

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35982

JACKSON COUNTY, MO.—ACQUISITION AND OPERATION EXEMPTION—UNION
PACIFIC RAILROAD COMPANY

Digest:¹ The Board denies the motion of CenturyLink Communications, LLC, for a stay of the effective date of the exemption in this proceeding.

Decided: February 4, 2016

On December 23, 2015, Jackson County, Mo. (Jackson County), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Union Pacific Railroad Company (UPRR) and to operate, approximately 17.7 miles of rail line between milepost 288.3 and milepost 270.6, in Jackson County, Mo. (the Line). The notice of exemption was served and published in the Federal Register on January 8, 2016 (81 Fed. Reg. 992). The exemption was scheduled to become effective on January 22, 2016. On January 15, 2016, CenturyLink Communications, LLC (CenturyLink),² filed a motion for a housekeeping stay of the exemption's January 22 effective date.³

In its motion,⁴ CenturyLink states that it “does not necessarily oppose the transaction” (CenturyLink Mot. 9), but argues that more information is needed before an exemption becomes effective, (id. at 2, 9-11). CenturyLink expresses concern that its rights under a confidential Easement Agreement with UPRR's predecessor, Southern Pacific Transportation Company (and

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CenturyLink is a global communications, hosting, cloud, and information technology services company and maintains a fiber optic telecommunications network that, in part, runs along the Line, pursuant to a confidential Easement Agreement with UPRR's predecessor, Southern Pacific Transportation Company.

³ In response, the Board's Director of the Office of Proceedings issued a decision postponing the effective date of the exemption to provide sufficient time for the Board to address the arguments presented.

⁴ Despite titling its motion as one for a housekeeping stay, CenturyLink substantively argues for a traditional stay as well.

a related court order) could be affected by UPRR's sale to Jackson County and argues that its contract rights are thus inextricably intertwined with rail transportation issues. (Id. 5-7.) CenturyLink also suggests that Jackson County may not be a bona fide railroad because of reports that it intends to use the Line for trail purposes. (Id. at 3-4.) CenturyLink is concerned that its rights under the Easement Agreement could be diminished if the Line ceases to be used by a railroad for freight railroad purposes. (Id. at 13.)

Jackson County filed a reply on January 19, 2016. Jackson County contends that CenturyLink's contract claims under the Easement Agreement and the related court order are not within the Board's jurisdiction. (Jackson Cty. Reply 5-8.) Jackson County also argues that, although it plans to use the Line for a recreational trail and possibly commuter rail service, neither of those uses is inconsistent with its freight service obligation. (Id. at 9.) It states that it has no plans to remove track for the trail, and it specifically reiterates that it "will provide service if a freight customer requires service, through a contract operator," thus making it a licensed rail carrier. (Id. at 8.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 721(b)(4), the Board may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm. In ruling on a petition for a stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying the stay. See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). For the reasons discussed below, the Board denies CenturyLink's request and will permit the exemption to become effective.

Success on the Merits. CenturyLink has failed to demonstrate that more information is needed as its concerns do not merit rejection of Jackson County's notice of exemption. CenturyLink has not supported its claim that the issues involving the Easement Agreement and the related court order are rail transportation issues and are thus within the Board's jurisdiction. See, e.g., Pyco Indus., Inc.—Feeder Line Application—Lines of S. Plains Switching, Ltd., FD 34890, slip op. at 10 (STB served Sept. 8, 2008) (interpretation of the terms of a purchase and sale agreement is a matter for a court applying state contract law); City of Peoria—Adverse Discontinuance—Pioneer Indus. Ry., AB 878, slip op. at 6 (STB served Aug. 10, 2005) ("the Board does not undertake to interpret or enforce operating agreements or contracts. . ."); see also Sierra R.R. & Sierra N. Ry. v. Sacramento Valley R.R., NOR 42133, slip op. at 4 n.12 (STB served Nov. 28, 2012) (questions of contractual obligations are a matter of state law). Further, any rights that CenturyLink seeks to enforce under the Easement Agreement or the related court order can be brought before the state court.

CenturyLink also suggests that Jackson County is not a bona fide common carrier because it has expressed a desire to use the Line as a recreational trail. (CenturyLink Mot. 3.) While admitting to its desire to use the right-of-way as a trail and potentially for commuter rail service, Jackson County accurately describes its obligations as a common carrier and commits to reestablishing rail service through a contract operator if a freight customer requires such service. (Jackson Cty. Reply 8-9; see also Jackson Cty. Verified Notice 3-4.) In addition, the record does not support CenturyLink's argument that the planned uses of the Line are inconsistent with the freight service obligation Jackson County will assume. Thus, the Line will remain part of the national rail network and available for freight rail service.

Irreparable Harm. CenturyLink has not demonstrated that it will suffer any irreparable harm without the imposition of a stay. The harm that CenturyLink articulates is the diminishment of its rights under the Easement Agreement. (CenturyLink Mot. 13.) As discussed above, this is a matter for a court of competent jurisdiction, not the Board.

Because the above-discussed factors of the stay criteria have not been satisfied, the Board concludes that the requirements for a stay have not been met. See 49 U.S.C. § 721(b)(4); Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 5 (STB served May 4, 2012). Thus, there is no need for the Board to address the remaining factors.

It is ordered:

1. CenturyLink's motion for a stay is denied.
2. The exemption is effective immediately.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.