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SERVICE DATE - OCTOBER 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33642 (Sub No. 1)

KYLE RAILROAD COMPANY--ACQUISITION AND OPERATION--
OMAHA PUBLIC POWER DISTRICT

Decided: September 29, 1998

By petition filed July 31, 1998, Kyle Railroad Company (KR or petitioner) requests that the Board permit the acquisition and operation of certain rail lines exempted in STB Finance Docket No. 33642¹ to extend only until December 31, 2003.²

Because Board authorization of the acquisition and operation agreement covered by the exemption in STB Finance Docket No. 33642 would normally remain in effect indefinitely, petitioner seeks revocation of the exemption to the extent necessary to allow the involved transaction to expire on December 31, 2003, as agreed to by the parties.

Although this transaction involves the temporary acquisition and operation of a rail line, it is similar to a proceeding granted by the Board in STB Finance Docket No. 33631 (Sub-No. 1).³

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

¹ On July 27, 1998, KR filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1150.41. The notice covered the agreement by Omaha Public Power District (OPPD) to temporarily authorize KR's acquisition and operation of approximately 56.75 miles of rail line between milepost 56.30 at Collegeview, and milepost 6.10 at Arbor, in Lancaster and Otoe Counties, NE. See Kyle Railroad Company--Acquisition and Operation Exemption--Omaha Public Power District, STB Finance Docket No. 33642 (STB served Aug. 25, 1998). The exemption became effective and was scheduled to be consummated on or shortly after August 4, 1998.

² The intended expiration date noted in the July 31, 1998 petition was changed from August 4, 2003, to December 31, 2003, by letter filed August 3, 1998, by KR's representative.

³ See Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (Sub-No. 1) (STB served July 30, 1998), which involves a temporary trackage rights proceeding.

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Limiting the term of the acquisition and operation is consistent with the limited scope of the transaction previously exempted. This action will have no adverse impact on shippers on the line, as OPPD is the principal shipper on the line and the other shippers will be served efficiently and effectively by KR, a seasoned short line operator. Therefore, we will grant the petition and permit line acquisition and operation exempted in STB Finance Docket No. 33642 to expire on December 31, 2003.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the acquisition and operation of rail lines described in STB Finance Docket No. 33642, as discussed above, permitting them to expire on December 31, 2003.

2. Notice will be published in the Federal Register on October 2, 1998.

3. This decision is effective on November 1, 1998.

4. Petitions to reopen must be filed by October 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary