future.¹⁰

Labor Impacts. According to CSXT, it and GTW would not integrate any of their forces, including those maintaining, dispatching, or operating the Elsdon Line. CSXT employees would assume the responsibilities for maintaining and dispatching the Elsdon Line. Its employees would operate CSXT trains, and GTW employees would operate GTW trains. Any GTW affiliate trains operating on the Elsdon Line would be operated by their employees.

To the extent necessary, CSXT states that it would hire additional employees to maintain, operate, and dispatch the Elsdon Line. CSXT does not believe that any of its employees would be adversely affected by the Acquisition, but it notes that no more than four positions would be abolished on the GTW property as a result of the Acquisition. It notes that these employees would have available other equivalent job opportunities in the Chicago Terminal area. It acknowledges that the Acquisition would be subject to employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979), as modified by *Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc.*, 6 I.C.C.2d 799, 814–826 (1990); *aff'd sub nom. Railway Labor Executives Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

Application Accepted. Under 49 CFR 1180.4(b)(2)(iv), the Board must determine whether a proposed transaction is “major,” “significant,” or “minor.” Here, we must determine whether the transaction CSXT seeks in its Docket No. FD 35522 application is “significant” under 1180.2(b) or “minor” under 1180.2(c).¹¹ A transaction not involving the control or merger of two or more Class I railroads is not of regional or national transportation significance and therefore is classified as “minor” if: (1) the transaction clearly will not have any anticompetitive effects, or (2) any anticompetitive effects will clearly be outweighed by the anticipated contribution to the public interest in meeting significant transportation needs. *See* 49 CFR 1180.2(b), (c).

Based on a review of the application, the Board agrees that CSXT's proposed acquisition of the easement over the Elsdon Line qualifies as a “minor” transaction under the agency's regulatory scheme. According to CSXT, the Elsdon transaction would not result in a reduction in the number of rail carriers serving any shippers. The application indicates that CSXT's use and control of the Elsdon Line would not restrain trade because GTW and its affiliates would be able to continue to jointly use the Elsdon Line via trackage rights and other railroads would continue to be able to use their own routes. The application further indicates that the transaction would result in more efficient CSXT operations in the Chicago area stemming from an overall

reduction in train delays and congestion. Specifically, CSXT states that this easement acquisition would allow it to take advantage of an underutilized freight line and allow it move trains off Indiana Harbor Belt Line Railroad Company's Franklin Park Branch, the Bulkmatc Railroad Corporation's rail line east of Clearing Yard, the Union Pacific Railroad Company's (UP) Villa Grove Subdivision north of Dolton, and a portion of the CSXT/UP Joint Line. The transaction would also reduce train conflicts in the region and reduce congestion at Dolton, a major intersection of freight activity in the Chicago area.

In sum, the Board finds the Acquisition to be a “minor” transaction because it appears on the face of the application that there would not be any clear anticompetitive effects from the transaction. *Cf. Norfolk S. Ry.—Consolidation of Operations—CSX Transp. Inc.*, FD 32299 (ICC served Aug. 5, 1993) (concluding that the consolidation of operations in a limited geographic area by two Class I carriers was a “minor” transaction because it only involved a paring down of expenses to operate more efficiently in markets the carriers were already serving). The Board's findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims that the Acquisition would have anticompetitive effects that are not apparent from the application itself. The Board can also condition the Acquisition to mitigate or eliminate any deleterious effects on regional or national transportation.

The Board also accepts the application and the filings in the two related subdockets for consideration. The application is in substantial compliance with the applicable regulations governing “minor” transactions. *See* 49 CFR pt. 1180; 49 U.S.C. 11321–26. The Board reserves the right to require the filing of further information as necessary to complete the record.

Procedural Schedule. CSXT provides a proposed procedural schedule with its application. We have adjusted the schedule, in part, to better accommodate the Board's environmental review responsibilities. Because the easement acquisitions in Docket Nos. FD 35522 and FD 35661 are related parts of the same overall negotiated easement exchange, we are adopting a schedule under which we will consider and rule on the application in this docket and the petition for exemption in Docket No. FD 35661 at the same time. *See Grand Trunk W. R.R.—Acquis. of Operating*

⁸ See n. 3.

⁹ See 49 CFR 1105.8.

¹⁰ See 49 CFR 1105.8(b)(1).

¹¹ See 49 CFR 1180.4(b)(2)(iv). CSXT's transaction is not “major” because it does not involve control or merger of two or more Class I railroads. *See* 1180.2(a). It also is not “exempt” because it is not within one of the eight class exemptions listed at 1180.2(d).

Easement—CSX Transp., Inc., FD 35661 (STB served Sept. 12, 2012).

Under the procedural schedule we are adopting in this case: any person who wishes to participate in this proceeding as a POR must file a notice of intent to participate no later than September 26, 2012; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by November 9, 2012; comments on the Draft EA also must be filed with OEA by November 9, 2012; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Acquisition, as well as Applicant's rebuttal in support of the Application, must be filed by November 29, 2012. The Board plans to issue its Final EA on or before January 14, 2013, and its final decision by February 8, 2013, and to make any such approval effective by March 10, 2013. The Board reserves the right to adjust the schedule as circumstances may warrant. For further information respecting dates, see Appendix A (Procedural Schedule).

Additionally, discovery may begin immediately. Requests for discovery from CSXT are due on September 26, 2012. CSXT responses are due on October 11, 2012. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than September 26, 2012, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Steven C. Armbrust and Louis E. Gitomer (counsel for CSXT).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only one official representative per party to be placed on the service list, as specified in Press Release No. 97-68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status to a Party of Record must accompany that request with a written certification that he or she has complied with the service

requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after September 26, 2012, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within ten days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within ten days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's Web site at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices."

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The application and other filings in this proceeding are available for inspection in the library (Room 131) at the offices of the Surface Transportation Board, 395 E Street SW., in Washington, DC, and will also be available on the Board's Web site at "www.stb.dot.gov" under "E-LIBRARY/Filings." In addition, the application may be obtained from Messrs. Armbrust and Gitomer at the addresses indicated above.

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

It is ordered:

1. The application and notices of exemption in the related subdockets are accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on September 12, 2012.

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

Jeffrey Herzig,
Clearance Clerk.

Appendix A

Procedural Schedule

August 13, 2012 CSXT's application, protective order, and notices of exemption filed with the Board.
September 26, 2012 Notices of intent to participate due to the Board. Discovery requests due to CSXT.
October 5, 2012 OEA issues Draft EA.
October 11, 2012 CSXT responds to discovery requests.
November 9, 2012 Comments due from all parties, including the Attorney General and the Secretary of Transportation, on the transportation merits of the Acquisition. Comments on Draft EA due to OEA.
November 29, 2012 Responses to comments on the transportation merits of the Acquisition due. Applicant's rebuttal in support of the application due.
December 26, 2012 Close of record.
On or before January 14, 2013 OEA issues Final EA.
February 8, 2013 Final decision served. *

*The Board reserves the right to modify this schedule as circumstances may warrant.

[FR Doc. 2012-22421 Filed 9-11-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35625]

City of Milwaukie—Petition for Declaratory Order

The City of Milwaukie, Or. (the City), filed a petition for declaratory order on June 29, 2012 (Petition), requesting that the Board declare that 49 U.S.C. 10501(b) does not preempt certain municipal regulations regarding the scattering of rubbish and the blocking of vehicular and pedestrian traffic along the border of the Oregon Pacific Railroad Company's (OPRC) train maintenance facility and in a public right-of-way. For the reasons discussed below, the request to institute a declaratory order proceeding will be granted.

On June 29, 2012, the City filed a petition for declaratory order. On July 3,