

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33990

C & C RAILROAD, INC.—OPERATION EXEMPTION—
CENTERPOINT PROPERTIES, L.L.C.

Decided: July 30, 2019

In 2001, C&C Railroad, Inc. filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate eight rail lines owned by Centerpoint Properties, L.L.C., and leased to The Custom Companies, Inc. (Custom). The lines consist of approximately 1.71 miles (the Lines) located in an office, warehouse, and dock facility at 317 West Lake Street, in Northlake, Ill., within the perimeter of the Global II Intermodal Yard owned by Union Pacific Railroad Company (UP). Notice of the exemption was served and published in the Federal Register on January 17, 2001 (66 Fed. Reg. 4,074).¹ The exemption became effective on January 9, 2001.

On May 1, 2019, UP filed a petition to revoke and void the exemption, asserting that C&C's verified notice contained false or misleading information. (Pet. 1.) According to the petition, UP leased to CDN Logistics, Inc. (CDN), and C&C's parent company, Custom, a warehouse and parking lot (formerly the Wardex Property), located within the perimeter of UP's Global II Intermodal Yard. (*Id.* at 2.) UP states that the leases for the Wardex Property expired on December 31, 2018, and that UP subsequently filed an eviction action against CDN and Custom on January 23, 2019. (*Id.*) On March 20, 2019, the Circuit Court of Cook County, Ill., issued an order finding that the issues concerning abandonment or discontinuance of rail service must first be resolved by the Board before the parties could proceed with a trial in the eviction action. (Pet., Ex. 1.)

In its petition, UP argues that, in exploring options to resolve the eviction action, it discovered that C&C's notice of exemption contained false or misleading information. (*Id.* at 2.) Specifically, UP states that Exhibit A of C&C's verified notice contains a map depicting the rail lines C&C purported it would operate, identified as "Subject Terminal Rail Lines." (*Id.* at 3.) According to UP, Exhibit A is misleading because: (1) the "Subject Terminal Rail Lines," which theoretically served as the connection between the tracks on the Wardex property and the Global II Intermodal Yard, did not exist when the 2001 notice was filed; and thus (2) the map

¹ The notice indicated that, pursuant to an agreement with Custom, C&C would acquire the right to operate the Lines for the purpose of shuttling cars solely on Centerpoint Properties, L.L.C.'s property.

falsely implied that a connection existed between the tracks that were the subject of the notice of exemption and UP's rail network. (*Id.*) UP states that its internal records show that the tracks had not existed since before 1998, (*id.*), and submits satellite images obtained from the U.S. Geological Survey purportedly demonstrating that the tracks did not exist in 1998 or 2002, (*id.*, V.S. Walter at 2-4). UP further states that it has no record of the tracks being reinstalled before the 2001 notice was filed, and no record of the tracks being removed again before 2002. (*Id.*)

UP also argues that C&C's operations consist of moving rail cars solely on the Wardex Property, which is located entirely within the state of Illinois, and that the Board would have jurisdiction over C&C's operations only if they were part of the interstate rail network. (*Id.* at 4.) UP maintains that without a connection to UP's rail network, C&C's operations could not be part of the interstate rail network. (*Id.*) Accordingly, UP requests that the Board find C&C's verified notice void ab initio and "vacate" C&C's operating authority. (*Id.* at 4.)

On May 31, 2019, C&C filed a reply to UP's petition, arguing that UP is attempting to short-circuit the formal discontinuance process that would otherwise apply. (Reply 2.) C&C asserts that the map it supplied with its verified notice depicted the location of C&C's trackage, and merely shows that the Lines are proximate to the UP Global II Intermodal Yard. (*Id.* at 4.) C&C also asserts that UP was constructively aware of C&C's invocation of the Board's class exemption procedures and knew, or should have known, about the status of the connecting track. (*Id.* at 6.) Accordingly, C&C argues that the principles of administrative finality should apply here. (*Id.*)

An exemption under 49 C.F.R. pt. 1150 subpart D is void ab initio if the verified notice contains false or misleading information (by assertion or omission) that is material to the grant of the exemption. See 49 C.F.R. § 1150.32(c); Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016). Further, pursuant to 49 U.S.C. § 10502(d), the Board may revoke an exemption if it finds that application of a statutory provision is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.

Given the issues raised by UP and the ambiguity regarding whether C&C's rail lines have ever connected to the interstate rail network, the parties will be directed to file supplemental information in order to assist the Board in determining whether C&C's notice should be voided and its operating authority revoked. Specifically, the parties are asked to submit the following information, under verified statement and with supporting documentation: (1) a description and any maps that would clarify the beginning and endpoint of the Lines in 2001 and whether they have ever physically connected to the interstate rail network; (2) a description of the services and activities provided, or formerly provided, on the Lines by C&C; (3) any information on whether the Lines were ever used by C&C in common carrier service; (4) any information indicating when and under what circumstances any portion of the Lines were removed; and (5) any information indicating who may have removed the Lines. This additional information will assist the Board in making a determination on the issues raised and ensure an accurate record regarding the status of the Lines.

The Board will, therefore, institute a proceeding and direct the parties to provide the information described above by August 29, 2019. Replies will be due by September 18, 2019.

It is ordered:

1. Under 49 U.S.C. § 10502(d), a proceeding is instituted.
2. The parties are directed to provide the information described above by August 29, 2019.
3. Replies are due by September 18, 2019.
4. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.