

SERVICE DATE - APRIL 10, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34081

EFFINGHAM RAILROAD COMPANY
—OPERATION EXEMPTION—
LINE OWNED BY TOTAL QUALITY WAREHOUSE

Decided: April 8, 2002

On August 6, 2001, Effingham Railroad Company (ERRC), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 3,661 feet of track to be constructed for and acquired by Total Quality Warehouse (TQW). The track will be in an existing industrial park in Effingham, IL, and the purpose of the proposed operation by ERRC is to provide a more efficient interchange with the Canadian National Railway Company/Illinois Central Railroad Company (CNR/ICR). Notice of the exemption was served and published in the Federal Register on September 4, 2001 (66 FR 46306) (September 4, 2001 notice).

Concurrently with the filing of its notice of exemption, ERRC moved to dismiss the notice for lack of jurisdiction. We have considered the notice and the motion and conclude that the notice should be dismissed and the exemption vacated.

BACKGROUND

ERRC has been serving the industrial park at Effingham, since its inception, pursuant to a series of Board decisions and notices. Beginning with Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL, STB Docket No. 41986 (STB served Sept. 12, 1997) (September 12, 1997 decision), we determined that ERRC needed Board authority to implement its plan to serve the new industrial park at Effingham.¹ For the initial phase of the plan, ERRC, then a noncarrier, filed a notice to operate under the class exemption for noncarriers at 49 CFR 1150.31 in Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation, STB Finance Docket No. 33468 (STB served Oct. 22, 1997) (October 22, 1997 notice). In accordance with the October 22, 1997 notice, ERRC became a carrier and the substitute operator for Consolidated Rail Corporation (Conrail) over approximately 206.05 feet of track, owned by the Agracel Corporation, which connected with a Conrail line and served a facility in Effingham. After becoming a carrier, ERRC extended its operations over an additional 400 feet of track constructed entirely within the industrial park. ERRC did not seek Board authority for this phase of its plan because it considered this extension of its operations to be statutorily exempt. ERRC again extended its operations in Effingham Railroad Company—Operation Exemption—Line Owned by Total Quality Warehouse, STB

¹ ERRC characterized the operation it would perform as a switching service within an industrial park. We looked, however, at the larger purpose and effect of the proposal, which was to serve a new rail shipper (or shippers), in territory not previously served, on what would be ERRC's entire line of railroad.

Finance Docket No. 33528 (STB served Dec. 30, 1997) (December 30, 1997 notice). This extension involved 9,201 feet of track that left the boundaries of the industrial park to connect TQW's facility with CNR/ICR.

The September 12, 1997 decision, the October 22, 1997 notice, and the December 30, 1997 notice were upheld in Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL, STB Docket No. 41986 et al. (STB served Sept. 18, 1998) (September 18, 1998 decision), aff'd sub nom. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999). In the September 18, 1998 decision, slip op. at 5, we concluded that ERRC's notices involving operations over track crossing the boundaries of the industrial park to establish connections with other railroads (Conrail in the initial notice and ICR in the second notice) were proper subjects of notices of exemption, whereas its other operations over new trackage entirely within the boundaries of the industrial park are properly exempt by statute, as siding, spur, or industrial trackage.

DISCUSSION AND CONCLUSIONS

Relying on the guidance in the September 12, 1997 decision, ERRC has moved to dismiss the September 4, 2001 notice arguing that its operation over this additional track does not allow it to serve any new markets or provide any new services. Instead, it asserts that the additional track is designed to improve an existing interchange, and is to be operated solely for the convenience of the existing carriers, for the benefit of existing shippers. We agree. Because the new operation does not constitute an extension of service to new territory or connection with a new carrier, it is not a proper subject of a notice of exemption. Accordingly, the notice of exemption should be dismissed, and because the exemption has already become effective, it will be vacated.

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

It is ordered:

1. The motion to dismiss the notice of exemption is granted.
2. The exemption is vacated.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary