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SERVICE DATE - DECEMBER 8, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33414

PENN-JERSEY RAIL LINES, INC.
—ACQUISITION AND OPERATION EXEMPTION—
WMI PROPERTIES, INC.

Decided: December 3, 1997

On June 24, 1997, a notice was served and published in the Federal Register, 62 FR 34110, with respect to the acquisition and operation by Penn-Jersey Rail Lines, Inc. (PENN), a noncarrier, of a railroad line of WMI Properties, Inc. (WMI). Based on PENN's description, the notice described the line as starting at the turnout from the track of Consolidated Rail Corporation (Conrail) at milepost 6.1 and extending for a total of 2.2 miles, all within the Penn Warner Industrial Park, Falls Township, Bucks County, PA. On August 5, 1997, Conrail filed a petition to revoke the exemption, alleging, among other things, that it owns a portion of the track at issue and, thus, the notice contains false and misleading information and is void ab initio.¹ Contemporaneously, Conrail filed a petition to stay the effectiveness of the exemption.

In decisions served August 22, September 16, and October 7, 1997, the due date for PENN's reply to Conrail's petition to revoke was extended (ultimately to October 27, 1997) pending negotiations between the parties.² In a letter filed October 20, 1997 (October 20 letter), PENN states that, rather than the turnout from Conrail's track at milepost 6.1, the starting point in its notice of exemption should have read:

Beginning at a point at Railroad Station 8+30 on the main service track to the

¹ As an additional ground to its petition to revoke, Conrail alleges that the involved railroad track constitutes spur, industrial, switching or side track, the acquisition of which is outside the Board's jurisdiction. 49 U.S.C. 10906. It would seem, however, that PENN is acquiring the track for the purpose of becoming a rail carrier. See Jeffrey L. Sutch and Leonard J. Smolsky—Continuance in Control Exemption—Penn-Jersey Rail Lines, Inc., STB Finance Docket No. 33415 (STB served and published June 24, 1997, 62 FR 34111). The Board has found this a factor in concluding in other factual circumstances that the jurisdictional exception did not apply and the Board's approval (or exemption) was required. See Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL, STB Docket No. 41986 (STB served Sept. 12, 1997).

² PENN filed a timely reply in opposition to Conrail's petition to stay. Action on the petition to stay was deferred pending the outcome of negotiations.

southern and western portions of Penn Warner Industrial Park, shown as Point “C” on a Survey Plot Plan, dated Oct. 13, 1997, attached hereto and marked Exhibit “A,” said point being located 830 feet +/- in a southeast direction along the centerline of the track from the Point of Switch at Railroad Station 0+00, shown as Point “A” on the aforesaid Plan; said point of beginning being the location at which the existing track exits the Conrail easement as referenced in a deed of easement from the Warner Realty Investment Co. to the Penn Central Transportation Co., dated Dec. 13, 1973.

On October 23, 1997, PENN filed a reply to Conrail’s petition to revoke in which it seeks to amend the notice of exemption by changing the starting point of the line accordingly. PENN states that the proposed amendment reflects an agreement of the parties and resolves any dispute over where the acquisition and operation begins.

In a letter filed November 6, 1997, Conrail advises that, upon publication of a corrected notice of exemption by the Board, incorporating the correct description of the rail line as provided in the October 20 letter, Conrail will withdraw its petition to stay and its petition to revoke. In a letter filed December 1, 1997, PENN states that the newly described limits of the railroad line as outlined in the October 20 letter fall within the former description of the line as set forth in the notice of exemption.³ Inasmuch as PENN could have acquired and operated less than what the exemption provided without further notice to the public, republication would serve no useful purpose. Instead, this decision will serve to correct the notice of exemption, and Conrail should inform the Board within 5 days after service of this decision whether it seeks to withdraw its petition to stay and petition to revoke.

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

It is ordered:

1. The notice of exemption served and published in the Federal Register on June 24, 1997, 62 FR 34110, is modified to the extent discussed herein.
2. Conrail shall inform the Board, within 5 days after service of this decision, whether it seeks to withdraw its petition to stay and petition to revoke.
3. This decision is effective on the date of service.

³ The “turnout from the track of [Conrail], at milepost 6.1” apparently coincides with the “Point of Switch at Railroad Station 0+00, shown as Point ‘A’ on the aforesaid Plan” (Exhibit A to the October 20 letter).

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

Vernon A. Williams
Secretary