

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35875

JOLIET BULK BARGE & RAIL, LLC—ACQUISITION AND OPERATION EXEMPTION—
CENTERPOINT PROPERTIES

Decided: January 12, 2015

On November 12, 2014, Joliet Bulk Barge & Rail, LLC (JBBR), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 6.5 miles of railroad right-of-way, trackage, and transloading facilities currently owned by CenterPoint Properties in Joliet, Ill. The notice of exemption also stated that “there is currently 34,450 linear feet of track being finished on the Joliet Transload Facility.” JBBR stated that this trackage, which is the same length as the trackage sought to be acquired, is “properly considered to be a line of railroad under 49 U.S.C. § 10901.”

In a decision served on December 2, 2014, the Board directed JBBR to file by January 2, 2015, supplemental information describing whether the activities at issue included construction of a line of railroad subject to the Board’s licensing authority and, if so, why Board authority for the construction had not been sought. The Board ordered JBBR to cease any construction that was ongoing pending resolution of this issue.

On December 19, 2014, JBBR filed the supplemental information requested by the Board, along with a withdrawal of the verified notice, and a petition requesting that the Board terminate this proceeding and issue an order allowing it to resume track construction.¹ JBBR has requested that the Board issue a decision by January 15, 2015.

In its petition to terminate the proceeding, JBBR asserts that the proposed operations would not constitute common carriage subject to the Board’s jurisdiction. Instead, JBBR states that it would operate the track at issue, once it is constructed, as a private carrier serving only one customer, ExxonMobil (Exxon), pursuant to a contract with Exxon. JBBR accordingly asserts that the proposed operations are outside of the Board’s jurisdiction.

Supporting its assertion that its proposed operations would be outside the Board’s jurisdiction, JBBR states that: (1) the facility and associated trackage described in the verified notice (the Joliet Facility) would be used to serve solely Exxon; (2) Exxon has contracted

¹ JBBR simultaneously filed a motion for issuance of a protective order to protect commercially sensitive data included in its supplemental information. The Board served a decision granting the protective order on January 5, 2015.

directly with JBBR for rail transload services to be provided within the Joliet Facility; and (3) Exxon would pay JBBR directly for its services. According to JBBR, Exxon payments to Canadian National Railway Company (CN) for rail transportation to the Joliet Facility would not cover any of the services provided by JBBR to Exxon, and JBBR would receive no remuneration from CN. JBBR also states that while it would enter an industrial track agreement with CN allowing CN to deliver rail cars containing Exxon's products onto JBBR's private track, the agreement would not obligate JBBR to provide common carrier service or any type of rail service other than that related to the Joliet Facility's transload operations. JBBR adds that the transload operations would not be common carrier operations because CN would not be contractually liable for anything that occurs at the Joliet Facility and would have no control over the JBBR operations. Nor would CN hold itself out as providing transloading services for JBBR.

Based on JBBR's representations in the supplemental information provided, JBBR's petition to terminate this proceeding will be granted.² The Board also will vacate its prior directive to cease construction.

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

It is ordered:

1. JBBR's petition to terminate this proceeding is granted.
2. The Board's prior directive to cease construction is vacated.
3. This decision is effective on its date of service.

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

² In its petition to terminate the proceeding, JBBR states that "[a]dditional trains will travel from the Exxon facility in Edmonton to another private rail transload facility similar to the Joliet facility that is owned and operated by an entity that is not affiliated with CenterPoint Properties or JBBR." This decision, however, addresses only JBBR's operations within the Joliet Facility as described in the pleadings filed in this proceeding.