

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35994

JACKSON COUNTY PORT AUTHORITY A/K/A PORT OF PASCAGOULA—  
PETITION FOR DECLARATORY ORDER

Digest:<sup>1</sup> In this decision the Board grants a request for a declaratory order from the Jackson County Port Authority a/k/a Port of Pascagoula (the Port), finding that the Port is not a common carrier railroad subject to the Board's jurisdiction.

Decided: July 27, 2016

By petition filed on March 3, 2016, the Jackson County Port Authority a/k/a Port of Pascagoula (the Port) seeks a declaratory order that it did not become a common carrier railroad subject to the Board's jurisdiction as a result of two prior agency decisions in which it sought and received Board authority. The Port states that on two separate occasions it received authority from the Board and the Board's predecessor, the Interstate Commerce Commission (ICC), to conduct activities that would subject it to the agency's jurisdiction. The Port states, however, that it never consummated those permissive grants of authority. Therefore, the Port argues that it did not become, and has never been, a common carrier railroad subject to Board jurisdiction. For the reasons discussed below, the Board grants the Port's petition for declaratory order.

BACKGROUND

The Port is a public agency and a political subdivision of the State of Mississippi. It owns and operates a large port in Pascagoula, Miss., that offers customers a full-service deep water port with facilities for handling a wide variety of cargo. The Port owns, maintains, and operates a small network of railroad trackage at each of its two facilities, known as East Harbor-Bayou Casotte and West Harbor-Pascagoula River. This trackage connects the Port's facilities with lines operated by two common carrier railroads, CSX Transportation, Inc. (CSXT), and Mississippi Export (MSE), a shortline railroad that serves the Port through a reciprocal switch with CSXT.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

The Port states that it filed its petition in light of two grants of authority it received from the ICC and the Board. First, the Port states that the ICC granted it authority in 1990 to construct and operate a new common carrier railroad line to serve a proposed new port facility. Jackson Cty. Port Auth.—Constr. Exemption—Pascagoula, Miss., FD 31536 (ICC served Aug. 21, 1990). However, the Port states that, due to the financial difficulties of the new port facility, the railroad track was never constructed. Second, the Port states that it explored the possibility of taking over terminal switching at Pascagoula from CSXT. The Port states that, in furtherance of that possibility, it filed a notice of exemption with the Board in 2001 to permit it to provide common carrier rail service at both the East Harbor-Bayou Casotte and West Harbor-Pascagoula River terminal facilities. The Board served and published the Port's notice of exemption. Jackson Cty. Port Auth. R.R.—Operation Exemption—Jackson Cty. Port Auth., FD 34134 (STB served Dec. 5, 2001). The Port states, however, that it took no action to consummate the authority to operate as a terminal switching carrier and that CSXT continues to provide local rail service.

The Port argues that because it did not construct and operate a new rail line and did not assume responsibility for the local switching operations, it never became and is not now a common carrier railroad. Finally, the Port states that it is satisfied with the service provided by CSXT and MSE and that it has no interest in becoming a common carrier railroad. No party has filed comments in response to the Port's petition.

## DISCUSSION AND CONCLUSION

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, it is appropriate to issue a declaratory order to address the uncertainty raised in the Port's petition regarding whether it is a rail carrier under the Board's jurisdiction (49 U.S.C. § 10501), and other Federal railroad laws.

The Board's grant of authority to construct or operate a rail line under a notice of exemption is permissive only, and a filer may choose whether or not to consummate that authority. See Port of Ivory, LLC—Operation Exemption—Line of R.R. in Tulare Cty., Cal., FD 35475, slip op. at 2 (STB served June 11, 2011); Big Stone-Grant Indus. Dev. & Transp., LLC—Constr. Exemption—Ortonville, Minn. & Big Stone City, S.D., FD 32645, slip op. at 2 (STB served June 9, 1998). According to the record, despite obtaining authority to construct and operate a new rail line and to conduct local switching operations, the Port never undertook steps associated with consummating that authority. Specifically, the Port did not undertake any rail construction or assume responsibility for local switching operations—the two actions for which the Port obtained authority. Therefore, we find that the Port has not become a common carrier railroad subject to Board jurisdiction by virtue of the grants of authority in Docket Nos. FD 31536 and FD 34134.

However, because the Board's previous grants of authority are permissive and have never been formally withdrawn, it is possible that the Port might engage in certain activities in the future that could be construed as consummating the authorities granted. Therefore, should the Port want to ensure that the question of whether or not it is a common carrier railroad is permanently settled, it may consider filing a request with the Board to formally withdraw the petition and notice in the earlier dockets.

Accordingly, the Board grants the Port's petition for declaratory order.

It is ordered:

1. The Port's petition for declaratory order is granted as discussed above.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.