

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35160

OREGON INTERNATIONAL PORT OF COOS BAY—FEEDER LINE APPLICATION—
COOS BAY LINE OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.

Decided: November 7, 2008

By decision served October 31, 2008, the Board ordered Central Oregon & Pacific Railroad, Inc. (CORP) to sell to the Oregon International Port of Coos Bay (the Port), under 49 U.S.C. 10907, a 111-mile rail line between Danebo, OR (milepost 652.114), and Cordes, OR (milepost 763.130) (the line). In that decision, the Board determined that the public convenience and necessity requires or permits the sale of the line, that the Port is financially responsible, and that the purchase price of the line will be its net liquidation value.

The net liquidation value of a line is typically determined by adding the value of the land underlying the line to the net salvage value of the assets on the line. In the October 31 decision, the Board determined the value of the land, but ordered the Port to file additional evidence on the net salvage value of the line, as specified in that decision, by November 5, 2008. The Board provided CORP with an opportunity to respond by November 7, 2008. The Board explained that it will determine the net liquidation value of the line in a subsequent decision.

When the Port filed its net salvage value evidence on November 5, 2008, it also filed a petition asking the Board to clarify that the start date for calculating the due date for any “post-decision actions” in this proceeding will run from the date that the Board subsequently serves a decision establishing the purchase price of the line, rather than from October 31, 2008. The Port asserted that, because the Board has not finished its decision-making in this case, the start date for determining when any post-decision actions would be due has not yet occurred.

Although the October 31 decision did not establish the line’s purchase price, it was nonetheless an entire Board action that included significant findings that will not be affected by a subsequent Board decision computing the purchase price. Board rules require that petitions for reconsideration of any entire Board action be filed within 20 days unless the Board authorizes otherwise. See 49 CFR 1115.3(e). In this case, it is appropriate to authorize a different time period so that any petitions for administrative reconsideration can encompass all of the Board’s determinations in the feeder line proceeding. Accordingly, parties should calculate the due date for any petitions for administrative reconsideration regarding issues resolved in the October 31 decision using the service date of the subsequent Board decision setting the purchase price for the line.

Petitions for administrative stays are normally due within 10 days of the service date of the entire Board action. See 49 CFR 1115.3(f). In this case, it is appropriate to adjust the time period for filing stay petitions so that any petitions to stay the Board's decision ordering the sale of the line and any petitions to stay the time period by which the Port must accept or reject the sale terms and conditions established by the Board will be due by the same date. Accordingly, parties should calculate the due date for any stay petitions using the service date of the subsequent Board decision setting the purchase price for the line.¹

To the extent the Port may have been seeking clarification regarding the time period for filing petitions for judicial review, we will not address that issue. The Board is not the arbiter of what would be considered a final order under the Hobbs Act, 28 U.S.C. 2321(a) and 2342(5), thus starting the 60-day clock for seeking judicial review.

It is ordered:

1. The due dates for petitions for reconsideration, stays and other administrative relief will be calculated from the service date of the Board's subsequent decision setting the purchase price for the line.
2. This decision is effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

¹ Parties should also calculate the time period for petitions for other relief, which are covered by 49 CFR 1115.5, based on the service date of the Board's subsequent decision setting the purchase price of the line.