

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35875

JOLIET BULK BARGE & RAIL, LLC—ACQUISITION AND OPERATION
EXEMPTION—CENTERPOINT PROPERTIES

Decided: December 1, 2014

On November 12, 2014, Joliet Bulk Barge & Rail, LLC (JBRR), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 6.5 miles of railroad right-of-way, trackage, and transloading facilities currently owned by CenterPoint Properties (CenterPoint) in Joliet, Ill. The notice of exemption also states that “there is currently 34,450 linear feet of track being finished on the Joliet Transload Facility.” JBRR states that this trackage, which is the same length as the trackage being acquired, is “properly considered to be a line of railroad under 49 U.S.C. § 10901.”

Section 1150.31, under which this notice of exemption was filed, “applies to all acquisitions and operations under [49 U.S.C. §] 10901,” but does not cover construction. Based on JBRR’s characterization, the notice of exemption may involve construction of a line of railroad, in which case Board authorization of the construction, and an environmental review under the National Environmental Policy Act, would be required. Neither JBRR nor CenterPoint have sought Board authority for this construction.

If the Board were to accept JBRR’s verified notice as sufficient and complete at this time, and were to publish the notice of the proposed exemption in the Federal Register, the Board’s actions might be seen as tacit approval of the construction of a line of railroad without Board authority.¹ Because the notice of exemption does not provide sufficient information to allow the Board to make a definitive determination that use of the class exemption at 49 C.F.R. § 1150.31 for acquisitions and operations is appropriate here, additional information is necessary. As a result, JBRR’s proposed exemption will not become effective, if at all, until further order of the Board.

¹ Under 49 C.F.R. § 1150.33(h), “the filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.” But JBRR’s verified notice of exemption does not certify whether or not this transaction involves such a provision or agreement. Therefore, JBRR should also supplement its notice of exemption to make the certification described in § 1150.33(h).

JBRR is directed to file, by January 2, 2015, supplemental information describing in detail whether the activities at issue include construction of a line of railroad subject to the Board's licensing authority and, if so, why Board authority for the construction has not been sought. Any construction that is currently ongoing should cease pending resolution of this matter.

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

It is ordered:

1. The exemption that is the subject of this proceeding will not become effective until further order of the Board.
2. JBRR is directed to file, by January 2, 2015, the supplemental information described above.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.