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SEC

SERVICE DATE - LATE RELEASE OCTOBER 8, 2004

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY — LEASE —
CSX TRANSPORTATION, INC.

Decision No. 5

Decided: October 8, 2004

As indicated in Decision No. 4 (served October 5, 2004), an oral argument will be held in this proceeding on Wednesday, October 13, 2004, beginning at 10:00 a.m., in Room 760, the Board's Hearing Room, on the 7th Floor of the Board's headquarters in the Mercury Building, 1925 K Street, N.W., Washington, D.C.

In Decision No. 4, any party wishing to speak at the oral argument was instructed to file with the Board a written notice of intent to speak by October 7, 2004. Notices of intent to speak have been filed by: Buckingham Branch Railroad Company (BBRR) and CSX Transportation, Inc. (CSXT) (collectively, applicants); the Brotherhood of Maintenance of Way Employees (BMWE); and the National Railroad Passenger Corporation (Amtrak).

The Board is issuing this decision setting the schedule for the oral argument. The schedule of appearances and the time provided for each party appear in the Appendix to this decision. The time allocations for the oral argument total 45 minutes, with applicants being allocated 20 minutes of that time. The purpose of oral argument is not to restate the written arguments previously made but, rather, to summarize and emphasize the key points of each party's case and to provide an opportunity for questions that the Board may have regarding the matters at issue. The time allocations set forth in the Appendix are sufficient for these purposes.

As noted in Decision No. 4, if a party wishes to enhance its argument by using projector-adaptable visual displays and/or handouts, it may do so. Staff will be available to demonstrate the Hearing Room's projection system on Tuesday, October 12, 2004, from 2 p.m. to 4 p.m. Please contact Beverly Ledbetter in the Board's Office of Proceedings at (202) 565-1618 to make arrangements.

Quiet laptops and tape recorders may be brought into the Hearing Room, but no provision will be made for the connection of personal computers to Board telephone lines. Cellular telephone use is not permitted in the Hearing Room, or in the rear anteroom. Cellular phones may only be used outside the Hearing Room.

The Board's Hearing Room complies with the Americans With Disabilities Act, and persons needing such accommodations should contact Beverly Ledbetter in the Board's Office of Proceedings at (202) 565-1618 by 5:00 p.m. on Tuesday, October 12, 2004.

Document Declassification. A 7/18/02 Federal Railroad Administration (FRA) document (which includes a 5/10/02 FRA memo) produced in discovery in this proceeding by CSXT was, at the time of production, marked "Confidential" by CSXT. BMWWE made that document part of the comments it filed in this proceeding, and, in accordance with the terms of the protective order adopted in Decision No. 1 (served June 4, 2004), BMWWE submitted that document in a pleading that BMWWE marked "Confidential." See BMWWE-8, Tab 4 (the 7/18/02 FRA document, which includes the 5/10/02 FRA memo). BMWWE and CSXT disagree regarding the appropriate level of classification of that document. See BMWWE-11 (filed 10/1/04), CSXT-10 (filed 10/6/04), BMWWE-13 (filed 10/7/04), BMWWE-14 (filed 10/7/04), and BMWWE-15 (filed 10/7/04). In response to a Freedom of Information Act (FOIA) inquiry by BMWWE, FRA has given BMWWE the 7/18/02 FRA document (which, as noted, includes the 5/10/02 FRA memo). The Board's protective order cannot be used to "protect" a document that, in view of its production by FRA in response to a FOIA inquiry, is now in the public domain. Therefore, BMWWE's Exhibit 4 — i.e., the material submitted by BMWWE as BMWWE-8, Tab 4, and submitted again as the attachment to BMWWE-11 — will henceforth be treated as if it had not been marked "Confidential" by CSXT.

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

It is ordered:

1. The BMWWE-11 motion for declassification of Exhibit 4 (erroneously referred to in the motion as Exhibit 5) is granted; the CSXT-10 sanctions suggestion is denied; the BMWWE-14 motion for leave to file the BMWWE-13 reply is granted; and the BMWWE-15 motion for declassification of Exhibit 4 (now correctly referred to as Exhibit 4) is granted.
2. Time for oral argument is allocated as reflected in the Appendix to this decision.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

SCHEDULE OF APPEARANCES

<u>PARTY</u>	<u>TIME ALLOCATED</u>
Buckingham Branch Railroad Company (BBRR) and CSX Transportation, Inc. (CSXT) (collectively, applicants)	20 minutes
<p>Speakers: Robert E. Bryant, President, and Keith G. O'Brien on behalf of BBRR; Peter J. Shudtz, Vice President- Regulatory Affairs & Washington Counsel, and Louis E. Gitomer on behalf of CSXT.</p> <p>Note: Applicants will open, and may reserve part of their time for rebuttal, if they so choose.</p>	
Brotherhood of Maintenance of Way Employes	20 minutes
<p>Speaker: Richard S. Edelman of O'Donnell, Schwartz & Anderson, P.C.</p>	
National Railroad Passenger Corporation (Amtrak)	5 minutes
<p>Speaker: Paul Vilter, Assistant Vice President for Host Railroads (accompanied by Frederick Ohly, Esq., Senior Associate General Counsel, Corporate Affairs).</p>	