

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34903

BUFFALO SOUTHERN RAILROAD, INC.—ACQUISITION AND OPERATION
EXEMPTION—LINE IN CROTON-ON-HUDSON, NY

Decided: July 3, 2006

This decision grants a housekeeping stay of the effective date of the exemption in this proceeding.

BACKGROUND

On June 29, 2006, Buffalo Southern Railroad, Inc. (BSOR), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a rail line on which it has been operating under a lease in Croton-on-Hudson, NY.¹ The line is approximately .3 miles in length, and connects with CSX Transportation, Inc.'s Hudson Line at approximately milepost QC 35 in Croton-on-Hudson, NY.² BSOR also filed a motion to dismiss its notice of exemption on June 30, 2006, on the grounds that the line is excepted track within the meaning of 49 U.S.C. 10906.

On June 30, 2006, the Village of Croton-on-Hudson, New York (Village) filed a petition in opposition to BSOR's notice of exemption. The Village asks the Board to reject the notice because it is defective and contains false information. The party claims that BSOR has failed to properly certify whether its projected annual revenue after the transaction will exceed \$5 million. See 49 CFR 1150.33(g). The Village also claims that, because BSOR's projected revenues will exceed \$5 million, the carrier must meet the labor notice requirements at 49 CFR 1150.42(e).

¹ Greentree Realty, LLC (Greentree) owns the line, which has been leased to RS Acquisition Co., LLC (RSA). Both Greentree and RSA are noncarriers.

² The line was the subject of two other Board proceedings, STB Finance Docket Nos. 34734 and 34735. See Northeast Interchange Railway, LLC—Lease and Operation Exemption—Line in Croton-on-Hudson, NY, STB Finance Docket No. 34734, et al. (STB served Nov. 18, 2005). The line was also at issue in Buffalo Southern Railroad, Inc. v. Village of Croton-on-Hudson, et al., No. 06 Civ. 3755 (S.D.N.Y. June 12, 2006) (preliminary injunction granted).

In case the Board does not reject the notice, the Village asks that the exemption's effective date be stayed so that the Board can fully consider the complaint it filed on June 30, 2006.³ In that pleading, the Village complains that BSOR has not received authority from the Board under 49 U.S.C. 10902 to operate as a common carrier on the instant line, and that BSOR has therefore unlawfully held itself out as a common carrier here. The Village further complains that Greentree, RSA, and Greentree's former lessee, Northeast Interchange Railway, LLC, have knowingly authorized, consented to, and permitted BSOR to operate in violation of 49 U.S.C. 10902. The complainant requests that the Board: (1) order BSOR and its affiliates to cease and desist their unlawful operations; (2) fine the parties under 49 U.S.C. 11901; and (3) require BSOR to file an application under 49 U.S.C. 10902 to receive the requisite authority.

DISCUSSION AND CONCLUSIONS

A housekeeping stay of the effective date of the exemption is appropriate to provide sufficient time for the Board to fully consider the issues presented by the parties. Thus, the exemption will be stayed until further order of the Board.

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

It is ordered:

1. The effective date of the exemption in this proceeding is stayed until further order of the Board.
2. This decision is effective on its date of service.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary

³ See STB Finance Docket No. 34905, Village of Croton-on-Hudson, New York v. Buffalo Southern Railroad, Inc. et al.