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SEC

SERVICE DATE - FEBRUARY 3, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33820

CENTRAL OF TENNESSEE RAILWAY & NAVIGATION COMPANY
INCORPORATED DBA THE LONGHORN RAILWAY COMPANY—
PETITION FOR DECLARATORY ORDER

Decided: February 2, 2000

Central of Tennessee Railway & Navigation Company Incorporated doing business as The Longhorn Railway Company (LHRR), the operator of a 162-mile rail line between Giddings and Llano, TX,¹ filed a petition for a declaratory order on November 12, 1999. LHRR alleges that Capital Metropolitan Transportation Authority (CMTA), owner of the Giddings-Llano line,² is engaged in a pattern of behavior that is inconsistent with the latter's common carrier obligation, and that this pattern of behavior is impeding LHRR's ability to carry out its own common carrier obligation as operator of, and forcing it to discontinue freight service to, the Giddings-Llano line. On December 17, 1999, CMTA replied, filing a motion to dismiss based on jurisdictional and ripeness issues. Additionally, CMTA petitioned, in the alternative, for a stay of the proceeding until the completion of mandatory, non-binding mediation scheduled for late January or early February 2000,³ or, if mediation fails, until a decision is issued by the Texas state courts in response to the

¹ Central of Tennessee Railway & Navigation Company Incorporated d/b/a The Longhorn Railway Company—Change of Operator Exemption—The City of Austin, TX, STB Finance Docket No. 32885 (Sub-No. 1) (STB served Aug. 18, 1996) [Austin Railroad Company doing business as Austin & Northwestern Railroad (AUNR) was the former operator of the Giddings-Llano line, see Austin Railroad Company—Operation Exemption—City of Austin, TX, Finance Docket No. 30861-B (ICC served Nov. 4, 1986)] (Austin Railroad).

² Ownership of the Giddings-Llano line apparently was transferred from the city of Austin, TX (Austin), to CMTA on May 20, 1998. Austin had acquired the Giddings-Llano line from Southern Pacific Transportation Company, City of Austin, TX—Acquisition—Southern Pacific Transportation Company, Finance Docket No. 30861(A) (ICC served and published at 51 FR 40085 on Nov. 4, 1986), had entered into a 10-year contract for AUNR to operate the Giddings-Llano line, Austin Railroad, *supra*, and was granted an exemption from regulation in City of Austin, TX—Exemption—From 49 U.S.C. Subtitle IV, Finance Docket No. 30861(A) (Sub-No. 1) (ICC served and published at 51 FR 40085 on Apr. 23, 1987).

³ CMTA previously stated that LHRR is contractually required to mediate before filing a lawsuit and that LHRR filed for mediation in state court in Texas on November 17, 1999.

lawsuit LHRR allegedly threatened to file.⁴ Subsequently, on January 12, 2000, CMTA filed a motion to strike LHRR's petition for a declaratory order, or, in the alternative, to strike portions of it, claiming that the declaratory order petition and supporting documents are interwoven with irrelevant, impertinent, and scandalous matter.

The due date to respond to CMTA's December 17 reply was extended twice, at LHRR's request, to February 10, 2000, by decisions that were served on January 5 and 18, 2000. On February 1, 2000, LHRR filed a letter requesting that this reply date be extended for 11 additional days and that the due date to respond to CMTA's motion to strike be extended for 20 days, so that the response to both CMTA's petitions would be due on February 21, 2000. Because February 21, 2000 is a holiday, the request is essentially for extensions until February 22, 2000.

These prior extensions were granted because LHRR's attorney had been ill and was hospitalized. LHRR states that this further extension is necessary because its attorney is convalescing at home after having been hospitalized for 12 days and that a copy of the request was served on CMTA. Although this is LHRR's third extension request, it is reasonable and seeks a relatively modest extension. Under the circumstances, the requested extensions will be granted.

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

It is ordered:

1. The due date for LHRR to reply to CMTA's motions to dismiss and to strike are extended to February 22, 2000.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

⁴ CMTA previously stated that LHRR had given it a draft of its state court lawsuit.