

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35247

GRENADA RAILWAY, LLC—ACQUISITION AND OPERATION EXEMPTION—  
ILLINOIS CENTRAL RAILROAD COMPANY AND WATERLOO RAILWAY COMPANY

Docket No. FD 35247 (Sub-No. 1)<sup>1</sup>

GRENADA RAILWAY, LLC—RAIL LINE IN GRENADA, MONTGOMERY, CARROLL,  
HOLMES, YAZOO AND MADISON COUNTIES, MISS.

Digest:<sup>2</sup> This decision requests supplemental information from Grenada Railway, LLC (GRYR) regarding an embargo it imposed on a portion of its rail line in Mississippi. It also denies a request to revoke the previously granted authority for GRYR to acquire and operate this rail line.

Decided: September 10, 2013

On September 11, 2012, Robert J. Riley filed a petition in Docket No. FD 35247 to revoke an exemption that authorized the acquisition and operation by Grenada Railway, LLC (GRYR) of a rail line approximately 175.4 miles long between milepost 403.0, at Southaven, Miss., and milepost 703.8, near Canton, Miss. (the Line). By decision served on December 10, 2012, the Board instituted a proceeding under 49 U.S.C. § 10502. On July 1, 2013, the Board issued a decision requesting additional information relating to certain allegations made by Riley. Having received responses from GRYR and replies from Riley and several other interested persons, the Board will: (1) request supplemental information from GRYR regarding an embargo GRYR imposed over a portion of the Line; (2) establish a new subdocket to consider the lawfulness of that embargo; and (3) deny Riley's petition to revoke the acquisition exemption.

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<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative convenience.

<sup>2</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language in Decisions, EP 696 (STB served Sept. 2, 2010).

## BACKGROUND

On May 13, 2009, GRYR filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire the Line from the Illinois Central Railroad Company (ICR) and to operate it, and to acquire from Waterloo Railway Company and operate a connecting rail line approximately 11.42 miles long between milepost 603.0, at Bruce Junction, Miss., and milepost 614.42, at Water Valley Junction, Miss. On May 29, 2009, a notice of exemption was served and published in the Federal Register (74 Fed. Reg. 25,799) in Docket No. FD 35247 for GRYR's acquisition and operation of the two lines (May 2009 Notice).<sup>3</sup>

On June 9, 2009, Mississippi State Representative Sidney Bondurant filed a petition to revoke the May 2009 Notice, arguing that GRYR's notice of exemption contained inaccurate and misleading information. By decision served on December 3, 2009, the Board denied Rep. Bondurant's petition.<sup>4</sup>

On September 20, 2011, GRYR filed a petition for exemption in Docket No. AB 1087X to abandon the portion of the Line between milepost 622.5 near Grenada, Miss., and milepost 703.8 near Canton, Miss., a distance of 81.3 miles. On November 4, 2011, the Board issued a notice scheduling a public meeting for November 16, 2011, in Winona, Miss., to allow interested persons to comment regarding GRYR's abandonment petition. Less than a week later, on November 10, 2011, GRYR filed a request to withdraw its petition, and the Board granted that request.<sup>5</sup> In a letter to the Grenada County Economic Development District dated July 13, 2012, GRYR indicated its intent to file again for abandonment of essentially the same portion of the Line (between milepost 619 and milepost 703.8).<sup>6</sup> To date, however, it has not done so.

According to GRYR, on July 28, 2011 (less than two months before filing its abandonment petition), it embargoed a bridge at milepost 656.4, and the embargo remained in place for approximately two years. See GRYR Sept. 24, 2012 Reply 8.<sup>7</sup> GRYR asserts that the embargo was reasonable because the cost of replacing this bridge would be \$784,000 and the revenue to be earned if service over the bridge were restored would not justify such an

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<sup>3</sup> See also Grenada Ry.—Acquis. & Operation Exemption—Ill. Cent. R.R., FD 35247 (STB served June 8, 2009) (correcting milepost description).

<sup>4</sup> See Grenada Ry.—Acquis. & Operation Exemption—Ill. Cent. R.R., FD 35247 (STB served Dec. 3, 2009).

<sup>5</sup> Grenada Ry.—Aban. Exemption—in Grenada, Montgomery, Carroll, Holmes, Yazoo & Madison Cntys., Miss., AB 1087X (STB served Nov. 10, 2011).

<sup>6</sup> See Riley Pet., Ex. J.

<sup>7</sup> The Association of American Railroads (AAR) embargo number for this embargo is GRYR000111.

expenditure. Id. GRYR also states that it removed certain sections of track—which it describes as “derails”—to prevent anyone from operating a train over the bridge in question.<sup>8</sup>

In response, Riley claims that the embargo was not actually located at milepost 656.4, the location of the allegedly damaged bridge. See Riley Sept. 28, 2012 Reply 8. Instead, according to Riley, the embargo was in effect from milepost 661 (at West, Miss.) to the southern end of the Line at milepost 703.8, and there are rail customers located on this embargoed section of track. Id.<sup>9</sup> Riley alleges that, were it not for the embargo, GRYR could have provided service to these customers without having to use the bridge at milepost 656.4, by traveling southbound and interchanging with Illinois Central Railroad Company (ICR) at milepost 703.8. See id. at 8-9. Riley also alleges that GRYR’s removal of track did not involve track located at the bridge. See Riley Sept. 28, 2012 Reply 9. Riley asserts that these removed sections of track are at milepost 703.8 and at milepost 625.6, the latter of which is 30.8 miles north of the bridge. Id.

On December 17, 2012, the Board received a letter from Senator Roger F. Wicker (R-Miss.) inquiring about the status of the proceeding and emphasizing the importance of rail service to Mississippi’s economy.

On July 1, 2013, as noted, the Board issued requests for information related to these allegations. GRYR submitted responses to these requests, and replies were submitted by Riley, Iowa Pacific Holdings, LLC (Iowa Pacific), Resolute FP US Inc. (Resolute), Carlisle Construction Materials (Carlisle), and Fly Timber Company (Fly Timber). On August 21, 2013, GRYR submitted a petition for leave to file a surreply, together with a surreply. In the interest of a more complete record, we will accept the surreply.

The Board takes official notice of the fact that the embargo expired as of July 26, 2013. As discussed below, the Board has substantial concerns regarding the lawfulness of this embargo. But even if we later determine that the embargo was lawful, its expiration means that GRYR now has a common carrier obligation under 49 U.S.C. § 11101 to provide service for regulated traffic on the entire Line (including the portion previously subject to the embargo) upon reasonable request.

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<sup>8</sup> See GRYR Sept. 24, 2012 Reply 9 n.5. See also Riley Pet. 25 & Exs. K, L, M.

<sup>9</sup> In its response to the Board’s information requests, GRYR states that the endpoints of the embargo were at mileposts 656.4 and 703.8. GRYR July 18, 2013 Response 1.

DISCUSSION AND CONCLUSIONS

1. Docket No. FD 35247 (Sub-No. 1) – Supplemental Information Regarding Embargo

Among the requests in its July 1, 2013 decision, the Board directed GRYR to state whether it is possible to serve shippers south of the above-referenced bridge temporarily across the Canton interchange, until repairs to the bridge are completed. In response, GRYR stated:

It is theoretically possible for GRYR to serve Burrows Paper Corp. at Pickens, but it would be prohibitively costly for it to do so. Burrows Paper Corp. received 12 carloads of freight in 2009, 11 carloads in 2010, and 24 carloads in 2011 before the bridge at MP 656.4 was embargoed. Its outbound shipments of paper and paper products were and continue to be handled by truck. None was tendered for transportation by GRYR. For GRYR to arrange for a locomotive and crew to operate on the 20-mile segment between Pickens and Canton to handle on average a single carload a month of freight consigned to Burrows Paper Corp. makes no economic sense.<sup>10</sup>

Based on this response and the record before us, it appears that GRYR's embargo may have violated its common carrier obligation under 49 U.S.C. § 11101. See, e.g., Cent. Or. & Pac. R.R.—Coos Bay Rail Line, FD 35130, slip op. at 3 (STB served Apr. 11, 2008) (the common carrier obligation “may be temporarily suspended if the rail carrier is incapable of providing service . . . . But a carrier is not given a free pass to choose not to serve just because of circumstances that make it difficult or expensive to provide service.”). The Board has several tools at its disposal to address an unlawful embargo, and we are considering the best way to proceed in this instance. To ensure a complete record is available to the Board, we direct GRYR to file, in Docket No. FD 35247 (Sub-No. 1), responses to the following supplemental information requests:

- (A) For each year from the commencement of GRYR operations to the present, state the number of carloads originating and terminating between milepost 403.0 and milepost 625.6, listing originating carloads and terminating carloads separately, and the names of all customers served with such traffic.
- (B) At any time prior to the establishment of embargo GRYR000111 on July 28, 2011, did GRYR provide service to Burrows Paper Corp. over the interchange with ICR near Canton? If so, when?

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<sup>10</sup> GRYR July 18, 2013 Response 2.

(C) At any time prior to the establishment of embargo GRYR000111 on July 28, 2011, did GRYR provide service to Burrows Paper Corp. over the bridge at milepost 656.4? If so, when?

(D) Prior to the establishment of embargo GRYR000111 on July 28, 2011, what types of products did GRYR deliver to or transport from Burrows Paper Corp.? Include STCC codes for all products listed.

(E) Prior to the establishment of embargo GRYR000111 on July 28, 2011, what types of rail cars did GRYR use to deliver freight to or transport freight from Burrows Paper Corp.?

(F) At any time prior to the establishment of embargo GRYR000111 on July 28, 2011, did GRYR provide service to Tri-County Cooperative over the interchange with ICR near Canton? If so, when?

(G) At any time prior to the establishment of embargo GRYR000111 on July 28, 2011, did GRYR provide service to Tri-County Cooperative over the bridge at milepost 656.4? If so, when?

(H) Prior to the establishment of embargo GRYR000111 on July 28, 2011, what types of products did GRYR deliver to or transport from Tri-County Cooperative? Include STCC codes for all products listed.

(I) Prior to the establishment of embargo GRYR000111 on July 28, 2011, what types of rail cars did GRYR use to deliver freight to or transport freight from Tri-County Cooperative?

(J) Summarize all traffic originated on or delivered to the stations impacted by embargo GRYR000111 (Canton, Goodman, West, Vaughan, Durant, and Pickens) between the dates of commencement of GRYR operations and establishment of the embargo. For each car please include the following information:

- (1) Date
- (2) Car no.
- (3) Car type
- (4) Event (i.e., placement or release)
- (5) Station

- (6) STCC
- (7) Name of consignee/consignor
- (8) Interchange (i.e., Canton or Memphis)

GRYR is directed to file responses to these questions by September 30, 2013, and it may include additional evidence beyond what is specifically requested here to support these responses. GRYR is also directed to serve a copy of this decision on Burrows Paper Corp. and Tri-County Cooperative and certify to the Board that it has done so by September 16, 2013. Replies may be filed by any interested person by October 21, 2013.<sup>11</sup> GRYR is reminded that it is required to provide service for regulated traffic upon reasonable request, including service to shippers south of milepost 625.6. 49 U.S.C. § 11101.

In addition, the Board intends to hold a public meeting in Mississippi at a time and place to be established in a subsequent Board decision. The meeting will be conducted by Board staff and will be held to allow interested persons to appear and speak on the effects of GRYR's embargo.

2. Docket No. FD 35247 – Petition to Revoke Acquisition and Operation Exemption

Notwithstanding the issues addressed above, the record before us does not support revoking the 2009 acquisition exemption. Under 49 U.S.C. § 10502(d), an exemption may be revoked, in whole or in part, if the Board finds that regulation of the transaction is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. When, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and, under 49 C.F.R. § 1115.3(b), must state in detail whether revocation is supported by material error, new evidence, or substantially changed circumstances. See Watco Holdings, Inc.—Acquis. of Control Exemption—Wis. & S. R.R., FD 35573 (STB served Mar. 22, 2012). The party seeking revocation has the burden of showing that regulation is necessary to carry out the RTP, 49 C.F.R. § 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and more detailed scrutiny of the transaction is necessary. See Consol. Rail Corp.—Trackage Rights Exemption—Mo. Pac. R.R., FD 32662 (STB served June 18, 1998).

Here, it has been more than four years since GRYR acquired the Line and began to provide rail service on it. Although we have substantial concerns about the reasonableness of GRYR's 2011-2013 embargo, which are addressed in Section 1 above, the record before us here

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<sup>11</sup> If any of the requested information raises confidentiality concerns, it should be filed under seal along with a motion for an appropriate protective order. See 49 C.F.R. § 1104.14.

does not satisfy the standards for revocation of the acquisition exemption. The petition for revocation relies on SF&L Railway—Acquisition & Operation Exemption—Toledo, Peoria & Western Railway Between La Harpe & Peoria, Illinois (SF&L), FD 33995 et al. (STB served Oct. 17, 2002),<sup>12</sup> where the Board revoked an exemption on the grounds that the rail carrier had misused the Board’s class exemption procedures by acquiring a railroad line for salvage, rather than to operate it. Here, however, GRYR purchased approximately 175.4 miles of rail line, operated the entire line for the first two years, and four years later it continues to operate approximately half of that line, between Southaven and Grenada.<sup>13</sup> This is in contrast to SF&L, where the Board relied on evidence that the railroad was wholly uninterested in operating the line it acquired; the evidence there indicated that the true purpose of the acquisition in that case was salvage. See SF&L, slip op. at 14-17 (e.g., for approximately 11 months after the acquisition, SF&L did not operate the rail line at all and expressed confusion regarding which railroad—SF&L or the seller—was responsible for providing rate quotes and serving shippers). Here, on the other hand, the facts could be consistent with an attempt by the purchaser to operate the purchased rail line profitably. We recognize that shippers here have complained about the level of service they have been receiving<sup>14</sup> and, as discussed above, it is possible that shippers and potential shippers lost rail service due to an unlawful embargo. However, although the level of service on the Line may be less than ideal, the Board generally encourages the acquisition of marginal lines by entities that believe they can make a success of a line that the prior owner might otherwise have abandoned, and revoking the acquisition exemption based on the facts presented here is unwarranted. Thus, the petition to reopen and revoke the acquisition exemption will be denied.

We emphasize, however, that this decision on revocation does not render shippers seeking service or seeking better service without recourse before this agency. As GRYR observes,<sup>15</sup> for example, Iowa Pacific, the State of Mississippi, or another entity or group of entities could seek to buy the Line using an application under the feeder line provision at 49 U.S.C. § 10907. See, e.g., PYCO Indus., Inc.—Feeder Line Application—Lines of S. Plains Switching, Ltd., FD 34890 et al. (STB served Aug. 31, 2007).<sup>16</sup> That we are denying revocation

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<sup>12</sup> Clarified, SF&L Ry.—Acquis. & Operation Exemption—Toledo, Peoria & W. Ry. Between La Harpe & Peoria, Ill., FD 33995 et al. (STB served Jan. 31, 2003).

<sup>13</sup> See, e.g., August 1, 2013 letters submitted by Resolute, Carlisle, and Fly Timber (shippers state they receive service from GRYR, although Resolute also states that service has deteriorated). GRYR states that, since it acquired the Line in 2009, it has not increased the rate for transportation over the segment it continues to operate. See GRYR August 21, 2013 Surreply 13.

<sup>14</sup> See, e.g., Resolute August 1, 2013 Letter.

<sup>15</sup> See GRYR August 21, 2013 Surreply 10.

<sup>16</sup> Clarified, PYCO Indus., Inc.—Feeder Line Application—Lines of S. Plains Switching, Ltd., FD 34890 (STB served Sept. 8, 2008).

here would have no bearing on a feeder line application, as the standards governing a feeder line application differ from the standards recited above that govern a request to revoke an acquisition exemption. See 49 U.S.C. § 10907; 49 C.F.R. pt. 1151.<sup>17</sup>

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

It is ordered:

1. GRYR is directed to file responses to the information requests set forth above, in Docket No. FD 35247 (Sub-No. 1), by September 30, 2013.
2. Replies may be filed in Docket No. FD 35247 (Sub-No. 1) by any interested person by October 21, 2013.
3. GRYR is directed to serve a copy of this decision on Burrows Paper Corp. and Tri-County Cooperative and certify to the Board that it has done so by September 16, 2013.
4. Riley's petition to reopen and revoke the exemption in Docket No. FD 35247 is denied.
5. GRYR's August 21, 2013 surreply is accepted.
6. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

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<sup>17</sup> 49 U.S.C. § 10502(d) also is available for petitions to revoke commodity or car service exemptions.