

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35794

KAN RAIL, INC.—ACQUISITION AND OPERATION EXEMPTION—IN  
WAPAKONETA, OHIO

Decided: April 28, 2014

On April 22, 2014, Kan Rail, Inc. (Kan Rail), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to lease and operate approximately two-thirds of a mile of existing railroad track, as well as approximately one-half of a mile of additional track to be constructed, all at a transloading facility located in Wapakoneta, Ohio. Kan Rail states that it was formed for the purpose of leasing and operating all rail lines and equipment owned by AIP Logistics, Inc., and KanTrade Ltd. (the Sister Entities). The notice of exemption also states that the Sister Entities propose to lay approximately 2,615 linear feet of additional track, to be leased to and operated by Kan Rail, and that the proposed time schedule for completion of such additional track is May 1, 2014.

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. Kan Rail’s notice of exemption under this section, however, appears to 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 Kan Rail nor the Sister Entities have sought Board authority for this construction.

If the Board were to accept Kan Rail’s verified notice as sufficient and complete at this time, and were to publish the notice of the proposed exemption in the Federal Register, then the Board’s actions might be seen as tacit approval of the construction of a line of railroad without Board authority. 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, Kan Rail’s proposed exemption will not become effective, if at all, until further order of the Board.

Kan Rail is directed to file, by May 14, 2014, 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. Kan Rail is directed to file, by May 14, 2014, 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.