

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35509

CORDELE INTERMODAL SERVICES RAILROAD, INC.—ACQUISITION AND
OPERATION EXEMPTION—RAIL LINE AT EAST INDUSTRIAL PARK, CORDELE, GA.

Decided: June 2, 2011

On May 16, 2011, Cordele Intermodal Services Railroad, Inc. (CISR), a noncarrier, filed a notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate over approximately 1,500 feet of track (the line) located in East Industrial Park (Park), Cordele, Ga.¹ The line connects with Heart of Georgia Railroad, Inc. (HOG), at HOG milepost 664.5. CISR states that it recently constructed the line for use as a side track or switching track for shipments originating or terminating in the Park and that it now intends to provide common carrier rail service over the line in conjunction with use of the line as an Inland Intermodal Center (Center). According to CISR, import and export traffic to or from the Port of Savannah would be transloaded at the Center; transportation between Savannah and the Center would be by rail, and transportation beyond the Center to points primarily west and north would be by truck.

The notice raises questions about the construction of and CISR's current operations on the line. CISR discloses that it "recently" constructed what it characterizes as "sidetrack or switching track for shipments originated or terminated in the Industrial Park." Under 49 U.S.C. § 10901, a noncarrier may construct or acquire a railroad line only after the Board finds that such an acquisition and/or construction is consistent with the public convenience and necessity. The Board has held that a noncarrier becomes a carrier, and the transaction is subject to Board jurisdiction where: (1) the larger purpose and effect of the transaction is to create a new railroad that would compete with other carriers in territory that it had not previously served; (2) the track would constitute the new carrier's entire line of railroad; and (3) the new railroad would interchange traffic with the national rail system. See Bulkmatic R.R.—Acquis. & Operation Exemption—Bulkmatic Transport Co. (Bulkmatic), FD 34145 et al., slip op. at 7 (STB served Nov. 19, 2002); see also Effingham R.R.—Pet. for Declaratory Order—Construction at Effingham, Ill. (Effingham), 2 S.T.B. 606, 609-10 (1997).

In this case, it appears that CISR may have already engaged in both construction and operation activities that would render it a common carrier, without having sought prior Board authority to do so. First, the construction may have required prior Board authority because it was CISR's initial railroad operation. Thus, rather than a siding or switching track, the constructed segment may be found to be CISR's entire line of railroad. Effingham R.R. Co.—Petition for

¹ There are no known mileposts associated with the line.

Declaratory Order— Construction at Effingham, Ill, NOR 41986 (STB served Sept. 18, 1998). The proposed construction of a line of railroad is subject to review under the National Environmental Policy Act (NEPA). See 49 C.F.R. §§ 1105.6(a), (b)(1).² Second, if CISR has already begun serving customers in the Park, it may be conducting unauthorized common carrier operations in contravention of 49 U.S.C. § 10901. It is unclear from the notice whether CISR is currently serving shippers in the Park, and, if so, whether it interchanges or will interchange traffic from the Park with HOG.

This notice raises a number of issues that CISR has not adequately addressed. Because the notice of exemption does not provide sufficient information to make a definitive determination that exemption authority is appropriate here, additional information is necessary for CISR's notice of exemption to be considered complete. As a result, CISR's proposed exemption will not become effective, if at all, until further order of the Board.

CISR is directed to supply the Board with specific information regarding any existing operations it is conducting over the line; and to show cause why any such operations and the construction of the line without prior Board approval did not violate statutes and regulations administered by the Board. CISR shall comply with this order within 14 days of the service of this decision.

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

It is ordered:

1. The notice of exemption will not become effective until further order of the Board.
2. CISR is directed to supply the Board, within 14 days of the service date of this decision, with information showing why the construction of the line and existing operations over the line are not in violation of statutes and regulations administered by the Board.
3. This decision is effective on its service date.

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

² See Suffolk & S. R.R.—Lease and Operation Exemption—Sills Rd. Realty, FD 35036 (STB served Aug. 13, 2007).