

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 33468

EFFINGHAM RAILROAD COMPANY  
— OPERATION EXEMPTION —  
LINE OWNED BY AGRACEL CORPORATION

Decided: September 24, 1997

On September 15, 1997, Effingham Railroad Company (ERRC) filed a notice of exemption under 49 CFR 1150.31 to operate over approximately 206.8 feet of railroad line owned by the Agracel Corporation (Agracel) and located in a new industrial park in Effingham, IL. ERRC states that it is a substitute operator for Consolidated Rail Corporation (Conrail), the previous owner of the line. ERRC represents that it will operate the line under lease or operating agreement with Agracel after the transaction is completed.

On September 22, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay the operation of the notice of exemption. The petition also seeks rejection or revocation of the notice. This decision addresses only the portion of the petition seeking a stay, which will be denied. A subsequent decision will be issued by the Board on the portion of the petition seeking to reject or revoke the exemption.

BACKGROUND

In Effingham Railroad Company--Petition for Declaratory Order--Construction at Effingham, IL, STB Docket No. 41986 (STB served Sept.12, 1997) (ERRC-Declaratory Order), ERRC requested that the Board issue a declaratory order that it does not have jurisdiction over ERRC's proposed construction and operation of track within the industrial park. The Board declined to issue the declaratory order, finding instead that it has jurisdiction over the construction project.

In ERRC-Declaratory Order, ERRC described its plan to serve the industrial park in two phases. Phase I consisted of its acquisition from Agracel of five acres of real estate, a rail easement, and approximately 206.05 feet of a 490-foot "switch track," that extends from Conrail's line to a small warehouse used to transfer shipments of beer from rail cars to trucks for delivery. ERRC stated that the "switch track" was always used as an industrial spur, and that because ERRC was a substitute carrier on a short piece of industrial track, the Board had no jurisdiction over the acquisition. In ERRC-Declaratory Order, slip op. at 3, n.8, the Board stated that ERRC must obtain approval or an exemption before operating the 206.05 feet of track.

DISCUSSION AND CONCLUSIONS

UTU-IL argues that the exemption should be stayed pending the Board's final decision on its petition to reject or revoke. UTU-IL contends that rail employees will be injured if ERRC commences to use trackage rights over other carriers once it acquires the status of a carrier.

The stay will be denied because UTU-IL has made no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). It is not apparent how rail employees will be injured unless a stay is granted because, before ERRC could commence to use trackage rights, it would first have to obtain Board authority for that transaction as well, subject to requisite employee protective conditions. Moreover, speculation over a possible trackage rights transaction at some time in the future does not warrant a stay of the instant transaction. As previously stated, UTU-IL's arguments for rejecting or revoking the notice will be considered in a subsequent Board decision.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary