40597 SERVICE DATE – APRIL 13, 2010
DO

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35205

U S RAIL CORPORATION—LEASE AND OPERATION EXEMPTION—
WINAMAC SOUTHERN RAILWAY COMPANY AND KOKOMO GRAIN CO., INC.

Decided: April 13, 2010

U S Rail Corporation (U S Rail), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 58.89 miles of rail lines in Indiana owned by Winamac Southern Railway Company (WSRY) and Kokomo Grain Co., Inc.: (1) between milepost 50.10 at Bringhurst and milepost 71.50 at Van Jct. (Logansport); (2) between milepost 74.50 at Eighteenth St. Yard (Logansport) and milepost 97.90 at Kokomo; (3) between milepost 0.00 at E. Markland Ave. (Kokomo) and milepost 1.50 at S. Union St. (Kokomo); and (4) between milepost 147.07 at Amboy and milepost 134.48± at Marion. Pursuant to the lease agreement, U S Rail also sought to acquire incidental trackage rights over 3.0 miles of rail line owned by Toledo, Peoria & Western Railway Corporation (TP&W), between milepost 71.50 at Van Jct. and milepost 74.50 at Eighteenth St. Yard.[1]

At TP&W's request, the Board, in a decision served on January 15, 2009, stayed the effectiveness of the exemption with respect to the 3.0 miles of incidental trackage rights. TP&W argued that WSRY did not have authority to operate over the 3-mile line and as a result had no trackage rights to convey, citing Winamac Southern Railway Company—Trackage Rights Exemption—A. & R. Line, Inc., STB Finance Docket No. 35208 (STB served Jan. 9, 2009) (Winamac Southern).[2] The Board, at U S Rail's request, allowed the remainder of the exemption to become effective as scheduled on January 16, 2009.

The Board directed U S Rail to request that the stay be lifted if TP&W and WSRY resolve their dispute concerning their rights under the 1995 Trackage Rights Agreement. The Board also directed U S Rail to notify it if TP&W and WSRY enter into a new trackage rights agreement. Because more than a year had elapsed since the Board granted TP&W's stay request,

---

[1] Notice of the exemption was served and published at 73 FR 80512 on December 31, 2008.

[2] In Winamac Southern, the Board rejected WSRY's notice of exemption to acquire these trackage rights because of a dispute regarding the status of the 1995 trackage rights agreement upon which WSRY's acquisition exemption was based.

the Board, in a decision served on February 2, 2010, directed U S Rail to file a report by March 4, 2010, on the status of the incidental trackage rights.

In a letter filed on March 3, 2010, U S Rail reports that WSRY and TP&W failed to resolve their dispute concerning their rights under their 1995 trackage rights agreement or to reach either a new trackage rights agreement or an acceptable alternative commercial arrangement to move traffic over the 3-mile line. Further, U S Rail reports that WSRY filed an action against TP&W in the Indiana state courts with respect to the disputed contract issues under their 1995 trackage rights agreement. Accordingly, U S Rail requests that the effectiveness of the exemption remain stayed with respect to the 3.0 miles of incidental trackage rights at issue in this proceeding.

U S Rail's request is reasonable and will be granted, subject to the requirement that U S Rail notify the Board of any court decision on the merits within 2 weeks of issuance and otherwise advise the Board promptly of any other resolution of this dispute.

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

It is ordered:

1. The effectiveness of this exemption with respect to the 3.0 miles of incidental trackage rights over the TP&W-owned rail line remains stayed pending further order of the Board.

2. U S Rail is directed to notify the Board of any court decision on the merits within 2 weeks of issuance and to otherwise advise the Board promptly of any other resolution of this dispute.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.