

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35376

SWANSON RAIL TRANSFER LP—OPERATION EXEMPTION—OLIVE INVESTORS

Decided: July 7, 2010

On May 12, 2010, Swanson Rail Transfer LP (Swanson), a noncarrier, filed a notice of exemption under 49 C.F.R. § 1150.31 to operate over approximately 1,805 feet of track located in the City of Philadelphia, Pa. In the notice of exemption, Swanson stated that its affiliate, Olive Investors (Olive), was the current owner of the track, that Olive had purchased the track from Consolidated Rail Corporation (Conrail), and that Olive has now leased the track to Swanson. The notice of exemption was, however, deficient because: (1) it raised too many unanswered questions, and (2) it failed to satisfy the Board’s rules because it is incomplete; accordingly, the Board rejected the notice. Swanson Rail Transfer LP—Operation Exemption—Olive Investors, FD 35376 (STB served May 28, 2010).

In rejecting the notice, the May 2010 decision stated that it did “not preclude Swanson from filing a new notice of exemption that provides clear and adequate information and meets the relevant criteria, or from filing a petition for exemption or a full application if the authority it seeks will raise controversial or complex issues.” Id. slip op. at 2. Instead of submitting a new notice of exemption, however, on June 9, 2010, Swanson filed an amended notice of exemption. Because the Board rejected the initial notice filed by Swanson, there is no pending notice to amend. Consequently, Swanson’s latest filing will also be rejected.

Moreover, the amended notice does not address all of the Board’s concerns and raises some new questions. Swanson’s purported amendment states that BDB Corporation (BDB), not Olive, purchased the line at issue from Conrail. But Swanson does not provide evidence that BDB obtained Board authority to acquire the track at issue, which it characterizes as ancillary spur or industrial track under 49 U.S.C. § 10906. While, generally, no license is required to acquire § 10906 track, when that track will be the entity’s only line of railroad, as is the case here, a license is required. Effingham R.R.—Petition for Declaratory Order—Constr. at Effingham, Ill., 2 S.T.B. 606 (1997). Swanson also states that it will install “additional trackage,” but Swanson has not sought construction authority here. Finally, Swanson argues, without support, that this proposal qualifies for a categorical exclusion from the need to prepare environmental documentation under 49 C.F.R. § 1105.6(c)(2), and therefore no environmental or historic report is required. If Swanson files a new notice, it must either substantiate this claim or file environmental and historic reports under 49 C.F.R. §§ 1105.7-1105.8.

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

It is ordered:

1. The amended notice of exemption is rejected.
2. This decision is effective on its service date.

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