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SEC

SERVICE DATE - AUGUST 12, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34514

RARITAN CENTRAL RAILWAY, L.L.C.
— OPERATION EXEMPTION —
HELLER INDUSTRIAL PARKS, INC.

Decided: August 9, 2004

This decision addresses the two requests respecting procedural matters that are, at this time, pending in this proceeding.

BACKGROUND

On June 15, 2004, Raritan Central Railway, L.L.C. (Raritan), an existing Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 1.0 route mile and approximately 2.0 track miles of railroad trackage and right-of-way inside the Heller Industrial Park, Edison Township, Middlesex County, NJ. Raritan advised, in its notice, that the transaction would be consummated, and that Raritan would commence operations inside the Heller Industrial Park, on or about August 15, 2004.

On July 7, 2004, Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company (collectively, petitioners) filed a petition to revoke the exemption. The petition included a proposed schedule for discovery and filings.

On July 9, 2004, petitioners served on Raritan, and filed with the Board, their first set of document requests, and asked the Board to waive 49 CFR 1121.2 insofar as that provision may be read as requiring the filing of discovery and the filing of a petition to revoke on the same day.

On July 23, 2004, petitioners filed a motion for a protective order. By decision served July 28, 2004, the Board issued the protective order sought by petitioners.

On July 27, 2004, Raritan filed a reply to the petition to revoke.

On July 29, 2004, petitioners filed a letter advising the Board of their withdrawal of the proposed schedule that had been included in their petition to revoke.

On August 6, 2004, petitioners and Raritan jointly filed a motion for extension of time. The motion indicates that, by mutual agreement, the parties adjourned the deposition of Raritan's

president on August 4, 2004, and scheduled the conclusion of that deposition for August 18, 2004. The motion requests that the Board: extend the discovery deadline to August 18, 2004, solely for the purpose of concluding the deposition of Raritan's president; and extend the deadlines for petitioners' supplemental petition and Raritan's reply to August 31, 2004, and September 13, 2004, respectively. The motion advises that no party will be prejudiced by these extensions, "which will still leave more than three weeks for the Board, after all filings are complete, to render its decision under 49 U.S.C. §10502(d)."

DISCUSSION AND CONCLUSIONS

(1) *Petitioners' Request.* § 1121.2 provides, in pertinent part, that if a party filing a petition for revocation of an exemption indicates in its petition that it seeks discovery, "the party must file its discovery requests at the same time it files its petition to revoke." Here, petitioners indicated in their petition that they sought discovery, but, rather than filing their discovery requests at the same time they filed their petition, they filed their discovery requests two days later (and, therefore, two days late). There is, however, no indication in the record, and no reason to believe, that Raritan was prejudiced by this late filing. Therefore, petitioners' request for a waiver of § 1121.2 will be granted.

(2) *The Joint Request.* § 1121.2 further provides, in pertinent part, that discovery shall be completed 30 days after the revocation petition is filed, that the party seeking discovery may supplement the revocation petition 45 days after the revocation petition is filed, and that replies to the supplemental petition are due 15 days after the supplemental petition is filed. Here, that would mean that discovery would have to be completed by August 6th, petitioners' supplemental petition would be due by August 23rd, and Raritan's reply to the supplemental petition would be due by September 7th. However, in view of the deposition schedule agreed upon by petitioners and Raritan, and given the absence of prejudice to any party, the alternative dates agreed upon by petitioners and Raritan are reasonable, and the joint motion for an extension of time will therefore be granted.

(3) *The Mandate of 49 U.S.C. 10502(d).* Section 10502(d) provides, in pertinent part, that "[t]he Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding." Section 10502(d) further provides, in pertinent part, that "[a]ny proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun." The joint motion recited that the extended deadlines sought by petitioners and Raritan, and herein granted, "will still leave more than three weeks for the Board, after all filings are complete, to render its decision under 49 U.S.C. §10502(d)," i.e., by October 5, 2004. The decision the Board must issue by October 5 is the decision "whether to begin an appropriate proceeding."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' request, filed July 9, 2004, for a waiver of 49 CFR 1121.2, insofar as that provision requires the filing of discovery requests and a revocation petition on the same day, is granted.
2. The joint motion, filed August 6, 2004, for an extension of time is granted.
3. The discovery deadline (i.e., the date by which discovery must be completed) is extended to August 18, 2004, but solely for the purpose of concluding the deposition of Raritan's president.
4. Petitioners' supplemental petition is due by August 31, 2004.
5. Raritan's reply to the supplemental petition is due by September 13, 2004.
6. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary