

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35205

U S RAIL CORPORATION—LEASE AND OPERATION EXEMPTION—
WINAMAC SOUTHERN RAILWAY COMPANY AND KOKOMO GRAIN CO., INC.

Decided: January 15, 2009

This decision stays the effectiveness of the exemption in this proceeding with respect to the 3.0 miles of incidental trackage rights associated with this transaction, pending further order of the Board.

This proceeding involves a verified notice of exemption filed by U S Rail Corporation (US Rail), a Class III rail carrier, under 49 CFR 1150.41 to acquire by lease and to operate approximately 58.89 miles of rail lines¹ owned by Winamac Southern Railway Company (WSRY) and Kokomo Grain Co., Inc. (Kokomo Grain), located in Indiana: (1) the Bringham Line, between milepost 50.1 at Bringham and milepost 71.5 at Van Jct. (Logansport); (2) the Kokomo Line, between milepost 74.5 at Eighteenth St. Yard (Logansport) and milepost 97.9 at Kokomo; (3) the Kokomo Belt Line, between milepost 0.0 at E. Markland Ave. (Kokomo) and milepost 1.5 at S. Union St. (Kokomo); and (4) the Amboy Line, between milepost 147.07 at Amboy and milepost 134.48± at Marion. Pursuant to the lease agreement, US Rail also seeks to obtain incidental trackage rights over 3.0 miles of rail line owned by Toledo, Peoria & Western Railway Corporation (TP&W), between milepost 71.5 at Van Jct. (Logansport) and milepost 74.5 at Eighteenth St. Yard (Logansport).² Notice of the exemption was served and published in the Federal Register on December 31, 2008 (73 FR 80512). The exemption is scheduled to become effective on January 16, 2009.

On January 9, 2009, TP&W petitioned the Board to stay the effectiveness of the exemption with respect to the 3.0 miles of incidental trackage rights over track owned by TP&W. TP&W argues that, because the Board rejected the notice of exemption in Winamac

¹ According to U S Rail, Central Railroad Company of Indianapolis operated the lines at the time the notice was filed, but was scheduled to cease operations as of December 31, 2008.

² In Winamac Southern Railway Company—Trackage Rights Exemption—A. & R. Line, Inc., STB Finance Docket No. 35208 (STB served Jan. 9, 2009) (Winamac Southern), the Board rejected WSRV's notice of exemption to acquire these trackage rights, due to a dispute regarding the status of the agreement (1995 Trackage Rights Agreement) upon which WSRV's acquisition exemption was based.

Southern due to the dispute concerning the 1995 Trackage Rights Agreement, WSRY does not have authority to operate over the TP&W line and thus has no trackage rights to assign to US Rail.

On January 13, 2009, US Rail filed a reply to TP&W's petition for stay. US Rail agrees that a stay of its exemption as it relates to the assignment of the incidental trackage rights over TP&W's line would be appropriate, but asks that the exemption become effective with respect to the other four lines of railroad as scheduled.

Based on the agreement of the parties and in light of the Board's decision in Winamac Southern, the effectiveness of the exemption will be stayed with respect to the 3.0 miles of incidental trackage rights over track owned by TP&W, pending further order of the Board. Accordingly, WSRY may not transfer any trackage rights over the 3.0 miles owned by TP&W, and US Rail may not operate over that 3.0 mile line. Should the parties' rights under the 1995 Trackage Rights Agreement be resolved in WSRY's favor (or if a new trackage rights agreement is reached between WSRY and TP&W), US Rail must so notify the Board and ask that this stay be lifted.³ The Board could then consider lifting the stay and thus allow the transfer and US Rail's proposed operations over the 3.0-mile line to proceed at that time. The remainder of this exemption, by which US Rail seeks to acquire 58.89 miles of rail lines owned by WSRY and Kokomo Grain, will become effective as scheduled.

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

It is ordered:

1. The effectiveness of the exemption is stayed with respect to the 3.0 miles of incidental trackage rights over track owned by TP&W, pending further order of the Board.
2. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Anne K. Quinlan
Acting Secretary

³ Of course, WSRY would first need to obtain Board authorization for these trackage rights under appropriate Board procedures.