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SERVICE DATE – JUNE 27, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34753

CENTRAL ILLINOIS RAILROAD COMPANY—OPERATION EXEMPTION—
RAIL LINE OF THE CITY OF PEORIA, IL

Decided: June 25, 2007

On November 28, 2006, Pioneer Industrial Railway Company (PIRY) filed a petition to reject as void ab initio a notice of exemption filed by Central Illinois Railroad Company (CIRY) to operate over a rail line in Peoria, IL, or, alternatively, to reopen the proceeding and revoke CIRY's exemption authority. This decision denies the relief sought, but directs CIRY to show cause why it should not be required to obtain authority to operate over an adjacent connecting track, or to cease operations over that trackage.

BACKGROUND

On September 7, 2005, CIRY, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 et seq., to operate a line of railroad, known as the Western Connection, owned by the City of Peoria, IL (City). The Western Connection extends easterly approximately 1.9 miles from a point of connection with the Peoria Subdivision of the Union Pacific Railroad Company (UP) at approximately UP milepost 71.5 to a point a short distance west of University Avenue in Peoria, Peoria County, IL.¹ The notice was served and published in the Federal Register on October 6, 2005, at 70 FR 58504. The transaction was scheduled to be consummated on or after September 14, 2005.

On November 28, 2006, PIRY filed the instant petition, to which CIRY filed a reply on December 21, 2006.

¹ An 1800-foot track connects the Western Connection to an 8.29-mile rail line known as the Kellar Branch, which is owned by the City and the Village of Peoria Heights, IL. The City was authorized to construct the connecting track in 2004. See City of Peoria, IL, D/B/A Peoria, Peoria Heights & Western Railroad—Construction of Connecting Track Exemption—In Peoria County, IL, STB Finance Docket No. 34395 (STB served Sept. 27, 2004). Also, CIRY received authority to operate the Kellar Branch in 2004. See Central Illinois Railroad Company—Operation Exemption—Rail Line of The City of Peoria and The Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL, STB Finance Docket No. 34518 (STB served July 28, 2004).

DISCUSSION AND CONCLUSIONS

In its petition, PIRY argues that the notice of exemption filed by CIRY contained materially false and misleading information and should be rejected as void ab initio on that basis. Specifically, PIRY argues that CIRY was not the proper entity to obtain operating authority over the Western Connection because CIRY does not have a contract with the City to operate the line, contrary to its assertions in the notice. PIRY claims that the operating contract is actually between DOT Rail Services (DOTR), a corporate affiliate of CIRY, and the City, not between CIRY and the City. Also, according to PIRY, Central Illinois Railroad Holdings LLC (Holdings), not CIRY, is the entity that is actually providing rail service over the Western Connection, despite lacking any Board authority to do so. PIRY asserts that DOTR should have filed for Board authority to operate the rail line or, alternatively, that DOTR should have filed for authority jointly with CIRY or Holdings if the parties intended either CIRY or Holdings to assume DOTR's common carrier obligation. Finally, PIRY argues that their failure to do so, coupled with PIRY's assertion that this transaction is contrary to the rail transportation policy (RTP) and represents an abuse of the Board's processes, provide sufficient grounds to alternatively revoke CIRY's exemption.

In response, CIRY asserts that there is no basis to reject its notice as void ab initio. According to CIRY, it never stated in its notice that it had reached an agreement with the City. CIRY explains that the City awarded the operating contract to "DOTR or its designee" and that, at the time, CIRY and DOTR were sister corporations and the parties intended that CIRY would operate the Western Connection.² CIRY also argues that neither DOTR nor Holdings has ever provided rail service and that the two entities do not have a corporate relationship. As for reopening and revocation, CIRY argues that the evidence PIRY has presented is not new, material, or truthful.

As next discussed, we conclude that PIRY has provided no basis for the rejection or revocation it seeks. CIRY will, however, be directed to show cause why it should not be required to obtain authority to operate over an adjacent connecting track, or to cease operating over that track.

² In support, CIRY attaches a December 19, 2006 letter from Thomas F. McFarland, attorney for the City. Therein, Mr. McFarland states that "it is my understanding that the Operating Agreement between the City and DOT Rail Service, Inc. (DOT) [here DOTR] was made by DOT for the benefit of its wholly-owned subsidiary, Central Illinois Railroad Company (CIRY), and that it was contemplated and intended that CIRY, not DOT, would provide rail service on and over the 'Western Connection'...."

Rejection. Pursuant to 49 CFR 1150.42(c), if a verified notice contains false or misleading information, the exemption is void ab initio.³ Consequently, it may be rejected after-the-fact on that basis. PIRY's allegations in support of such Board action here do not satisfy that standard.

PIRY asserts that CIRY was not the proper entity to obtain operating authority over the Western Connection because it has no contract with the City. PIRY also claims that CIRY misled the Board by asserting that it had a contract with the City when it did not. However, CIRY properly obtained operating authority here because it is the entity actually providing service over the line. And contrary to PIRY's claims, CIRY never stated in its notice that it had a contract with the City, but only stated that "[a]n agreement has been reached for CIRY's operation of the Subject Rail Line" (notice p. 3) and that "CIRY will be the operator" (notice p. 3). These statements by CIRY were accurate. Moreover, PIRY has not supported its assertion that DOTR or Holdings are operating or have ever operated as carriers on this line. Consequently, there is no reason for either entity to have sought Board authority to perform common carrier service on the Western Connection.

Revocation. PIRY requests that, in the alternative, we reopen the proceeding and revoke CIRY's exemption authority. Under 49 U.S.C. 10502(d), we may revoke an exemption in whole or in part if we find that regulation is necessary to carry out the rail transportation policy set forth in 49 U.S.C. 10101. The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

Here, PIRY seeks reopening and revocation on grounds that the information CIRY provided in its notice was false and misleading and that the same misinformation also violated the RTP and amounts to an abuse of the Board's processes, warranting agency reregulation. But, for the reasons explained above, the "false and misleading" argument is meritless. Because PIRY offers no other evidence in support of its revocation request and has not met any of the requirements for reopening a proceeding, we will deny petitioner's request for such relief.⁴

³ See Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento, STB Finance Docket No. 34114, slip op. at 2 (STB served Feb. 3, 2003).

⁴ Under 49 CFR 1115.4, a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. Here, PIRY has not addressed these specific requirements, much less satisfied them.

Other matters. PIRY claims in its petition that DOTR became a common carrier when it entered into an agreement with the City, and that DOTR also controlled common carrier CIRY at that time. Consequently, PIRY argues that DOTR should have filed for Board authority to continue in control of CIRY, but failed to do so. However, as there is no evidence that DOTR is or has ever been a carrier, or that CIRY and DOTR have ever had a corporate affiliation, beyond being sister corporations, PIRY's arguments in this regard must be rejected.

PIRY also includes in its petition a request that the Board find CIRY to be operating without authority over the track connecting the Western Connection to the Keller Branch. In its reply, CIRY acknowledges that it has provided service over the 1800-foot connecting track since the start up of operations and there is no evidence to show that CIRY has authority to operate over it.⁵ Consequently, CIRY will be directed, by July 27, 2007, to show cause why it should not be required to obtain Board authority to operate over the connecting track or, alternatively, to cease operations over that trackage. CIRY states that it would amend the exemption notices or resubmit new notices if directed by the Board.

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

It is ordered:

1. The request by PIRY to reject CIRY's notice of exemption to operate the Western Connection and treat the notice as void ab initio is denied.
2. The request by PIRY to reopen the proceeding and revoke CIRY's operation exemption is denied.
3. CIRY is directed, by July 27, 2007, to show cause why it should not be required to obtain Board authority to operate over the 1800-foot connecting track, or to cease operations over the trackage.

⁵ The City was granted an exemption to construct the connecting track in 2004, and CIRY received authority to operate the Keller Branch, but neither entity received authority to operate the connecting track at that time. See supra note 1.

4. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary