

Surface Transportation Board Announces Results of May 3 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, May 3, 2005 by the STB.

The Board voted unanimously to adopt each of the draft decisions in the nine matters before it. A summary of those votes is attached as a fact sheet.

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ATTACHMENT

ATTACHMENT

Fact Sheet

VOTING RESULTS OF SURFACE TRANSPORTATION BOARD'S MAY 3, 2005 VOTING CONFERENCE

• ***CSX Transportation, Inc.--Petition for Declaratory Order, STB Finance Docket No. 34662.***

On March 14, 2005, the STB issued a declaratory order (an expression of the agency's opinion on a matter of controversy) in this proceeding concerning the scope of Section 10501(b) of Title 49, *United States Code* [49 U.S.C. 10501(b)], often referred to as "ICC Termination Act preemption." The declaratory order found that, based on the statute and well-established precedent, Congress foreclosed state or local power to determine how a railroad's traffic should be routed. The District of Columbia, which had enacted a law governing routing of rail shipments of hazardous materials, and the Sierra Club later petitioned the STB to reconsider and reopen its March 14 decision.

The Board voted, 3 to 0, to deny to the requests for reconsideration and reopening of this proceeding.

• ***New England Transrail, LLC, d/b/a [doing business as] Wilmington and Woburn Terminal Railroad Co.--Construction, Acquisition, and Operation Exemption--in Wilmington and Woburn, MA, STB Finance Docket No. 34391.***

At issue in this case is a New England Transrail, LLC (NET) petition that would allow NET to construct 2,700 feet of new track, to acquire 1,300 feet of existing track, and to operate all 4,000 feet of track in Wilmington and Woburn, Massachusetts, as a common carrier (a railroad offering its transportation services to the public, as opposed to the provision of services under contract).

The Board voted, 3 to 0, to dismiss without prejudice (to later refiling) NET's petition because the project NET presented to the STB differs materially from what NET subsequently presented in other forums.

• ***Kaw River Railroad, Inc.--Acquisition and Operation Exemption--The Kansas City Southern Railway Company, STB Finance Docket No. 34509.***

This case involves the Kaw River Railroad, Inc.'s (KRR) notice of exemption to acquire by lease, sublease, and assignment, and to operate as a common carrier, a total of 18.2 miles of track in Kansas City, Kansas, and Kansas City, Missouri. The Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), and the United Transportation Union (UTU) requested that the STB hold a hearing in connection with this proceeding, schedule an oral-argument session, and reject KRR's notice or revoke KRR's exemption.

The Board voted, 3 to 0, to deny the BLET and UTU petitions.

• ***CSX Transportation, Inc.--Abandonment Exemption--in Summit County, OH, STB Docket No. AB-55 (Sub-No. 631X).***

(Embraced case: Embraced case: *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42086.)

This proceeding involves a notice of exemption filed by "CSX" to abandon a 0.7-mile portion of a railroad line in Summit County, Ohio. CSX made the requisite certification to the STB that no local traffic had moved over the line for at least two years, that any overhead traffic (traffic neither originating nor ending on a specific section of track, but merely passing over it) could be rerouted over other rail lines, and that no formal complaint filed by a user of the line was either pending or decided in favor of the complainant within the two-year period. Service over the track portion had been embargoed for the last six months of the two-year period at issue because of a damaged bridge. Terminal Warehouse, Inc. (Terminal Warehouse) file a petition to revoke the exemption, as well as a separate complaint challenging the embargo, alleging that the embargo was unlawful and that the line portion did not qualify for two-year, out-of-service status. The STB denied Terminal Warehouse's revocation petition and dismissed the complaint. Terminal Warehouse subsequently sought reconsideration of the agency's denial of its petition to revoke the abandonment proceeding, and the dismissal of the complaint.

The Board voted, 3 to 0, to deny Terminal Warehouse's petition for reconsideration of the agency's earlier decision.

• ***Public Service Company of Colorado d/b/a Xcel Energy v. BNSF Railway Company, STB Docket No. 42057.***

In this proceeding, the Public Service Company of Colorado, doing business as Excel Energy (Xcel) challenged the reasonableness of BNSF Railway Company (BNSF) rates for the transportation of coal from origins in the Powder River Basin of Wyoming to Xcel's Pawnee power plant near Brush, Colorado. The STB earlier found that BNSF had market dominance over the coal movements at issue and that the challenged rates were unreasonably high. The agency prescribed maximum reasonable rates and awarded reparations to Xcel. Later, the agency addressed technical errors in, and petitions for reconsideration of, its earlier decision in this proceeding. In February of this year, Xcel filed a petition for the STB's correction of technical and computational errors in the agency's decision reconsidering the issues in this proceeding.

The Board voted, 3 to 0, to issue a decision accepting Xcel's requested technical corrections to the agency's reconsidered decision.

• ***Union Pacific Railroad Company--Abandonment Exemption--in Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X).***

At issue is a petition by Concerned Citizens for an oral hearing and a petition requesting that the STB reopen its prior decisions in this case in which the agency authorized "Union Pacific's" sale, to the Denver & Rio Grande Railway Historical Foundation, under an offer of financial assistance (a financial offer to purchase a line or subsidize operations for the purpose of preserving service after the agency has approved a rail-line abandonment or service-discontinuance proposal), of a 21.6-mile line, known as the Creede Branch, in Rio Grande and Mineral Counties, CO.

The Board voted, 3 to 0, to deny the request for an oral hearing and the petition requesting reopening of the STB's prior decisions in this case.

• ***City of Creede, CO--Petition for Declaratory Order, STB Finance Docket No. 34376.***

This proceeding involves the STB's response to a petition for a declaratory order filed by the City of Creede, CO (the City), pursuant to an order of the U.S. District Court for the District of Colorado (U.S. District Court) referring to the STB questions related to the issue of federal preemption of the City's zoning laws, as applied to the railroad right-of-way (ROW), for a Denver & Rio Grande Railway Historical Foundation (D&RGHF) rail line.

The Board voted, 3 to 0, to respond to the U.S. District Court that the D&RGHF needs the full width of its ROW in the City for railroad purposes, and that the City's zoning ordinances are preempted under 49 U.S.C. 10501(b).

• ***Norfolk and Western Railway Company--Abandonment Exemption--Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, IN, STB Docket No. AB-290 (Sub-No. 168X).***

At issue here are petitions for the STB's reconsideration or revocation of earlier agency decisions that issued Notices of Interim Trail Use authorizing rail banking/interim trail use for portions of a Norfolk Southern Railway Company (NSR) railroad line that NSR had been authorized to abandon. The petitions were filed by landowners adjacent to the line.

The Board voted, 3 to 0, to deny the petitions for reconsideration and revocation.

• ***State of Washington, Department of Transportation--Acquisition Exemption--Palouse River and Coulee City Railroad, Inc., STB Finance Docket No. 34609.***

This case involves a verified notice of exemption filed with the STB by the State of Washington, Department of Transportation (WSDOT) to acquire from the Palouse River and Coulee City Railroad, Inc., certain physical assets of seven railroad lines, including the underlying rights-of-way, totaling approximately 188 miles in Washington. The WSDOT later filed a motion to dismiss the notice, asserting that the transaction does not require the STB's approval because WSDOT will not become a common carrier as a result of the transaction.

The Board voted, 3 to 0, to dismiss the motion.

The STB provides the above summaries as a courtesy to the public and the media. The STB's actions in these cases, however, are the agency's written decisions. Those decisions will be forthcoming. Printed copies of the decisions will be available for a fee by contacting **ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (202) 306-4004**, or via asapdc@verizon.net. The decisions also will be available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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