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SERVICE DATE – MAY 2, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35353

VFRC, LLC–ACQUISITION EXEMPTION–UNION PACIFIC RAILROAD COMPANY

Decided: April 29, 2011

On February 22, 2010, VFRC, LLC (VFRC), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire certain physical assets of a rail line and the underlying right-of-way from Union Pacific Railroad Company (UP), between milepost 682.25, near Greenberry, Or., and milepost 687.6, near Corvallis, Or. (the Line), a distance of approximately 5.35 miles. The notice was served and published in the Federal Register on March 10, 2010 (75 Fed. Reg. 11,224).

Subsequently, on June 30, 2010, VFRC filed a motion to dismiss its notice. VFRC asserted that the Board did not have regulatory authority over the transaction and that the transaction's consummation did not render VFRC a common carrier. VFRC contended that, as part of the overall agreement to restore rail service on the Line, UP retained and then transferred a permanent, exclusive easement to conduct rail freight operations on the Line to the Albany & Eastern Railroad Company (AERC).

By decision served on March 1, 2011 (March 2011 decision), the Board expressed concern that language in the Line's operating agreement between VFRC and AERC pertaining to termination provisions and VFRC's ability to select a replacement carrier vested too much control in the hands of VFRC. The March 2011 decision noted VFRC's efforts to restore service over the Line and provided VFRC an opportunity to submit a modified operating agreement by May 2, 2011, that removes or revises the language suggesting that AERC does not have a permanent easement to operate the Line. Alternatively, the Board indicated that it would render a decision based on the existing record.

By letter filed on April 27, 2011, in response to the Board's March 2011 decision, VFRC states that it has worked with AERC in an attempt to modify the operating agreement in a manner that would satisfy the Board's concerns, and at the same time, satisfy the concerns of VFRC and AERC. VFRC requests that the due date be extended an additional 60 days, until July 1, 2011, to come up with a solution that will satisfy the concerns of the Board and the parties to the operating agreement. The extension is reasonable and will be granted.

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

It is ordered:

1. VFRC's request for an extension is granted.
2. VFRC may submit a modified operating agreement by July 1, 2011.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.