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SERVICE DATE – LATE RELEASE AUGUST 26, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35397

ABC & D RECYCLING, INC.
—LEASE AND OPERATION EXEMPTION—
A LINE OF RAILROAD IN WARE, MASS.

Decided: August 26, 2010

This decision grants a housekeeping stay of the effective date of the exemption in this proceeding and allows ABC & D Recycling, Inc. (ABC & D) until September 7, 2010, to file a reply to the petition to reject and/or dismiss filed by the Town of Ware, Mass.

On July 28, 2010, ABC & D, a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to lease from O’Riley Family Trust, and to operate, 773 feet of rail line located at milepost 12.8, in Ware, Mass. (the Town). The line is currently operated by the Massachusetts Central Railroad Corporation.¹

Notice of the exemption was served and published in the Federal Register on August 13, 2010 (75 Fed. Reg. 49,549-50). ABC & D’s exemption is scheduled to become effective on August 27, 2010 (30 days after filing of the notice), and the deadline for filing a motion to stay the effective date of the exemption was August 20, 2010.

On August 17, 2010, the Town filed a petition to reject and/or dismiss ABC & D’s exemption notice, and to stay the effective date of ABC & D’s exemption. In support of its petition, the Town argues that ABC & D’s notice contains false and misleading information and should therefore be rejected ab initio. The Town further argues that ABC & D’s notice addresses complicated and controversial matters and, as a result, the Board should not authorize the transaction using its class exemption procedures. The Commonwealth of Massachusetts Executive Office of Energy & Environmental Affairs and the Massachusetts Department of Transportation each filed comments in support of the Town’s petition.

On August 20, 2010, ABC & D filed a motion for procedural order in response to the Town’s petition. In its motion, ABC & D requests until September 7, 2010, to file a reply to the

¹ ABC & D earlier filed a verified notice of exemption concerning lease and operation of this trackage, which it later withdrew and the Board dismissed. ABC & D Recycling, Inc.— Lease & Oper. Exempt.—a Line of R.R. in Ware, Mass., FD 35356 (STB served Mar. 12, 2010 and Apr. 1, 2010).

Town's petition. ABC & D further states that it agrees to a stay of the effective date of its exemption, and suggests that its exemption take effect on September 27, 2010. In a reply to ABC & D's motion, filed on August 24, 2010, the Town states that it does not object to ABC & D's request to file its reply on September 7, 2010. However, the Town requests that the Board stay the effective date of the exemption in this proceeding until such time as the Board issues a decision addressing the Town's August 17, 2010 petition.

A housekeeping stay of the effective date of the exemption will be entered to permit ABC & D additional time to reply to the Town's petition and to provide the Board sufficient time to fully consider the issues presented by the petition.

ABC & D's request to file a reply to the Town's petition no later than September 7, 2010, is reasonable and unopposed, and therefore will be granted. ABC & D's suggestion, however, that a stay remain in effect until September 27, 2010, is rejected. Instead, the stay will remain in effect pending further order of the Board. The Board will address promptly the Town's petition in a separate decision after it has fully considered the issues that the Town has raised, as well as any issues that ABC & D raises in its reply.

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

It is ordered:

1. The effective date of ABC & D's notice of exemption is stayed pending further order of the Board.
2. ABC & D's request to file a reply no later than September 7, 2010, is granted.
3. This decision is effective on its date of service.

By the Board, Daniel R. Elliott, Chairman.