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SERVICE DATE – FEBRUARY 2, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35205

U S RAIL CORPORATION—LEASE AND OPERATION EXEMPTION—
WINAMAC SOUTHERN RAILWAY COMPANY AND KOKOMO GRAIN CO., INC.

Decided: February 1, 2010

U S Rail Corporation (U S Rail), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 58.89 miles of rail lines in Indiana owned by Winamac Southern Railway Company (WSRY) and Kokomo Grain Co., Inc.: (1) between milepost 50.1 at Bringham and milepost 71.5 at Van Jct. (Logansport); (2) between milepost 74.5 at Eighteenth St. Yard (Logansport) and milepost 97.9 at Kokomo; (3) between milepost 0.0 at E. Markland Ave. (Kokomo) and milepost 1.5 at S. Union St. (Kokomo); and (4) between milepost 147.07 at Amboy and milepost 134.48± at Marion. Pursuant to the lease agreement, U S Rail also sought incidental trackage rights over 3.0 miles of rail line owned by Toledo, Peoria & Western Railway Corporation (TP&W), between milepost 71.5 at Van Jct. and milepost 74.5 at Eighteenth St. Yard.¹

At TP&W's request, the Board, in a decision served on January 15, 2009, stayed the effectiveness of the exemption with respect to the 3.0 miles of incidental trackage rights. TP&W argued that WSRY did not have authority to operate over the 3-mile line and as a result had no trackage rights to convey, citing Winamac Southern Railway Company—Trackage Rights Exemption—A. & R. Line, Inc., STB Finance Docket No. 35208 (STB served Jan. 9, 2009) (Winamac Southern).² The Board, at U S Rail's request, allowed the remainder of the exemption to become effective as scheduled on January 16, 2009.

The Board directed U S Rail to request that the stay be lifted if TP&W and WSRY resolve their disagreement concerning their rights under the 1995 Trackage Rights Agreement. The Board also directed U S Rail to notify it if TP&W and WSRY enter into a new trackage rights agreement. More than a year has elapsed since the January 15, 2009 decision was served, and the Board has heard nothing from U S Rail. Consequently, U S Rail will be directed to file a

¹ Notice of the exemption was served and published at 73 FR 80512 on December 31, 2008.

² In Winamac Southern, the Board rejected WSRY's notice of exemption to acquire these trackage rights because of a dispute regarding the status of the 1995 Trackage Rights Agreement upon which WSRY's acquisition exemption was based.

report within 30 days from the service date of this decision updating the Board on the status of the incidental trackage rights.

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

It is ordered:

1. The effectiveness of this exemption with respect to the 3.0 miles of incidental trackage rights over the TP&W-owned rail line remains stayed pending further order of the Board.
2. U S Rail is directed to file a report updating the Board on the status of the incidental trackage rights within 30 days from the service date of this decision.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.