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SERVICE DATE - FEBRUARY 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33989

PEJEPSCOT INDUSTRIAL PARK, INC., d/b/a GRIMMEL INDUSTRIES—
PETITION FOR DECLARATORY ORDER

Decided: February 9, 2001

By petition filed December 28, 2000, Pejepscot Industrial Park, Inc., d/b/a Grimmel Industries (Grimmel) seeks a declaratory order finding that Maine Central Railroad Company, Springfield Terminal Railway Company, and Guilford Transportation Industries, Inc. (respondents) violated 49 U.S.C. 11101(a) by refusing to provide rail service to Grimmel upon reasonable request. Petitioner states that the matter is before the Board on referral from the United States District Court for the District of Maine, in Civil Action No. 99-112-P-C, Pejepscot Industrial Park, Inc., d/b/a Grimmel Industries v. Maine Central Railroad Co., Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. The court's referral order, dated November 4, 2000, stayed the court proceeding pending the Board's determination of the issues. Defendants in the Maine court case have not responded to Grimmel's petition.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests. In doing so, both agencies have considered a number of factors, including the significance to the industry and the ripeness of the controversy. See Delegation of Authority--Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). There, the ICC noted that petitions for issuance of a declaratory order premised on referral from a federal court are routinely accepted.¹

Under the Board's authority in 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The matter is within the Board's jurisdiction and has been referred by a federal court. The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1, et seq. While Grimmel's petition is acceptable as its opening statement, the schedule will provide an opportunity for opening statements by Grimmel and any person in support of Grimmel's position. Grimmel may therefore supplement its petition if it wishes by the due date for opening statements.

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

¹ Responsibility for taking initial action in disposing of such matters has been delegated to the Director of the Office of Proceedings. See 49 CFR 1011.8(c)(6).

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.

2. Opening statements by Grimmel and any person wishing to file in support of Grimmel are due March 14, 2001. Replies by respondents and any person wishing to file in support of respondents are due on April 13, 2001. Rebuttal is due on May 3, 2001.

3. This decision is effective on the date of service.

4. This decision will be served on persons on the service list in Maine Central Railroad Company—Abandonment Exemption—in Androscoggin Co., ME, STB Docket No. AB-83 (Sub-No. 16X).²

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² Petitioner states that its request is based on the Board's decision in that proceeding that was served on September 15, 2000.