

34776  
SEC

SERVICE DATE - JULY 9, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34435

AMEREN ENERGY GENERATING COMPANY–CONSTRUCTION  
AND OPERATION EXEMPTION–IN COFFEEN AND WALSHVILLE, IL

Decided: July 8, 2004

This decision denies a request by Coffeen and Western Railroad Company (CWRC) that the Board strike the initial comments of Norfolk Southern Railway Company (NS) in this proceeding.

BACKGROUND

By petition filed on February 5, 2004, Ameren Energy Generating Company (AEGC), a wholly owned subsidiary of Ameren Corporation (Ameren), on behalf of itself and CWRC, its newly formed railroad subsidiary,<sup>1</sup> sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for AEGC to construct and CWRC to operate an approximately 13-mile rail line between Ameren's Coffeen Power Plant near Coffeen, IL, and connections with the Union Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company near Walshville, IL. In a decision served on May 5, 2004, the Board instituted a proceeding under 49 U.S.C. 10502(b).

On May 26, 2004, NS filed a notice of appearance and initial comments. NS raises concerns about possible misuse of the Board's notice of exemption procedures at 49 CFR 1150.31 to create new common carriers. NS does not specifically ask for revocation of the

---

<sup>1</sup> Through a wholly owned subsidiary, Ameren ERC, Inc., Ameren controls the Missouri Central Railroad Company (MCRR). See Ameren Corporation–Control Exemption–Missouri Central Railroad Company, STB Finance Docket No. 33805 (STB served Nov. 5, 1999). In addition, Ameren owns 60% of Electric Energy, Inc. (EEI), an exempt wholesale generator with 1,087 megawatts of capacity. Through EEI, Ameren controls the Joppa & Eastern Railroad (JERR). Ameren stated that it would seek authority to control MCRR, JERR, and the new railroad in a subsequent filing with the Board under 49 CFR 1180.2(d)(2). Ameren filed a notice of exemption and thus obtained an exemption for that control in Ameren Corporation–Control Exemption–Coffeen and Western Railroad Company, STB Finance Docket No. 34498. The Board published notice of that exemption on May 10, 2004.

exemption in a related proceeding that resulted in CWRC's becoming a Class III carrier,<sup>2</sup> but NS asks the Board to consider reviewing its notice of exemption procedures generally.

CWRC filed a reply to NS's comments on June 2, 2004, asking that the Board strike the comments or disregard them as irrelevant and inappropriate. CWRC argues that NS's comments urging the Board to reevaluate its licensing exemption procedures have no relevance to this construction proceeding and should be raised and addressed in a separate rulemaking proceeding. CWRC also points to NS's own statement that it has no basis to file a petition to revoke in STB Finance Docket No. 34497 or to challenge the instant petition for exemption.

On June 14, 2004, NS filed a response to CWRC's motion to strike. NS argues that the motion to strike is unjustified and should be denied because its arguments are relevant to this proceeding. It reiterates that the Board should consider requiring procedures to make sure that the notice of exemption is used for the purposes for which it was intended. On June 22, 2004, CWRC filed a reply to NS's response, countering several factual statements in NS's pleading.

#### DISCUSSION AND CONCLUSIONS

The motion to strike will be denied. CWRC's objections to the comments on the basis of relevancy go to the weight to be accorded the comments rather than to their admissibility. The comments may not be directly relevant to this proceeding, but that would be reason to give them little weight, not reason to strike them. Moreover, acceptance and consideration of the comments will not prejudice CWRC, as it has replied to them. Therefore, in the interests of compiling a complete record in this proceeding, the Board will accept and consider NS's initial comments, as well as CWRC's reply, NS's response to that reply, and CWRC's reply to NS's response.

It is ordered:

1. CWRC's motion to strike is denied.

---

<sup>2</sup> Coffeen and Western Railroad Company—Lease and Operation Exemption—near Coffeen, IL, STB Finance Docket No. 34497 (STB served May 10, 2004). By that notice, CWRC obtained an exemption to lease from AEGC and operate approximately 0.2 miles of rail line near Coffeen, IL.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary