

Surface Transportation Board Reviews 1990 Trackage Rights Terms, Finds that Provisions Do Not Limit Shipper's Service Choice to Single Railroad

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision granting the request of Rymes Heating Oils, Inc. (Rymes) for a Board order declaring that, in addition to the service already provided to Rymes by the Springfield Terminal Railway Company (ST), Rymes is entitled to obtain service from the New England Central Railroad, Inc. (NECR) over the Connecticut River Line (Conn River Line). NECR owns the Conn River Line, but must operate over it subject to ST's exclusive trackage rights (where one railroad rents use of its lines to another railroad) for certain shippers and facilities.

In a 1988 decision, the Interstate Commerce Commission (ICC), the Board's predecessor agency, required the Boston & Maine Corporation (B&M) to sell its Conn River Line to the National Railroad Passenger Corporation (Amtrak), subject to trackage rights allowing B&M to continue to exclusively serve its existing customers. Shortly thereafter, Amtrak transferred the line to the Central Vermont Railway, Inc. (CV). In a 1990 decision, the ICC imposed terms and conditions providing that the existing customers that B&M had the right to continue to serve exclusively were those shippers and facilities that B&M had actually served during the one-year period before the line's transfer in the late 1980s.

Subsequently, NECR succeeded to CV's interest in the Conn River Line, and ST succeeded to B&M's trackage rights over the line. Rymes, a propane distributor that built a new facility near the Conn River Line during the mid-1990s, was not satisfied with ST's service and decided that it wanted to receive service from NECR. ST, however, took the position that, under the terms and conditions established in the ICC's 1990 decision, ST had the right to insist that it be allowed to serve Rymes exclusively. ST based its position on the argument that Rymes had connected its newly constructed track to a portion of a rail siding on the Conn River Line that ST's predecessor, B&M, had actually served before the line's transfer.

In today's decision, the Board found that this connection to a B&M-served siding was too remote to make Rymes an "existing" shipper or a shipper at an "existing" location under the ICC-imposed terms and conditions. Noting that Rymes had first tendered a shipment on the Conn River Line in November 1996, and that Rymes had built its facility in 1995-96 on separate property that previously contained no tracks or facilities, the Board found that neither Rymes nor its facility had been served by B&M, and that, therefore, Rymes is now entitled to obtain NECR service.

The Board issued its decision today in the case entitled *Rymes Heating Oils, Inc.--Petition for Declaratory Order*, STB Finance Docket No. 34098. A printed copy of the decision is available for a fee by contacting **D-2 D- Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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