

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33424

PORTLAND & WESTERN RAILROAD, INC.--ACQUISITION AND OPERATION
EXEMPTION--THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

Decided: October 6, 1997

On July 3, 1997, Portland & Western Railroad, Inc. (PWR), filed a verified notice of exemption under 49 CFR 1150.41 from the provisions of 49 U.S.C. 10902 to acquire and operate approximately 91.66 miles of railroad line owned by The Burlington Northern and Santa Fe Railway Company (BNSF). The line, known as the Astoria Branch, is between milepost 5.22 near Willbridge, OR, and milepost 96.88 near Tongue Point, OR.¹ The exemption became effective on July 10, 1997, and the transaction was consummated on July 11, 1997.

On July 10, 1997, John D. Fitzgerald, for and on behalf of the United Transportation Union-General Committee of Adjustment (UTU-GCA), filed a petition to reject, to revoke, and to stay the exemption. PWR filed a reply to the petition to stay on July 14, 1997, and filed a separate reply to the petition to revoke on July 30, 1997.

Notice of the exemption was served and published in the Federal Register on July 22, 1997 (62 FR 39301). In the notice, the Director of the Office of Proceedings indicated that because the stay request was filed after the exemption had taken effect, it would not be considered. Finding that the notice of exemption complied with the Board's regulations at 49 CFR 1150.41, the Director did not reject the notice, but instead published it.

On August 1, 1997, UTU-GCA filed an appeal to the publication of the notice of exemption in which it argues, among other things, that the Board should reverse the Director's action (or non-action) with respect to its stay request and reverse the Director's denial of its petition to reject. On August 11, 1997, PWR replied to the appeal.

The petition to revoke and the appeal raise issues that require further consideration by the Board. By this decision, the Board is instituting a proceeding under 49 U.S.C. 10502(d) to consider UTU-GCA's revocation request. UTU-GCA's appeal will be considered in the same proceeding. At this time, there does not appear to be a need for the parties to submit additional evidence or argument on any issues. Should the need arise, a supplemental decision will be issued.

It is ordered:

1. Under 49 U.S.C. 10502(d), a proceeding is instituted to consider UTU-GCA's revocation request. UTU-GCA's appeal will be considered in the same proceeding.
2. This proceeding will be completed by July 6, 1998.

By the Board, Vernon A. Williams, Secretary

Vernon A. Williams
Secretary

¹ BNSF is also granting incidental trackage rights to PWR over the line between milepost 5.22 near Willbridge and milepost 3.30 near Willbridge Yard, a distance of approximately 1.92 miles.