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SERVICE DATE – LATE RELEASE JANUARY 10, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35363

R. J. CORMAN RAILROAD PROPERTY, LLC—ACQUISITION EXEMPTION—NC
RAILROAD, INC.

Docket No. FD 35364¹

R. J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE—LEASE AND OPERATION
EXEMPTION— R. J. CORMAN RAILROAD PROPERTY, LLC

Decided: January 10, 2011

This decision requests that NC Railroad, Inc. (NCRL), and R. J. Corman Railroad Property, LLC (RJC Railroad Property), submit additional information.

RJC Railroad Property, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire approximately 42 route miles of rail line from NCRL in Scott, Campbell, and Anderson Counties, Tenn. That acquisition notice in FD 35363 was served and published in the Federal Register on April 9, 2010 (75 Fed. Reg. 18,253), and became effective on April 25, 2010 (acquisition notice). According to RJC Railroad Property, the parties consummated the purchase on or about May 18, 2010 (May 2010 acquisition). In a related matter, R. J. Corman Railroad Company/Bardstown Line (RJCR) filed a verified notice of exemption under 49 C.F.R. § 1150.41 to lease the line from RJC Railroad Property and begin operating over it. That lease and operation notice in FD 35364 was served and published in the Federal Register on April 9, 2010 (75 Fed. Reg. 18,254), and became effective on April 25, 2010.

The line had previously been acquired by NCRL in 2006 through the offer of financial assistance (OFA) process from Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NS). Tenn. Ry.—Aban. Exemption—in Scott County, Tenn., AB 290 (Sub-No. 260X) et al. (STB served Mar. 3, 2006). In the pleadings submitted to the Board for the acquisition notice, however, there was no mention that the line had previously been subject to an OFA.

¹ These proceedings are not consolidated; they are being considered together for administrative purposes.

The OFA process was not disclosed until RJC Railroad Property filed a petition for waiver on June 4, 2010, seeking exemption from 49 U.S.C. § 10904(f)(4)(A) and waiver of the associated Board regulation at 49 C.F.R. § 1152.27(i)(2)(ii).² These sections of the statute and regulations prohibit a railroad from transferring a line acquired through the OFA process to any party, except the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.³ This 5-year period does not expire as to the line until February 2011.

The May 2010 acquisition of the line violated the governing statute and regulations from which RJC Property now seeks exemption. The Board has three primary concerns. First, the May 2010 acquisition of the line by RJC Railroad Property, and the subsequent RJCR lease of the line, should not have occurred until after the Board decided the merits of the petition for exemption from the statute, and then only if the Board granted the exemption. Second, the exemption request should have been filed by NCRL—the party restricted by the statute—rather than RJC Railroad Property. And third, the status of the line—as one having been purchased through the OFA process—should have been disclosed in the notice of exemption filed by RJC Railroad Property for the acquisition of the line.

RJC Railroad Property's exemption request does not provide any rationale for why it violated the Board's governing statute and regulations in the acquisition and exemption request in this proceeding. While the Board recognizes the benefits of active rail service for the shippers on the line, rail carriers must follow the proper processes to obtain authority to provide that service.

NCRL and RJC Railroad Property are directed to submit supplemental information within 20 days from the service date of this decision providing an explanation for their actions regarding the Board's three areas of concern, noted above. If they do not submit the supplemental information within the time allotted, the Board will decide the merits of RJC Railroad Property's petition based on information in the existing record. Depending on the Board's determination, the acquisition notice and the lease and operation notice may be considered void.

² Although RJC Railroad Property calls its pleading a petition for waiver, it is actually both a petition for exemption from the statute, and a petition for waiver of the Board's regulations. This decision will refer to the requests as a petition for exemption.

³ RJC Railroad did provide a letter from NS, and instruments from both NS and TNR, releasing their right to repurchase the line and the right of first refusal under 49 U.S.C. § 10904(f)(4)(A) and 49 C.F.R. § 1152.27(i)(2).

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

It is ordered:

1. Counsel for NCRL and RJC Railroad Property are directed to submit supplemental information as discussed in this decision by January 31, 2011.
2. This decision is effective on its service date.

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