

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35509

CORDELE INTERMODAL SERVICES RAILROAD, INC.—ACQUISITION AND
OPERATION EXEMPTION—RAIL LINE AT EAST INDUSTRIAL PARK, CORDELE, GA.

Digest:¹ The Board requires further information and evidence prior to ruling on a request to withdraw a notice of exemption to acquire and operate a rail line.

Decided: August 17, 2011

On May 16, 2011, Cordele Intermodal Services Railroad, Inc. (CISR), a noncarrier, filed a notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate over approximately 1,500 feet of track (the Track) located in East Industrial Park (the Park), Cordele, Ga.² In the notice, CISR stated that it had recently constructed the Track for use as a side track or switching track for shipments originating or terminating in the Park and subsequently intended to provide common carrier rail service over the Track in conjunction with using the Track as an intermodal center. CISR also indicated that the Track connected with Heart of Georgia Railroad, Inc. (HOG), a Class III rail carrier, at HOG milepost 664.5.

In a decision served on June 2, 2011 (June 2 Decision), the Board found that the notice raised questions about the construction of, and CISR's current operations on, the Track, because Board authorization is required for a noncarrier, such as CISR, to construct or acquire a railroad line on which there is a common carrier obligation. The Board ordered that the notice of exemption would not become effective until further notice and directed CISR to submit information showing why the Track's construction and existing rail operations are not in violation of Board-administered statutes and regulations.

In a response filed by counsel on June 3, 2011, CISR asks leave to withdraw the notice of exemption with prejudice. CISR's counsel responds that he incorrectly stated that the Track had already been constructed, but meant to say that, as of June 3, 2011, it had yet not been constructed.³ Counsel further states that CISR's corporate existence will be dissolved.

¹ 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).

² There are no known mileposts associated with the line.

³ CISR's counsel filed a sworn statement indicating that the Track had not been constructed as of June 3, 2011.

CISR's counsel advises that, "[i]n view of the June 2 Decision," HOG would build the Track as an "industry track" to provide service to 1 shipper, Cordele Intermodal Services, Inc. (CIS), and that HOG would own and maintain the segment of the Track to be located on property owned by HOG, while CIS would own and maintain the segment of the Track to be located on property owned by CIS. He goes on to say that CIS would pay HOG to transport intermodal containers and CIS would unload the containers on the segment of the Track within its property; that CIS's traffic would "remain in HOG's account as delivering rail carrier;" and that HOG would distribute a portion of CIS's payment to HOG's connecting rail carrier.

Parties are not permitted to withdraw notices of exemption where, as here, the record reveals significant contradictions about critical facts. See, e.g., Milwaukee Indus. Trade Center, LLC, D/B/A Milwaukee Terminal Ry.—Acquis. & Operation Exemption—Line Owned by Milwaukee Indus. Trade Ctr., LLC, D/B/A Milwaukee Terminal Ry., FD 35133, slip op. at 2 (STB served June 11, 2010) (although revoking a notice of exemption on other grounds, declining a party's request to "undo" an "unexercised and unwanted" exemption); Suffolk & So. R.R.—Lease & Operation Exemption—Sills Rd. Realty, LLC, FD 35036, slip op. at 2 (STB served Aug. 13, 2007) (finding that it was inappropriate to permit withdrawal of a notice of exemption without first obtaining further information). Although CISR's counsel attests that the Track had not been constructed as of June 3, 2011, there is no sworn evidence by a witness for one of the parties here – CIS, CISR, or HOG – establishing whether, when, and by whom, the Track was built or will be built. Accordingly, further information is necessary before CISR will be permitted to withdraw the notice of exemption. To protect the integrity of the Board's processes, additional evidence addressing the questions listed below is needed in the form of a verified statement from the party(ies) involved in constructing this Track (and not just CISR's counsel). Following receipt of this evidence, the Board will decide whether to permit CISR to withdraw the notice.

Accordingly, CISR shall file the verified statement of a knowledgeable director or officer of the entity that caused or that will cause the construction of the Track attesting to:

1. Whether the Track has been constructed;
2. If the Track has been constructed,
 - a. the dates on which construction began and ended;
 - b. the name of the entity that performed the construction of the Track;
 - c. the name of the entity that hired or engaged the entity that performed the construction of the Track; and
 - d. a specific description of the location and coverage of the portion of Track constructed;

3. If the Track has not yet been constructed,
 - a. the dates on which construction is expected to begin and end;
 - b. the name of the entity that will perform the construction of the Track;
 - c. the name of the entity that will hire or engage the entity that will perform the construction of the Track; and
 - d. a specific description of the location and coverage of the portion of Track planned to be constructed; and
4. The date that any rail carrier commenced or is expected to commence operations over the Track.

If, at the time of filing this information, CISR has been dissolved as a corporation, a person who was an officer or director of the now-dissolved corporation should provide the verified statement.

In addition to providing the requested verified statement, CISR shall also provide copies of any papers showing its incorporation and its dissolution, and a list of those persons who were, or currently are, officers and directors thereof. CISR shall comply with these information requests within 14 days of the service date of this decision.

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

It is ordered:

1. The notice of exemption will not be withdrawn until further order of the Board.
2. CISR is directed to supply the Board, within 14 days of the service date of this decision, with the information set forth above.
3. This decision is effective on its service date.

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