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SERVICE DATE – LATE RELEASE NOVEMBER 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35685

RAIL SWITCHING SERVICES, INC.—OPERATION EXEMPTION—PEMISCOT COUNTY
PORT AUTHORITY

Docket No. FD 35686

PIONEER RAILCORP—CONTINUANCE IN CONTROL EXEMPTION—RAIL
SWITCHING SERVICES, INC.¹

Decided: November 13, 2012

This decision imposes a housekeeping stay, postponing the effective date of the exemptions sought in these proceedings.

On October 15, 2012, Rail Switching Services, Inc. (RSS), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate approximately 4.9 miles of rail line owned by Pemiscot County Port Authority (PCPA) between the BNSF Railway Company (BNSF) interchange at milepost 212.32, at Hayti, Mo., and milepost 217.22 at Pemiscot Port Harbor, on the Mississippi River between Hayti and Caruthersville, Mo. (the Line). Pioneer Railcorp (Pioneer) concurrently filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of RSS upon RSS's becoming a Class III rail carrier. Notices of the exemptions were served and published in the Federal Register, 77 Fed. Reg. 65,937, on October 31, 2012. The exemptions are scheduled to become effective on November 14, 2012.

On October 26, 2012, PCPA, the owner of the Line, filed a petition to reject the exemptions. PCPA argues: (1) RSS lacks an agreement with PCPA to provide common carrier railroad service over the Line and the notices of exemption are therefore false or misleading and should be void ab initio; (2) Board authority is unnecessary for the services that RSS provides on the Line; and (3) the matter involves unusual, complex, and controversial issues not suitable for the Board's expedited class exemption procedures. On November 1, 2012, PCPA filed a supplement to its petition to reject and a petition to stay wherein it requests that, if the notices are not rejected by the effective date of the exemptions, the Board should stay the effectiveness of the exemptions and initiate a proceeding to determine whether class exemptions are appropriate

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

for these transactions. On November 5, 2012, RSS and Pioneer filed joint replies to PCPA's petitions. BNSF filed a letter in opposition to RSS's notice of exemption for operating authority on November 8, 2012. On the same date, PCPA filed a petition for leave to reply to RSS and Pioneer's joint replies. On November 9, 2012, RSS and Pioneer filed a motion to strike and reply to PCPA's petition for leave to reply. RSS then filed a letter in response to BNSF's letter, and PCPA filed a corrected version of its November 8, 2012 petition. Later that day, BNSF filed a letter in response to RSS's November 9, 2012 letter.

A brief housekeeping stay of the effective date of the exemptions will be imposed to provide the agency sufficient time to fully consider the arguments presented. The effective date of both exemptions will be postponed until further order of the Board.

It is ordered:

1. The effective date of the operation exemption in Docket No. FD 35685 is postponed until further order of the Board.
2. The effective date of the continuance in control exemption in Docket No. FD 35686 is postponed until further order of the Board.
3. This decision is effective on its date of service.

By the Board, Daniel R. Elliott III, Chairman.