

Surface Transportation Board Announces Results of September 15 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, Thursday, September 15, 2005, by the STB.

The Board voted unanimously to adopt each of the draft decisions 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 SEPTEMBER 15, 2005 VOTING CONFERENCE

• ***Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, LTD., and Matson Navigation Company, Inc., STB Docket No. WCC-101.***

This proceeding involves a complaint filed with the STB by the Government of the Territory of Guam (GovGuam) challenging the reasonableness of the rates, rules, classifications and practices for transportation provided by Sea-Land Service, Inc., now known as Horizon Lines, LLC (Horizon), American President Lines, Ltd., and Matson Navigation Company, Inc. (Matson) (collectively, defendants), in the noncontiguous domestic trade (transportation between or among points in the United States mainland and points in Alaska, Hawaii, or U.S. territories or possessions). The complaint also seeks damages.

Earlier, the STB had adopted a three-step process for resolving this matter. Phase I involved the agency's addressing a joint motion by the defendants to dismiss GovGuam's discrimination claim, among other matters. Phase II, the current stage of this proceeding, involves the agency's plans to address an appropriate methodology for assessing rate reasonableness. A future Phase III will involve the agency's consideration of the merits of the complaint.

In October 2004, oral argument was scheduled for November 2004, but was rescheduled for February 2005 after GovGuam requested a postponement. The February 2005 oral argument was later canceled by the STB and the proceeding held in abeyance pending communication from GovGuam. In June 2005, the STB directed GovGuam to show cause why this proceeding should not be dismissed.

Finding that GovGuam has shown sufficient justification to allow it to move forward with the proceeding, and that it has shown that the proceeding should not be dismissed, the Board voted, 3-0, to continue Phase II of the complaint and to set a date for oral argument in a decision to be issued later.

• ***East Brookfield & Spencer Railroad, LLC--Lease and Operation Exemption--CSX Transportation, Inc., STB***

Finance Docket No. 34505.

At issue in this proceeding is a United Transportation Union (UTU) request that the STB revoke a notice of exemption filed with the agency by the East Brookfield & Spencer Railroad, LLC, to acquire by lease, and to operate as a common carrier (i.e., offering its service to the general public) approximately four miles of railroad line and related trackage in East Brookfield and Spencer, in Worcester County, Massachusetts.

The Board voted, 3-0, to deny UTU's petition.

• *San Pedro Railroad Operating Company, LLC--Abandonment Exemption--in Cochise County, AZ*, STB Docket No. AB-441 (Sub-No. 4X).

This case involves a petition for exemption filed by the San Pedro Railroad Operating Company, LLC (SPROC) to abandon approximately 76.2 miles of rail line in Cochise County, Arizona. The Chemical Lime Company (Chemical) and Sonora-Arizona International, LLC (Sonora) oppose the petition.

The Board voted, 3-0, to deny SPROC's petition for exemption to abandon the line, finding that in a petition for exemption proceeding, a railroad must make its case-in-chief on opening, and that SPROC cannot be permitted to make that case by filing new evidence in its rebuttal filed in response to opposition filed by Chemical and Sonora. Denial of this petition is without prejudice to SPROC's filing an appropriate abandonment application or petition for exemption that contains all relevant evidence and financial data.

• *Pittsburg & Shawmut Railroad, LLC--Abandonment Exemption--in Armstrong and Jefferson Counties, PA*, STB Docket No. AB-976X.

In this proceeding, the Pittsburg & Shawmut Railroad, LLC (Pittsburg & Shawmut) has petitioned the STB for an exemption from its prior-approval requirements to allow the railroad to abandon approximately 40 miles of rail line in Armstrong and Jefferson Counties, Pennsylvania. Pittsburg & Shawmut states that: there has been no traffic on the line since September 1999, the railroad has unsuccessfully attempted to bring new business to the line, and all overhead traffic (traffic neither originating nor ending on a specific section of track but, rather, merely passing over it from another origin to another destination) has been rerouted.

The Board voted, 3-0, to grant the petition, subject to trail use, public use, environmental and standard labor protective conditions.

• *Yakima Interurban Lines Association--Adverse Abandonment--in Yakima County, WA*, STB Docket No. AB-600.

At issue is the Naches Line (Line) in Yakima County, Washington. The Line is owned by Yakima Interurban Lines Association (YILA), a Washington State nonprofit corporation. When YILA acquired 11.29 miles of the Line in 1999, the Line had been out of service since 1997 because of poor track conditions. The State of Washington, through the Washington State Department of Transportation, subsequently loaned YILA \$516,000 to rehabilitate the Line, but YILA failed to perform the rehabilitation and defaulted on the loan. In 2004, Kershaw Sunnyside Ranches, Inc. (Kershaw) filed an adverse abandonment application (wherein a party other than a railroad providing service seeks the discontinuance of that service) asking the agency to withdraw its primary jurisdiction to permit Kershaw to proceed to state court to obtain control of a portion of the Line crossing its property. Several protests to Kershaw's petition were filed with the agency. In November 2004, the STB denied Kershaw's application, stating that local governments, shippers, a potential replacement rail carrier, and other parties opposed abandonment, and that several petitioners had presented feasible plans for the Line's rehabilitation and service restoration. Kershaw filed a petition for reconsideration and clarification of the STB's November 2004 decision.

The Board voted, 3-0, to deny Kershaw's petition for reconsideration and clarification.

• ***Kansas & Oklahoma Railroad, Inc.--Acquisition Exemption--Rail Line of Union Pacific Railroad Company, STB Finance Docket No. 34746.***

This proceeding concerns an August 2005 petition by the Kansas & Oklahoma Railroad Company, Inc. (K&O), seeking a waiver of the STB's advance-notice requirements relative to employees who potentially may be affected by K&O's planned acquisition and continued operation of a 27-mile segment of a line of railroad owned by the Union Pacific Railroad Company (UP) between Newton and McPherson, Kansas. K&O currently leases the line from UP and has operated it since September 2002. Because K&O's current revenues exceed \$5 million, the notice requirements would apply unless a waiver is granted. K&O asserts that no purpose would be served by a notice because no UP or K&O employees will be affected by the transaction; no UP employee has performed operations or maintenance on the line in nearly three years; K&O will continue to provide the same service and perform the same maintenance as it does under the current lease; and the transaction will simply convert operations according to a lease to operations over a K&O-owned line.

The Board voted, 3-0, to grant K&O's request for waiver of the agency's advance-notice requirements.

• ***Union Pacific Railroad Company--Temporary Trackage Rights Exemption--BNSF Railway Company, STB Finance Docket No. 34694 (Sub-No. 1).***

This proceeding involves a Union Pacific Railroad Company (UP) request that the STB partially revoke a trackage rights exemption, previously granted by the agency in a related case, to permit UP's local trackage rights over a BNSF Railway Company (BNSF) line to expire on or about December 31, 2005, as agreed by UP and BNSF.

UP states that the purpose of the previously exempted trackage rights arrangement was to permit UP to move loaded and empty ballast trains for use in its maintenance-of-way projects. UP had originally sought, and BNSF was only willing to grant, temporary operating rights over BNSF's track until December 31, 2005.

The Board voted, 3-0, to grant UP's petition for partial revocation of the trackage rights exemption to permit UP's local trackage rights over the BNSF line to expire on or about December 31, 2005, as agreed by the parties, subject to the agency's imposition of protective conditions on employees who may be adversely affected by the discontinuance of trackage rights operation.

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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