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CO

SERVICE DATE - DECEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 33528

EFFINGHAM RAILROAD COMPANY  
--OPERATION EXEMPTION--  
LINE OWNED BY TOTAL QUALITY WAREHOUSE

Decided: December 15, 1997

On December 3, 1997, Effingham Railroad Company (ERRC) filed a notice of exemption under 49 CFR 1150.31 to operate over approximately 9,201 feet of railroad line that will be constructed for and acquired by Total Quality Warehouse (TQW), located in a new industrial park in Effingham, IL. ERRC represents that it will operate the line under agreement with TQW after the transaction is completed.

On December 9, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay the operation of the notice of exemption. The petition also seeks rejection of the notice or revocation of the exemption. ERRC has filed a reply to the petition. This decision addresses only the portion of the petition seeking a stay, which will be denied. A subsequent decision will be issued by the Board on the portion of the petition seeking to reject or revoke the exemption.

BACKGROUND

Pursuant to a notice of exemption in Effingham Railroad Company--Operation Exemption--Line Owned by Agracel Corporation, STB Finance Docket No. 33468 (STB served Oct. 22, 1997), 62 FR 54897, ERRC became the operator of approximately 206.05 feet of track, owned by the Agracel Corporation, which connects with a Consolidated Rail Corporation (Conrail) line and serves a facility in the Effingham industrial park. Subsequently, and assertedly pursuant to the statutory exemption of 49 U.S.C. 10906, ERRC has become the operator of an additional 400-foot line of railroad, within the industrial park, to serve an additional facility. The instant notice of exemption involves a further rail line, to be constructed by a contractor and acquired by TQW, over which ERRC will operate to reach an interchange with Illinois Central Railroad Company (IC).

DISCUSSION AND CONCLUSIONS

UTU-IL argues that the exemption should be stayed pending the Board's final decision on its petition to reject or revoke. It argues, among other things, that operation over the 400-foot section of trackage may not commence without invoking Board jurisdiction, and that the notice is premature with respect to the 9,201-foot line, because the line has not yet been constructed and, thus, is not in

existence as a line of railroad. On the other hand, it suggests that persons employed by Conrail and IC will be adversely affected in their employment if the notice is not stayed.

The stay request will be denied because UTU-IL has made no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). It is not apparent how rail employees will be injured in the absence of a stay, particularly when the line has not yet been constructed.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary

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