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SERVICE DATE - DECEMBER 24, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34425

CITY OF LINCOLN—PETITION FOR DECLARATORY ORDER

Decided: December 23, 2003

On November 12, 2003, the city of Lincoln, NE (Lincoln) filed and served on Lincoln Lumber Company (LLC) a petition for a declaratory order. Lincoln requests that a proceeding be instituted to determine that its acquisition of a 20-foot wide strip of LLC's rail right-of-way for a five-block distance between 19th Street and 24th Street in Lincoln does not constitute either an acquisition or an abandonment or discontinuance of operations for which prior Board approval is required under 49 U.S.C. 10901-03. By decision served on December 8, 2003, a proceeding was instituted and a procedural schedule established under which replies would be due on December 29, 2003, and rebuttal due on January 8, 2004. By petition filed on December 10, 2003, Arkansas-Oklahoma Railroad, Inc. (AOK), a Class III rail carrier, gave notice of its intent to participate in the proceeding and moved that the Board reconsider the procedural schedule, publish a notice of the filing of Lincoln's petition in the Federal Register, and provide an opportunity for public comment. On December 23, 2003, Lincoln replied in opposition to AOK's request for reconsideration of the procedural schedule.

AOK argues that the procedural schedule does not provide adequate notice to persons who may wish to participate in the proceeding. According to AOK, the proceeding involves an issue of general transportation policy with national implications, particularly for Class III carriers, and, therefore, Federal Register publication followed by a period for public comment is warranted. AOK contends that the 20-day reply deadline is an inadequate amount of time to notify and elicit a response from the public. There is no merit to this argument. The decision establishing the procedural schedule was served on the parties to the case, and this alone is sufficient notice of the matter. The decision has also been available on the Board's website since approximately the same date. Furthermore, several parties did, in fact, file their notices of intent to participate. The decision thus provided ample notice and opportunity to participate in this proceeding.

In a related matter, by motion filed on December 15, 2003, Lincoln requested that the Board publish an order permitting Lincoln to enter the property owned by LLC for survey purposes and requiring LLC to produce the documents sought by Lincoln in a Request for the Production of Documents served on LLC on November 24, 2003. Although it initially opposed entry onto part of its

property, in a letter filed on December 16, 2003, LLC has agreed to permit Lincoln to enter its property as of 9:00 a.m., December 19, 2003. Also, LLC indicates that it “intends to respond in good faith to the City’s document request by the December 30 due date.”

By a pleading filed on December 18, 2003, Lincoln, in response to LLC’s consent to allow it to survey the property, has withdrawn its motion to compel entry. Also, inasmuch as LLC has stated its intention to provide the requested information, Lincoln’s motion to compel discovery with regard to the document request is premature. However, in the December 18 pleading, Lincoln has requested that the Board hold this motion in abeyance until January 2, 2004. Accordingly, the motion to compel discovery will be held in abeyance until that date. If LLC believes that any of the documents requested contain trade secrets or confidential commercial information, it may petition the Board for a protective order.

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

It is ordered:

1. AOK’s petition to reconsider the procedural schedule is denied.
2. Lincoln’s request to withdraw its motion to compel entry onto LLC’s property is granted.
3. Lincoln’s motion to compel discovery is held in abeyance until January 2, 2004.
4. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary