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SERVICE DATE - MARCH 25, 2002

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FR 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority -- Construction of a Line of Railroad in Pemiscot County,

MO

AGENCY: Surface Transportation Board

ACTION: Notice of Ruling on Fee Waiver

SUMMARY: The Surface Transportation Board(Board) grants an appeal of the denial of a fee waiver request, but reaffirms that henceforth it will narrowly apply its rule providing for a waiver of filing fees for state and local government entities, as originally intended.

DATES: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Vernon A. Williams, (202) 565-1650

[TDD/TTY for the hearing impaired: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: This decision addresses an appeal of a Board order denying a request for waiver of a filing fee. Under the law, the Board is required to assess fees upon parties filing pleadings seeking to engage the Board's processes. The fees that the Board charges were established by the Board's predecessor, the Interstate Commerce Commission (ICC), in Regulations Governing Fees for Services, 1 I.C.C.2d 60 (1984), and they have been amended on various occasions.

The Board's fee program is described fully in 49 CFR 1002.2. Under the provisions of 49 CFR 1002.2(e)(1), a government entity may request a waiver of the otherwise applicable filing fee. In Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services - Policy Statement, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000) (Policy Statement), the Board reviewed how the government-entity fee waiver provision had been used by "state or local government entit[ies] acting in a proprietary capacity as [carriers]" (id. at 3), specifically citing cases in which "states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party." Id. The Board expressed the view that, in the past, waivers had been too readily issued, and emphasized that, for the future, it would closely adhere to the strict guidelines established by the ICC in determining whether to grant a waiver. In particular, the Board stated (id. at 4, emphasis in original) that "fees will be assessed to any entity (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, . . . and comes before the Board in that capacity."

In this case, Pemiscot County Port Authority (Pemiscot) filed a request with the Office of the Secretary for waiver of the \$51,500 filing fee required in connection with a petition for a construction exemption under 49 U.S.C. 10502. Because Pemiscot would be seeking authority to construct and operate (through a third party operator) a line of railroad, by letter dated December 10, 2001, Pemiscot's request for waiver of the fee was denied. On March 8, 2002, Pemiscot submitted an untimely appeal, which we will accept for filing, of the decision denying the fee waiver request. In its appeal, Pemiscot argues that

even though it will retain a residual common carrier obligation if it contracts with a third party to operate the proposed line, the project that it wants to pursue would “convey[] a public benefit, . . . the project would not exist but for public funding, and . . . the transaction does not entail any effort to gain an advantage over another party.” Pemiscot also argues that a waiver is in the best interest of the public and that denial of the waiver would impose an undue hardship on it.

Pemiscot has clearly not shown that the denial of its waiver request was erroneous, and indeed, the decision follows closely the guidelines laid out in the Policy Statement. Nevertheless, because a party in a different case was granted a fee waiver after issuance of the Policy Statement under circumstances not substantially different from those prevailing here, we will grant Pemiscot’s appeal and waive the filing fee that should be required in this case. However, in the future, we will construe the waiver provision narrowly, as we said we would do in the Policy Statement.

Decided: March 21, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary