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SERVICE DATE - JANUARY 28, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33522

CHICAGO SOUTHSORE & SOUTH BEND RAILROAD  
--PETITION FOR DECLARATORY ORDER--  
STATUS OF TRACK AT HAMMOND, IN

Decided: January 23, 1998

Chicago SouthShore & South Bend Railroad (CSS) has filed a petition for a declaratory order seeking a determination that a certain segment of its track is exempt from the Board's regulatory jurisdiction under 49 U.S.C. 10906, and, thus, that CSS need not obtain Board approval under 49 U.S.C. 10903 to abandon this track.

BACKGROUND

The track in question is approximately 1.8 miles (9,520 feet) long and, according to the map attached to the petition, appears to be located at or near Hammond, IN. It connects to CSS's main line between South Bend, IN, and Kensington, IL, by a switch at milepost 64.2, and is stub-ended, terminating inside the Harbison Walker Facility (Harbison), the only shipper located on the track. The track has no mileposts, has never been shown in railroad timetables, and was not specifically listed in the notice of exemption<sup>1</sup> whereby CSS acquired its main line. CSS contends that the only activity on the track since its purchase has been to switch cars for loading and unloading Harbison's freight and, therefore, no through freight trains have operated on the track since it was acquired by CSS. According to CSS, the track is in need of immediate repair and has been embargoed because of poor conditions since September 17, 1997.

CSS asks the Board to issue a declaratory order that this track qualifies, under 49 U.S.C. 10906, as a "spur, industrial, team, switching, or side" track and thus is exempt from Board jurisdiction.

DISCUSSION AND CONCLUSIONS

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<sup>1</sup> See Chicago SouthShore & South Bend Railroad Co.--Acquisition and Operation Exemption--Chicago South Shore and South Bend Railroad Co., Finance Docket No. 31575 (ICC served Jan. 10, 1990).

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 question CSS has raised. A procedural schedule is set forth below. CSS has essentially filed its opening statement with its petition and has requested expedited handling so that it may act promptly to resolve the current, embargoed status of the track in question if the Board finds that the track is not exempt under section 10906.

The petition does not show that Harbison has been notified of the filing of the petition. Accordingly, CSS will be required to serve a copy of its petition and this decision upon Harbison within 5 days of the service date.

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

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 interested parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.
2. CSS must serve a copy of its petition and a copy of this decision upon Harbison by February 2, 1998.
3. Interested parties may file replies to the petition by February 23, 1998.
4. CSS may file rebuttal comments by March 5, 1998.
5. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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