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SERVICE DATE - JULY 2, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34117

PEMISCOT COUNTY PORT AUTHORITY — CONSTRUCTION EXEMPTION —  
PEMISCOT COUNTY, MO

Decided: June 25, 2002

By petition filed on April 3, 2002, Pemiscot County Port Authority (Pemiscot) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct an approximately 5-mile line of railroad between milepost 212.32 at Hayti, and milepost 217.22 at Pemiscot's existing intermodal port facility located on the Mississippi River between Hayti and Caruthersville, in Pemiscot County, MO. Pemiscot requests that we conditionally grant the exemption, subject to our environmental review. We will grant a conditional exemption and we will issue a final decision after completion of the environmental review process.

BACKGROUND

Pemiscot is a political subdivision in the State of Missouri and a county port authority. As a political subdivision, Pemiscot has the power to raise money through the issuance of bonds, construct, own and lease facilities, engage in industrial development, and own and operate railroads. In 1974, the Missouri legislature authorized Pemiscot to construct a port facility along the banks of the Mississippi River. The port became operational in 1981 with the establishment of a transloading facility to transfer fertilizer between trucks and river barges.<sup>1</sup>

In 1995, Pemiscot conducted a feasibility study, which concluded that rail service is essential to the development of the port and that, by improving its intermodal capabilities, the port will attract new industry and give existing customers efficient and economical rail transportation. To finance the

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<sup>1</sup> The port currently serves four principal companies: MFA, Incorporated; Consolidated Grain and Barge Co.; Trinity Marine Products, Inc.; and Oakley Missouri, Inc.

recommended rail line construction, Pemiscot sought and obtained funding from the U.S. Department of Agriculture's Rural Economic and Community Development Office (RECD).<sup>2</sup>

The rail line is to be built in four phases. The first two phases involve reconstruction of approximately 12,000-feet of an abandoned rail line and right-of-way<sup>3</sup> between the BNSF interchange at milepost 212.32 and milepost 214.61, southeast of Hayti.<sup>4</sup> The third and fourth phases require the acquisition of a new right-of-way. Specifically, phase three would extend the line a distance of 8,800-feet, from milepost 214.61 to the crossing of County Road 337. Phase four would take the line an additional 5,000-feet from the road crossing to Pemiscot's port facility on the Mississippi River.

Pemiscot indicates that, although it seeks authorization to construct the proposed line and, therefore, would become a common carrier, it expects that a short line carrier will provide daily round-trip service. The four current industries that use the port have submitted verified statements supporting the construction. Additionally, United States Senator Jean Carnahan and several individuals and political organizations have submitted letters in support of Pemiscot's construction project.<sup>5</sup>

## DISCUSSION AND CONCLUSIONS

The construction of railroad lines requires prior Board approval under 49 U.S.C. 10901. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

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<sup>2</sup> According to Pemiscot, as part of its analysis RECD reviewed the rail line construction project from an environmental perspective and concluded that its impacts were negligible.

<sup>3</sup> The rail line and right-of-way were formerly owned by the predecessor to The Burlington Northern and Santa Fe Railway Company (BNSF).

<sup>4</sup> Pemiscot began construction in 1997 without realizing that it needed prior Board authorization. It had begun to regrade the right-of-way, laid new ties, ballast, and rail, and built a new trestle to carry the line over a drainage ditch. Pemiscot immediately suspended construction after learning that it needed prior Board approval.

<sup>5</sup> Letters were submitted by: Denny J. Merideth, III, Missouri State Representative, District 162; the Pemiscot County Commission; the City of Caruthersville, MO; the City of Hayti; the St. Francis Levee District of Missouri; and Trinity Marine Products, Inc.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy by providing a rail service option to shippers, ensuring the development of a sound rail transportation system with effective competition among rail carriers and with other modes, fostering sound economic conditions in transportation, and reducing regulatory barriers to entry [ 49 U.S.C. 10101(4), (5), and (7)]. Unless determined otherwise following environmental analysis, nothing on the record indicates that other aspects of the rail transportation policy will be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed transaction will enhance competition by providing the port, which is now served by motor carriers and barges, with a rail transportation option. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Pemiscot has consulted with our Section of Environmental Analysis (SEA) regarding the environment review process. It has requested and received from SEA a waiver of the 6-month pre-filing notice normally required by 49 CFR 1105.10(a) for a proposed line construction project. Pursuant to our rules at 49 CFR part 1105, Pemiscot has retained an independent third-party consultant to prepare the environmental documentation for this project. After a final environmental assessment or final environmental impact statement is issued, we will issue a further decision addressing the environmental issues and making the exemption effective at that time, if appropriate, thereby allowing construction to begin. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994); and Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989). No construction may begin until our final decision has been issued and has become effective.

As conditioned, this action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we conditionally exempt Pemiscot's construction of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.
2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate.

3. Notice will be published in the Federal Register on July 2, 2002.
4. Petitions to reopen must be filed by July 22, 2002.
5. This decision is effective 30 days from the date of service of this decision.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary