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SERVICE DATE – LATE RELEASE JANUARY 27, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35583

EASTERN ALABAMA RAILWAY LLC—PETITION FOR DECLARATORY ORDER

Decided: January 27, 2012

On December 16, 2011, Eastern Alabama Railway LLC (EARY) filed a petition for an order declaring that the proposed condemnation of certain of its property by the Utilities Board of the City of Sylacauga, Ala. (Utilities Board), is preempted by federal law under 49 U.S.C. § 10501. The Utilities Board seeks to condemn the property to permit the construction of a sewer line under EARY's railroad line, at Hill Road on the southwest side of Sylacauga.

In a reply filed on January 19, 2012, the Utilities Board contends that further pleadings are unnecessary and that the Board can and should issue a decision expeditiously on the current record. Expedited action, in the form of a Board decision by February 29, 2012, is necessary, the Utilities Board asserts, because the new sewer line is needed by April 1, 2012, to serve a new roofing products facility. If unable to construct the new line, the Utilities Board claims that it will be forced to construct a circuitous, much longer, and much more expensive alternative line, which would impose a great economic burden on it and its customers.

This matter was referred by the United States District Court for the Northern District of Alabama, Eastern Division, on November 17, 2011, in Utilities Board of the City of Sylacauga v. Eastern Alabama Railway LLC, No. 1:11 -CV-03192-RBP.

Under 5 U.S.C. § 554(e), the Board has discretionary authority 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, considering 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 a court referral are routinely accepted and treated procedurally in the same manner as a complaint.

Pursuant to the Board's authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721, a proceeding will be instituted to resolve the controversy at issue here. The matter has been referred by a court of competent jurisdiction and otherwise appears to be within the

Board's primary jurisdiction. The Board will consider this matter under its modified procedures, 49 C.F.R. pt. 1112.

The Utilities Board has requested expedited action in this proceeding and has given sufficient cause. For this reason, an expedited procedural schedule will be adopted.

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

It is ordered:

1. The request for institution of a declaratory order proceeding is granted.
2. EARY's opening statement is due by February 8, 2012, the Utilities Board's rebuttal statement is due by February 15, 2012 and EARY's rebuttal statement is due by February 21, 2012.
3. This decision is effective on its service date.
4. Copies of this decision will be mailed to:

The Honorable Robert B. Propst
United States District Court for the Northern District of Alabama
Eastern Division
Hugo L. Black U. S. Courthouse
1729 Fifth Ave. North
Birmingham, Ala. 35203

RE: NO. 1:11 -CV-03192-RBP

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.