

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35914

FORT TRANSFER COMPANY—ALTERNATIVE RAIL SERVICE—TOLEDO, PEORIA &  
WESTERN RAILWAY CORP.

Digest:<sup>1</sup> This decision holds the proceeding in abeyance and directs Toledo, Peoria & Western Railway Corp. (TPW) to certify to the Board by May 1, 2015, that it has completed repairs to, and restored service to Fort Transfer Company over, the Morton Industrial Lead (the Lead), an approximately 4.3-mile long track located in Morton, Ill.

Decided: April 15, 2015

On March 10, 2015, Fort Transfer Company (Fort Transfer) filed a petition pursuant to 49 U.S.C. § 11123 and 49 C.F.R. pt. 1146, seeking an emergency service order for Keokuk Junction Railway Co. (KJRY) to provide interim rail service for an initial period of 30 days and a total period of not more than 270 days over approximately 4.3 miles of rail track owned by Toledo, Peoria & Western Railway Corp. (TPW). The track is located in Morton, Ill., and is known as the Morton Industrial Lead (the Lead).

Fort Transfer—a provider of transportation and bulk liquid storage of chemicals and agricultural products, including herbicides—states that it requests emergency service because TPW ceased providing rail service to its Morton Facility, located near the end of the Lead in Morton, Ill., in February 2015.<sup>2</sup> The majority of the product that Fort Transfer handles is herbicides and about half of the product Fort Transfer receives is hazardous.<sup>3</sup> Fort Transfer states that its busiest season is mid-March to mid-July.<sup>4</sup>

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Fort Transfer Pet. 1, 3, Mar. 10, 2015; TPW Reply 3, 5, Mar. 17, 2015.

<sup>3</sup> Tr. 8 (noting that not all of the herbicides handled by Fort Transfer are hazardous).

<sup>4</sup> Fort Transfer Pet. 1, Mar. 10, 2015. TPW disputes this, pointing out that its deliveries to Fort Transfer “over the past 2 years have been spread evenly throughout the year.” TPW Reply 4, Mar. 17, 2015.

TPW states that it took the Lead out of service on February 21, 2015, based on an inspection performed by TPW's Roadmaster the day before.<sup>5</sup> According to TPW, its Roadmaster found "numerous problems" with the track, including defective ties, deteriorated crossings, and culverts that either needed repairs or replacing.

Fort Transfer filed its petition requesting emergency service on March 10, 2015. On March 16, 2015, TPW embargoed the Lead in response to an FRA inspection that was conducted on March 12, 2015.<sup>6</sup> According to TPW, the FRA inspection report confirms that the Lead must be repaired before rail service is reinstated and requires that all bridges and public crossings on the Lead be brought into Class 1 condition before hazardous materials (including hazardous product destined for Fort Transfer) can be moved over them.<sup>7</sup>

The Board held a conference between Board staff and the parties involved in this proceeding on April 1, 2015.<sup>8</sup> During the conference, TPW explained the delay between taking the Lead out of service on February 21 and embargoing the Lead on March 16, stating that it had "no intention of shutting the line down completely for an extended amount of time."<sup>9</sup> TPW indicated that it was willing to have a discussion with Fort Transfer and the other shipper on the Lead regarding service over the track at a condition acceptable to both parties<sup>10</sup> and estimated that repairing the Lead to excepted track service would cost approximately \$166,500<sup>11</sup> and take approximately 30 days, if a contractor were lined up to perform the work.<sup>12</sup>

On April 13, 2015, TPW submitted a supplemental filing, stating that it has decided to proceed with, and has already begun, repairing the Lead, and expects to restore service to Fort

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<sup>5</sup> TPW Reply 5, Mar. 17, 2015.

<sup>6</sup> TPW Reply 6, Exs. D & E, Mar. 17, 2015.

<sup>7</sup> See TPW Reply 4, 6, Mar. 17, 2015.

<sup>8</sup> Fort Transfer Co.—Alt. Rail Serv.—Toledo, Peoria & W. Ry., FD 35914 (STB served Mar. 30, 2015). Parties' corrections to the transcript and supplemental information were due on April 13, 2015. Fort Transfer Co.—Alt. Rail Serv.—Toledo, Peoria & W. Ry., FD 35914 (STB served Apr. 9, 2015).

<sup>9</sup> Tr. 67.

<sup>10</sup> Tr. 72.

<sup>11</sup> This estimate included a cost of \$5,000 to repair a bridge. Because the bridge is located beyond Fort Transfer's Morton facility, it should not be necessary to repair that bridge to restore service to Fort Transfer's facility. Tr. 79-80, 85, 102-03.

<sup>12</sup> Tr. 103.

Transfer by the end of April 2015.<sup>13</sup> TPW states that it will attempt to partially restore service sooner if the necessary repairs are completed.

Given TPW's commitment to restoring service to Fort Transfer by the end of April 2015, the Board will hold this proceeding in abeyance until further order of the Board. TPW is directed to certify to the Board by May 1, 2015, that repairs to the Lead have been completed in accordance with applicable standards and service restored to Fort Transfer.

It is ordered:

1. This proceeding is held in abeyance until May 1, 2015.
2. TPW is directed to certify by May 1, 2015, that repairs to the Morton Industrial Lead have been completed in accordance with applicable standards and service restored.
3. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

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<sup>13</sup> TPW Supplemental Filing 3-4. TPW also offers to pay for some of Fort Transfer's substitute truck service costs in the interim. TPW Supplemental Filing 3-4, 6.