

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35181

INDIANA RAIL ROAD COMPANY—PETITION FOR DECLARATORY ORDER

Decided: April 14, 2009

On October 7, 2008, Indiana Rail Road Company (INRD) filed a petition for institution of a declaratory order proceeding. INRD seeks a determination that a track it proposes to construct from its east-west main line at Dugger, IN, to a new coal operation south of that main line will be a spur track exempt from the need to seek Board approval under 49 U.S.C. 10906, rather than a line of railroad requiring Board approval under 49 U.S.C. 10901. By decision served on December 2, 2008, we instituted a declaratory order proceeding and sought comments from the public. No comments in response were filed. We are granting the petition for a declaratory order.

BACKGROUND

INRD is a Class II carrier with two main lines. INRD's east-west main line runs from Indianapolis, IN, to Newton, IL; its north-south main line runs from Chicago, IL, to Louisville, KY. Currently, INRD serves the Black Beauty Coal Company, a subsidiary of Peabody Energy (collectively, Peabody), at the Farmersburg Mine south of Terre Haute, IN, through its north-south main line. The mine, however, is running out of mineable reserves at its current operation. To replace this capacity, Peabody plans to develop a new operation—the Farmersburg Mine, Bear Run Pit—in the coal-bearing area south of INRD's east-west main line.

INRD has an agreement with Peabody to build a track connection from Bear Run Pit to INRD's east-west main line east of Dugger. The track will run west from the main line for approximately one mile using about 1/2 mile of the right-of-way of an earlier Peabody owned private track. After approximately one mile, the new track will turn south and run almost directly to the new mining operation's loadout and loop track. The total length of the new track will be approximately 5 miles (27,174 track feet including both branches of the wye connection to the main line).

INRD explains it will use the new track to move loaded coal trains from Bear Run Pit's loadout and loop track to the INRD main line for routing to various power plants or to connections with other railroads. The only inbound movements to the mine will be of empty coal trains. No other mines or industries will be served from the track.

According to INRD, most of the proposed track will be on right-of-way owned or controlled by Peabody. Presently, Peabody owns or controls 3.26 miles of the proposed right-of-way and INRD expects Peabody to acquire an additional mile of right-of-way. Thus, INRD anticipates that Peabody will provide about 4.2 miles of the approximate 5 miles of the proposed right-of-way for the new track.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty as to the status of particular track. The issue presented here is whether INRD's proposed track construction involves the construction of a "spur" or, alternatively, a "line of railroad." The Board is granting the request for a declaratory order in order to resolve this uncertainty.

The Board does not exercise licensing authority "over construction, acquisition, operation, abandonment, or discontinuance of spur . . . tracks." 49 U.S.C. 10906. The determination of whether a particular track segment is a "railroad line" requiring Board authorization under 49 U.S.C. 10901(a) or an exempt spur turns on the intended use of the track segment. Nicholson v. I.C.C., 711 F.2d 364, 368 (D.C. Cir. 1983), cert. denied, 464 U.S. 1056 (1984). Exempt spurs are "commonly constructed either to improve the facilities required by shippers already served by the carrier or to supply the facilities to others, who being within the same territory and similarly situated are entitled to like service from the carrier." Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co., 270 U.S. 266, 278 (1926) (Texas & Pacific). In contrast, if a railroad constructs tracks that extend substantially its line into new territory, then the new track is an extension subject to Board licensing requirements and not an exempt "spur." Id.

Petitioner asserts that the track proposed to be constructed here meets the test for spur track set forth in Texas & Pacific. We agree. The intent of the proposed track is to improve the facilities required by Peabody, an existing shipper whose Farmersburg Mine is already being served by INRD. The track will not invade the territory of another railroad because the closest track already in service is a CSXT main line 6.2 miles west of Bear Run Pit. Furthermore, INRD has historically served the area that the proposed track will occupy and the track will serve only Peabody. For these reasons, we find that the proposed track will be a spur exempt from Board licensing approval under 49 U.S.C. 10906.

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

It is ordered:

1. The petition for a declaratory order is granted.

2. This decision is effective on its service date.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary