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SEC

SERVICE DATE – APRIL 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34986

ASHLAND RAILROAD, INC.–LEASE AND OPERATION EXEMPTION–RAIL LINE
IN MONMOUTH COUNTY, NJ

STB Finance Docket No. 34987

G. DAVID CRANE–CONTINUANCE IN CONTROL EXEMPTION–ASHLAND
RAILROAD, INC.

Decided: April 27, 2007

These proceedings involve the lease and operation of approximately 1.5 miles of track in the Township of Freehold, in Monmouth County, NJ. In STB Finance Docket No. 34986, Ashland Railroad, Inc. (ASRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate as a common carrier by railroad the line owned by Grems-Kirk Railway, LLC, also a noncarrier. ASRR states that it plans to develop a transload facility on the track and interchange traffic with Consolidated Rail Corporation (Conrail).

The transaction is related to a concurrently filed notice of exemption in STB Finance Docket No. 34987, wherein G. David Crane seeks to continue in control of ASRR upon that entity's becoming a Class III rail carrier.¹

On February 21, 2007, the New Jersey Department of Environmental Protection (NJDEP) filed a petition asking the Board to stay the effective date of the exemptions. NJDEP claimed that further development of facts is necessary in order to determine whether ASRR will become a rail carrier as defined by 49 U.S.C. 10102(5). NJDEP asked that the Board require ASRR and Mr. Crane to provide additional and specific information with respect to the nature of the proposed operations, whether the proposed facility will operate as a solid waste rail/truck transload facility, the nature of the freight, the nature and volume of the shipments, the identity and nature of the shippers, the names

¹ ASRR's notice of exemption was published in the Federal Register on February 14, 2007 (72 FR 12973). Mr. Crane's notice of exemption also was published in the Federal Register on February 14, 2007 (72 FR 12974).

of its management and their qualifications to provide rail transportation, and other information relevant to a determination of whether ASRR will be a rail carrier.

By pleading filed on February 22, 2007, New Jersey Transit Corporation (NJT) also sought a stay pending receipt of further information regarding the proposed operations by ASRR, which could impact NJT trackage. And, by letter filed on February 21, 2007, Conrail reported that it has had no discussions to date with ASRR regarding the interchange of traffic.

By decision served on February 27, 2007, the Board, through its Chairman, stayed the effective date of the exemptions. The decision explained that staying their effectiveness is appropriate because more time is needed for ASRR and Mr. Crane to answer the concerns raised and for the Board to consider the matters presented. The decision ordered ASRR and Mr. Crane to provide additional information by March 30, 2007, and they timely filed a joint reply on March 28, 2007.²

On April 4, 2007, NJDEP filed a reply requesting that the Board continue to stay the proceedings. NJDEP explains that Mr. Crane and ASRR have failed to provide sufficient information for the Board to determine whether ASRR will become a rail carrier and lists a number of areas where the record remains silent.

As noted by NJDEP, the record in this case is still insufficient for the Board to determine whether ASRR will become a rail carrier, including the extent of its proposed operations. ASRR and Mr. Crane should file additional information to address NJDEP's concerns, explain why ASRR would become a rail carrier, and describe in detail the operations it proposes to perform. ASRR's and Mr. Crane's supplement is due May 30, 2007. Replies are due June 29, 2007, and ASRR's and Mr. Crane's rebuttal is due July 19, 2007. To allow the record to more fully develop and to allow the agency time to consider the matters raised, a proceeding is being instituted under 49 U.S.C. 10502(b).

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding is instituted to consider the issues raised in these proceedings.

² Norfolk Southern Railway Company (NSR) filed a comment on March 5, 2007. NSR claims that ASRR's notice and the resulting concerns about the nature of its operations demonstrate why the agency should require more information from noncarriers seeking to use the notice of exemption process to acquire rail lines. NSR maintains that greater disclosure will avoid situations where more information is necessary to ensure that a transaction is legitimate and will lessen the need for last-minute stay requests. NSR asks that the Board institute a rulemaking wherein the Board proposes the new requirements. If NSR advocates that Board action, it may pursue that request in a separate proceeding.

2. The parties are directed to submit filings in accordance with the procedural schedule set forth above.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary