

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33336

RAILROAD VENTURES, INC.--ACQUISITION AND OPERATION EXEMPTION--  
YOUNGSTOWN AND SOUTHERN RAILWAY COMPANY

Decided: January 9, 1997

On January 3, 1997, Railroad Ventures, Inc. (RVI), a noncarrier, filed a notice of exemption under 49 CFR 1150.31(a)(1) to acquire approximately 36 miles of railroad from Youngstown & Southern Railway Company (YSR), extending from milepost 0.0 in the City of Youngstown, OH, to milepost 35.7 in the Township of Darlington, PA. RVI states that it consummated the transaction on November 8, 1996, and only recently became aware of the need for this Board's approval or exemption of the transaction. On January 8, 1997, the Columbiana County Port Authority (CCPA) filed a petition to reject, revoke, or stay the notice of exemption. CCPA supplemented its petition with a correction filed on January 9, 1997. The notice of exemption will be rejected.

CCPA states that RVI does not intend to operate the line and that arrangements have been made to scrap the line.<sup>1</sup> CCPA also states that Ohio & Pennsylvania Railroad Company (OPRC) has been operating this line pursuant to a lease from P&LE Properties, Inc.<sup>2</sup> and serving several customers that ship approximately 500 carloads of freight per year. The line, however, is currently embargoed due to a washout.<sup>3</sup> CCPA states that, together with North East Ohio Trade & Economic Consortium, Mahoning County Commissioners and the Ohio Rail Development Commission, it is funding a contract with the OPRC to repair the washout in Mahoning County to expedite restoration of service over the line.

CCPA alleges that the notice of exemption contains false or misleading information. It not only questions whether RVI will operate the line, but questions whether YSR either owns the line or has the authority to sell it. It notes that OPRC leased the line from P&LE Properties, not YSR, in Finance Docket No. 32711. CCPA states that it is unaware of any subsequent transfer of the line from P&LE Properties to YSR. CCPA notes that RVI states that it is purchasing only approximately 36 miles of line, while OPRC operates over 39.24 miles of line, and states that this discrepancy requires clarification. It requests that RVI be required either to file a petition for exemption under 49 U.S.C. 10502 or a formal application under 49 U.S.C. 10901.

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<sup>1</sup> See Verified Statement of Tracy V. Drake, Executive Director of CCPA, attached to CCPA's petition as Exhibit A, at 1.

<sup>2</sup> See Ohio & Pennsylvania Railroad Company--Lease and Operation Exemption--P&LE Properties, Inc., Finance Docket No. 32711 (ICC served June 14, 1995).

<sup>3</sup> See OHPA Embargo Notice No. 2-96, issued and effective December 18, 1996.

The notice of exemption contains insufficient information to verify that it qualifies for the class exemption for noncarriers to acquire and operate an active line of railroad. RVI states that the line will be operated by Ohio Central Railroad Company (OCR), an established Class III carrier,<sup>4</sup> pursuant to a contract with RVI. No details of this arrangement were provided.

OPRC, not OCR, appears to be the carrier operating the line. OPRC issued an embargo on November 19, 1996, stating as the cause the cancellation of its lease.<sup>5</sup> Subsequently, OPRC canceled that embargo on December 5, 1996.<sup>6</sup> When the washout was discovered, OPRC issued another embargo for the line.<sup>7</sup> RVI does not mention OPRC in its notice of exemption or describe what arrangements have been made for OPRC's continued operation of the line or discontinuance of operations.

Under these circumstances, the notice of exemption will be rejected. RVI is not foreclosed from filing a new notice of exemption or, as CCPA requests, a petition for exemption or an application for approval of the transaction; however, if and when RVI does seek an exemption or approval for this transaction, it must disclose in detail its plans for acquiring and operating the line, including specifically: YSR's ownership or authority to sell the line, RVI's arrangements with OPRC, RVI's agreement with OCR, and its arrangements to restore service. Whether RVI files a new notice or exemption, a petition for exemption, or an application, the filing must be made under a separate docket number with an appropriate filing fee.

This decision 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 is rejected.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>4</sup> See Ohio Central Railroad--Exemption--Acquisition and Operation of a Line of Railroad in Ohio, Finance Docket No. 31258 (ICC served May 6, 1988).

<sup>5</sup> See OHPA Embargo Notice No. 1-96, issued and effective November 19, 1996.

<sup>6</sup> See OHPA Embargo Notice No. 1-96, issued December 5, 1996, and effective December 9, 1996.

<sup>7</sup> See OHPA Embargo Notice No. 2-96, issued and effective on December 18, 1996.