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SERVICE DATE - NOVEMBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33508<sup>1</sup>

MISSOURI CENTRAL RAILROAD COMPANY  
--ACQUISITION AND OPERATION EXEMPTION--  
LINES OF UNION PACIFIC RAILROAD COMPANY

STB Finance Docket No. 33537

GRC HOLDINGS CORPORATION--ACQUISITION EXEMPTION--  
UNION PACIFIC RAILROAD COMPANY

Decided: November 24, 1998

This decision requires Missouri Central Railroad Company (MCRR) to file supplemental evidence addressing a matter raised in a petition for reconsideration of a decision served April 30, 1998, in these proceedings. That decision denied a petition to reject the notices of exemption filed in the proceedings.

BACKGROUND

On December 24, 1997, in STB Finance Docket No. 33537, GRC Holdings Corporation (GRCH), a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) a 244.5-mile line of railroad between Vigus, MO (milepost 19.0) and Pleasant Hill, MO (milepost 263.5). GRCH, upon acquiring the line, intended immediately to convey to MCRR the rail assets necessary to conduct operations over the line. On December 23, 1997, in STB Finance Docket No. 33508, MCRR, also a noncarrier, filed a notice of exemption under section 1150.31 to acquire the rail assets from GRCH and to operate the line, and to acquire directly from UP incidental trackage rights over UP's lines of railroad between Vigus (milepost 19.0) and Rock Island Junction, MO (milepost 10.3), and between Pleasant Hill (milepost 263.5) and Leeds Junction, MO (milepost 288.3), a total distance of 33.5 miles. Notices of the exemptions were served and published on January 27, 1998 (both at 63 FR 3945).

As pertinent here, the Cities of Lee's Summit and Raytown, MO (the Cities or petitioners) jointly filed a petition to reject the notice of exemption filed in the MCRR proceeding and to find the exemption void ab initio. The focus of the Cities' concern was the 24.8-mile "west end" line between Pleasant Hill and Leeds Junction, over which MCRR would operate pursuant to trackage

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<sup>1</sup> These proceedings were consolidated in a decision served April 30, 1998.

rights granted by UP, and which passes through Lee's Summit and Raytown. In their petition to reject, the Cities asserted, inter alia, that MCRR's proposal triggered a requirement that the Board undertake an environmental review and that MCRR file an environmental and an historic report.

In a decision served April 30, 1998, the Board found that the Cities had failed to establish grounds for rejecting the notice of exemption. As pertinent here, we found no merit in the Cities' argument that the requirements for an environmental review under the National Environmental Policy Act (NEPA) were met because the proposed operations would exceed the thresholds of 49 CFR 1105.7(e)(5)(i)(A).<sup>2</sup> To the contrary, we found that MCRR's proposal to operate one train a day each way, 5 days a week, did not reach the applicable threshold. We explained that, when a line currently carries no traffic, any resumption of service, no matter how small, represents an increase mathematically of infinite magnitude. But the Cities had cited no instance where an increment of one train each way, as proposed by MCRR, has been deemed to suffice to trigger our environmental reporting and documentation requirements. Moreover, we stated that the fact that the 100% standard in 49 CFR 1105.7(e)(5)(i)(A) is paired in the same sentence with an absolute standard of an increase of eight trains a day suggests that the 100% standard applies to an anticipated increment that greatly exceeds the one train a day each way operations proposed by MCRR. We noted that MCRR's actions are most closely analogous to the situation that arises when a carrier reinstates service on a line where service has been discontinued. In such a case, under 49 U.S.C. 1105.7(e)(5)(i)(C), the environmental requirements are not triggered unless the proposed operations will amount to at least eight trains per day. In short, reading the regulations as a whole, we could not accept the Cities' interpretation of the environmental report and documentation requirements.

#### THE PETITION FOR RECONSIDERATION

On May 18, 1998, the Cities jointly filed a petition for reconsideration of the April 30 decision. MCRR and GRCH jointly replied on June 8, 1998. On June 11, 1998, the Cities filed an amendment to their petition, to which MCRR replied on July 1, 1998.

In the June 11, 1998 filing, the Cities have submitted a paper entitled "Rumors Concerning the Operations of the Missouri Central Railroad" distributed to the public by MCRR. The paper states in part: "Initially MCRR will be operating only one train a day. By year five, as business increases, the number may approach five to eight trains per day." Thus, the Cities assert, the basis for our April 30, 1998 decision, that environmental review is not required because only one train a day each way would operate through Lee's Summit and Raytown, is no longer correct.

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<sup>2</sup> Under that provision, which concerns air quality, an environmental report is required ". . . [i]f the proposed action will result in . . . [a]n increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal."

In reply to the Cities' supplemental pleading, MCRR asserts that the paper on which the Cities rely was distributed to persons attending a public meeting in Lee's Summit and was intended to show that, even in a "worst case scenario," the effect of the proposed operations on the community would be minimal. MCRR argues that the document did not, as petitioners claim, project that MCRR will be operating five to eight trains per day through the Cities in the near future. In any event, MCRR adds, even if the railroad did intend to operate five to eight trains a day, the threshold of "at least eight trains a day" specified in the Board's environmental regulations would not be reached.

#### DISCUSSION AND CONCLUSIONS

The railroad explains that, in its briefing paper, MCRR was presenting a "worst case scenario." This explanation is insufficient. The Board requires substantially more to enable us to render a fully informed decision on the petition for reconsideration. Questions have been raised by petitioners that require more information in the record. We therefore will require MCRR to submit a verified statement containing supplemental evidence regarding the number of trains it plans to operate over the "west end" segment for the reasonably foreseeable future.

Specifically, in its supplemental verified statement, MCRR must present and certify relevant traffic projections for the reasonably foreseeable future along with data to support those projections. This is the same approach we used in Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp., and Burlington Northern Railroad Company--Control--Washington Central Railroad Company, STB Finance Docket No. 32974 (STB served Oct. 25, 1996), aff'd sub nom. City of Auburn v. United States, 154 F.3d 1025 (9th Cir. 1998), pet. for rehearing pending.

We will give MCRR 30 days to file its supplement, and we will afford the Cities 20 days to reply. After considering the parties' submissions, we will decide whether the Cities have shown a need for us to reconsider our April 30 decision.

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

It is ordered:

1. MCRR must file the supplemental evidence required by this decision by December 30, 1998.
2. The Cities may reply by January 19, 1999.

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3. This decision will be effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary