

37964
DO

SERVICE DATE – MAY 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35016

ROCK RIVER RAILROAD, INC.—ACQUISITION AND OPERATION
EXEMPTION—RAIL LINES OF RENEW ENERGY, LLC

STB Finance Docket No. 35017

MARK K. SMITH—CONTINUANCE IN CONTROL EXEMPTION—ROCK RIVER
RAILROAD, INC.

Decided: May 3, 2007

These proceedings involve approximately 2,100 feet of rail line, located within the plant site of Renew Energy, LLC (RE), a noncarrier, in Jefferson, Jefferson County, WI. In STB Finance Docket No. 35016, Rock River Railroad, Inc. (RRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from RE, and to operate as a common carrier by railroad, the line owned by RE. RRR states that it plans to ship ethanol and dried distillers' grain from RE's plant using the track, which connects with Union Pacific Railroad Company (UP) at both of its termini. RRR further states that, although the line has been owned and operated by RE as private track and might otherwise be considered to be spur, industrial, or switching track exempt from the Board's acquisition and operation authority under 49 U.S.C. 10906, it constitutes a line of railroad for which an exemption from the Board is required because it is RRR's initial rail acquisition and operation.¹

The acquisition transaction is related to a concurrently filed notice of exemption in STB Finance Docket No. 35017, wherein Mark K. Smith seeks to continue in control of RRR upon that entity's becoming a Class III rail carrier.²

¹ See Effingham RR Co.—Pet. For Declaratory Order, 2 S.T.B. 606 (1997), aff'd sub nom. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999); see also Bulkmatic Railroad Corporation—Acquisition & Operation Exemption—Bulkmatic Transport Company, STB Finance Docket No. 34145 (STB served Nov. 19, 2002).

² RRR's notice of exemption was published in the Federal Register on April 20, 2007 (72 FR 20009-10). Mr. Smith's notice of exemption also was published in the Federal Register on April 20, 2007 (72 FR 20009).

On April 27, 2007, UP filed a petition asking the Board to stay the effective date of the exemptions. UP argues that: (1) RRR is misusing the notice of exemption process; and (2) the activity in which RRR would be engaging is not subject to Board jurisdiction because it is not rail transportation by a common carrier, but merely continuation of the same switching activities by a different entity. UP asks that the Board require RRR and Mr. Smith to provide additional and specific information with respect to RRR's reasons for seeking common carrier status and how RRR can function as a common carrier when it cannot serve any shipper other than RE or link up with any railroad other than UP.

By letter filed on May 1, 2007, RRR and Smith (jointly, applicants) advised that they intend to file a reply in opposition to the petition to stay the exemptions. Because applicants wish the Board to consider their reply before the exemptions become effective, they have volunteered to postpone the effective date of the exemption from May 6, 2007, to May 13, 2007. This request is reasonable and, accordingly, will be granted.

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 the exemptions in STB Finance Docket No. 35016 and STB Finance Docket No. 35017 is postponed to May 13, 2007.
2. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary