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SERVICE DATE – LATE RELEASE MAY 10, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35016

ROCK RIVER RAILROAD, INC.—ACQUISITION AND OPERATION EXEMPTION—  
RAIL LINES OF RENEW ENERGY, LLC

STB Finance Docket No. 35017

MARK K. SMITH—CONTINUANCE IN CONTROL EXEMPTION—ROCK RIVER  
RAILROAD, INC.

Decided: May 10, 2007

In STB Finance Docket No. 35016, Rock River Railroad, Inc. (RRR), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Renew Energy, LLC (RE), also a noncarrier, and to operate as a common carrier by railroad, approximately 2,100 feet of rail line, located within the plant site of, and owned by, RE, in Jefferson, Jefferson County, WI (the line). In STB Finance Docket No. 35017, Mark K. Smith filed a notice under 49 CFR 1150.31 to continue in control of RRR once RRR becomes a Class III rail carrier. The original effective date of the transactions was May 6, 2007; however, by letter filed on May 1, 2007, RRR and Mr. Smith agreed to postpone the effective date until May 13, 2007. By decision served on May 4, 2007, the effective date of the exemptions was postponed until May 13, 2007.

On April 27, 2007, Union Pacific Railroad Company (UP) filed a petition for a stay of the transactions encompassed by the notices of exemption. In support of its stay request, UP argues that, based on the information provided in the notices: (1) RRR might be misusing the notice of exemption process; and (2) the activity in which RRR would be engaging might not be subject to Board jurisdiction because it would not be rail transportation by a common carrier, but merely continuation of the same switching activities by a different entity. UP asks that the Board require RRR and Mr. Smith to provide additional and specific information about RRR and its plans. On May 4, 2007, RRR and Mr. Smith replied in opposition to the stay request.

DISCUSSION AND CONCLUSIONS

An interested party seeking a Board-ordered stay must establish that: (1) there is a strong likelihood that it will prevail on the merits; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed; and (4) the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm’n, 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Here, UP has not met the criteria for granting a stay. UP has not come forward with sufficient evidence and argument to show that it is likely to prevail in its argument that RRR might be misusing the notice of exemption process; that this transaction does not require Board approval due to the nature of the track; or that RRR would not be a common carrier. The reply to the stay petition filed by RRR and Mr. Smith provides sufficient information to refute UP’s suggestions that RRR is merely a contract switching operation and that the trackage to be operated by RRR is too short and too restricted by virtue of running through a building to permit RRR to serve additional shippers. Moreover, even if UP could establish, as it asserts here, that the trackage involved in STB Finance Docket No. 35016 could be characterized as switching track if the transaction involved a different operator, that would not change the fact that RRR would need Board authority to implement the transaction. As proposed by RRR, the transaction would enable a new carrier to reach territory that is new to it and would constitute RRR’s entire line of railroad. Therefore, a Board license is required for the transaction. See Effingham RR Co.—Pet. for Declaratory Order, 2 S.T.B. 606 (1997), aff’d sub nom. United Transp. Union—Ill. Legislative Bd. v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999); see also Bulkmatic RR.—Acquire and Operate—Bulkmatic Transport, 6 S.T.B. 481 (2002). Furthermore, in their reply, RRR and Mr. Smith listed several opportunities for RRR to serve other shippers on the line, contrary to UP’s assertion that RRR would not hold itself out as a common carrier.

Likewise, UP has not justified the remaining elements required for a stay. Because UP has failed to establish that a stay is warranted, its request will be denied.

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

It is ordered:

1. The petition for stay is denied.

2. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams  
Secretary