

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32984

HASTINGS INDUSTRIAL LINK RAILROAD--CONSTRUCTION AND
OPERATION EXEMPTION--HASTINGS, NE

Decided: December 2, 1996

Hastings Industrial Link Railroad (HILR)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a 1-mile line of railroad in Adams County, NE.

The line proposed to be constructed would begin at a point of interchange with the Union Pacific Railroad Company (UP), extend southward and eastward, cross a line of the Burlington Northern Railroad Company (BN)² at grade, loop back in a northerly direction past AGP's ethanol manufacturing facility at Hastings, NE, connect with the AGP facility siding, and then extend north, east, and south through property intended to serve as an industrial park.

The construction of the new track is intended to bring competitive rail service to AGP's facility and to other businesses that locate at the industrial park site. AGP will grant HILR an easement for construction and will finance the construction of the railroad line. When service begins, AGP will be the only shipper using the new line, but HILR will hold itself out to provide service to other shippers consistent with its common carrier obligation.

HILR requests that we conditionally grant the exemption, subject to the completion of our environmental review of the proposal and the issuance of a further decision addressing the environmental matters and establishing an exemption effective date. It seeks a conditional exemption because of AGP's need to explore and enter into marketing arrangements based on competitive transportation options that will be available as soon as the proposed line is constructed.

¹ HILR, a Nebraska corporation, is a wholly owned subsidiary of Ag Processing, Inc. (AGP). AGP is a cooperative that is owned by 324 country grain elevators located in 13 states. AGP's primary business is the processing of soybeans into soybean oil and soybean meal.

² Any exemption granted in this proceeding is permissive only and does not relieve the petitioner from any legal impediments to the proposed construction, particularly those relating to crossing rights and compensation under 49 U.S.C. 10901(d)(1). An agreement to permit the crossing must be reached or section 10901(d)(1) authority must be sought and obtained before a crossing may be constructed. See Kansas City Southern Railway Company--Construction and Operation Exemption--Geismar Industrial Area Near Gonzales and Sorrento, LA, Finance Docket No. 32530 (ICC served June 30, 1995) (slip op. at 7).

In support of its request, HILR attached to its petition the verified statements of James W. Lindsay, Director of HILR and Chief Executive Officer of AGP, and Anthony L. Porter, AGP's Group Vice President of Soy Processing.

According to Mr. Lindsay, AGP believes that opportunities exist for additional economic growth and, therefore, has offered the acreage to the north and east of its facility, which is currently under cultivation as corn fields, for the development of an industrial park to be served by HILR. Mr. Lindsay states that access to this site is by means of paved and rural roads and that the City of Hastings has laid out a grid of streets and avenues that surround the AGP property, from which direct access to the industrial park site is possible. In Mr. Lindsay's view, the availability of rail service to this site will make it attractive to businesses that currently receive rail shipments, such as building and construction materials.

According to Mr. Porter, BN, which has served the AGP facility since it commenced operations in April 1996 and which will continue to serve it directly, does not provide reciprocal switching to AGP on outbound shipments where BN serves the destination of the outbound shipments, either solely or jointly, directly or through reciprocal switching. Mr. Porter states that when AGP selected the Hastings site, AGP thought that direct access to that site would be available from both UP and BN, but later learned that only BN could serve the site directly. Mr. Porter indicates that approximately 60% of AGP's outbound rail shipments are affected by this "switching impediment," which will be overcome by the construction of the new track to permit service by HILR.

DISCUSSION AND CONCLUSIONS

The construction of and operation over the new railroad line are subject to Board approval under 49 U.S.C. 10901. Under 49 U.S.C. 10502, however, we must exempt the construction and operation from regulation if we find that: (1) application, in whole or in part, of a provision of the rail laws administered by the Board is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Based on the information provided, we conclude that detailed scrutiny of this transaction under section 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy. The proposed construction of the new track will give AGP, and possibly other shippers to be located in the industrial park, access to competitive rail service via HILR and UP. As a consequence, the construction and operation will increase competition [49 U.S.C. 10101(1) and (4)]. Exempting the proposed construction and operation will reduce the need for Federal regulation, ensure the development of a sound transportation system, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Unless determined otherwise following the environmental analysis or in a decision on an application under 49 U.S.C. 10901(d)(1), other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not necessary to protect

shippers from the abuse of market power. The proposed transaction will provide AGP, and possibly other shippers, with an additional rail transportation option and thus will shield them from potential market power abuses by a single carrier. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

HILR has consulted with the Board's Section of Environmental Analysis (SEA) regarding the environmental review process. Because HILR would like to begin construction of the new track as soon as possible, it requests that the proposed construction exemption be granted conditionally, pending completion of our environmental review of the proposed transaction. Once an environmental assessment or impact statement is issued and comments are received, we will issue a further decision based on the environmental document and the comments. Granting the requested conditional exemption will not diminish our capacity to consider environmental matters when we issue a final decision addressing the environmental issues and making the exemption effective at that time, if appropriate. See Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert denied, 488 U.S. 1004 (1989).

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

1. Under 49 U.S.C. 10502, we conditionally exempt HILR's construction and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.

2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate.

3. Notice will be published in the Federal Register on December 10, 1996.

4. Petitions to reopen must be filed by December 30, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary