

SERVICE DATE – OCTOBER 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 673

INFORMATION REQUIRED IN CERTAIN NOTICES OF EXEMPTION

Decided: October 3, 2007

On June 7, 2007, six Class I rail carriers (the Coalition)<sup>1</sup> filed a petition to institute a rulemaking to amend the Board's regulations at sections 1150.33, 1150.34, 1150.43, and 1150.44 of Title 49 of the Code of Federal Regulations. The Coalition seeks to increase the information required in a Notice of Exemption and to have the Board reexamine certain precedent related to proposals to initiate new rail service. Several comments and notices of intent to participate in the proceeding were submitted to the Board.<sup>2</sup>

In the petition, the Coalition urges the Board to consider requiring more information in Notices of Exemption, such as whether the entity seeking authorization from the Board intends to provide facilities for the transportation or transloading of municipal solid waste or construction and demolition debris, and how the railroad facilities have been and will be operated. Additional information assertedly would enable the Board to better determine whether the filing entity is or will become a rail carrier intending to provide rail transportation or is a party whose primary objective is something else. The Coalition also argues that we should reconsider Board precedent insofar as it holds that track acquired by a new entrant rail carrier becomes a jurisdictional line of railroad even if it possesses characteristics that had made it a spur or siding.

The Coalition raises issues that warrant institution of a proceeding. The Board will therefore grant the petition requesting that we institute a rulemaking proceeding. Following further analysis of the suggestions made by the Coalition and those that have already

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<sup>1</sup> Those six Class I rail carriers are BNSF Railway Company, Canadian National Railway Company, Canadian Pacific Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company.

<sup>2</sup> The parties who submitted filings in support of the petition are Consolidated Rail Corporation, John D. Fitzgerald for United Transportation Union-General Committee of Adjustment (UTU/GO-386), American Short Line and Regional Railroad Association, Association of American Railroads, and New Jersey Department of Environmental Protection and New Jersey Meadowlands Commission (jointly). Bergen Passaic Rail Corporation submitted a filing in partial support of the petition. United Transportation Union and Bulkmatic Railroad Corporation filed notices of intent to participate in the proceeding.

commented, and assessment of other related issues, we will prepare a Notice of Proposed Rulemaking, as the circumstances warrant, and will seek public comments on any such Board proposal.

It is ordered:

1. The petition to institute a rulemaking is granted.
2. This decision is effective on the date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary