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SERVICE DATE – LATE RELEASE SEPTEMBER 19, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35175

ROSEBURG FOREST PRODUCTS CO., TIMBER PRODUCTS COMPANY, L.P.,
SUBURBAN PROPANE, L.P., COWLEY D&L, INC., SOUSA AG SERVICE, AND YREKA
WESTERN RAILROAD COMPANY—ALTERNATIVE RAIL SERVICE—CENTRAL
OREGON & PACIFIC RAILROAD, INC.

EX PARTE NO. 346 (Sub-No. 25-C)

RAIL GENERAL EXEMPTION AUTHORITY—PETITION FOR PARTIAL REVOCATION
OF COMMODITY EXEMPTION—LUMBER OR WOOD PRODUCTS

Decided: September 19, 2008

On August 26, 2008, shippers Roseburg Forest Products Co. (RFP), Timber Products Company, L.P. (TPC), Suburban Propane, L.P., Cowley D&L, Inc., and Sousa AG Service, and carrier Yreka Western Railroad Company (YWR) (collectively, petitioners) filed a petition under 49 U.S.C. 11123 and 49 CFR part 1146,¹ seeking an order authorizing interim alternative rail service for the shipper petitioners' traffic over approximately 218 miles of rail line (the Line) operated by Central Oregon & Pacific Railroad, Inc. (CORP). The Line extends between the connection with Union Pacific Railroad Company (UP) at milepost 346.00 in Black Butte, CA, and milepost 562.00 at Dillard, OR. Petitioners request that West Texas & Lubbock Railway Company, Inc. (WTL), and its agent, YWR, be authorized to provide alternative rail service due to an asserted substantial and measurable deterioration in CORP service. Inasmuch as RFP and TPC ship lumber and wood products over the Line, and the rail transportation of these commodities has been exempted from Board regulation, petitioners also seek partial revocation of the class exemption for these products "in order to entertain the portion of the Petition that seeks alternative rail service for the transportation of these commodities." Petition at 8. See 49 CFR 1039, Rail Exemption—Lumber or Wood Products, 7 I.C.C.2d 673 (1991), and Service Inadequacies, at 976.

WTL, a Class III rail carrier, is a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is a subsidiary of Iowa Pacific Holding, LLC (Iowa Pacific), a short line railroad holding company. WTL operates 107 miles of railroad on two lines extending from Lubbock, TX, to Seagraves and Whiteface, TX, and provided alternative rail service over the 14.1-mile

¹ These rules were adopted in Expedited Relief for Service Inadequacies, 3 S.T.B. 968 (1998) (Service Inadequacies).

line of South Plains Switching, Ltd. Co. in Lubbock for a 20-month period commencing in January 2006. See PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34802 (STB served Jan. 26, 2006, and Jan. 11, 2008). YWR, also a Class III rail carrier, operates approximately 8 miles of rail line from Yreka, CA, to a connection with CORP, YWR's only connection to the national rail system, at milepost 375.50 in Montague, CA. According to petitioners, WTL would administer the alternative service, and this would include issuing the bills of lading and collecting freight charges on shipments not originating or terminating on YWR. YWR, as WTL's agent, would handle all traffic and YWR would maintain interchange agreements and relationships with connecting rail carriers on all traffic originating and terminating on YWR.

CORP filed a reply in opposition to the petition for alternative rail service on September 3, 2008. Contending that it has met, and remains ready, willing, and able to meet, all reasonable requests for rail service on the Line, CORP claims that the petition for alternative rail service is an inappropriate response to the rate increases it placed into effect in May 2008. Nevertheless, CORP states that it is willing to enter into a voluntary agreement for WTL to provide rail service over the approximately 96-mile portion of the Line between Black Butte and milepost 441.80 at Medford, OR. For movements north of Medford, CORP states that it would either provide haulage for WTL or would interchange traffic for delivery to points between Medford and Dillard.

Such an agreement, CORP insists, would have to assure that it is paid compensation pursuant to the formula developed in PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34889 et al. (STB served Jan. 11, 2008). Additionally, CORP states that WTL and YWR would have to: (1) accept liability, and obtain adequate insurance, for the operation of the Line; (2) ensure at their own expense that their engineers and other personnel are qualified to operate the Line and that YWR has appropriate locomotives; (3) agree to standard industry terms for other matters; and (4) make rental payments in advance, guaranteed by Permian, by Iowa Pacific, by Edwin Ellis, president of Iowa Pacific, by RFP, and by TPC.

CORP requests that the Board hold these proceedings in abeyance for a 15-day period to give the parties an opportunity to negotiate an agreement. Further, CORP suggests that the parties be ordered to report back to the Board on the status of their negotiations at the end of the 15-day period and be prepared to come to the Board's offices the next day to mediate any unresolved issues.

UP, in a letter filed on August 29, 2008, takes no position on the merits of the alternative rail service request. Asserting that it owns, and leases to CORP, the approximately 80-mile portion of the Line between Black Butte and milepost 425.29 at Bellview,² UP states that authorization to provide alternative rail service on the Line, if granted, should be made contingent on WTL entering into an agreement with UP covering WTL's use of the 80-mile segment.

² CORP owns the remaining 138-mile segment of the Line between Dillard and Bellview.

On September 8, 2008, petitioners and WTL filed their rebuttal statements. Petitioners contend that CORP has failed to rebut their evidence of a substantial, measurable deterioration and other inadequacy in the rail service CORP has provided over the Line. WTL disputes CORP's argument that WTL lacks the competence and ability to provide alternative rail service over the Line, and otherwise asserts that the standards for relief under 49 CFR part 1146 have been satisfied and that the petition for alternative rail service should be granted without delay.

Both petitioners and WTL state that they are willing to enter into a voluntary agreement for the lease of the portion of the Line between Bellview and Black Butte. According to petitioners, CORP's proposal is sufficiently promising to justify holding the proceedings in abeyance to permit the parties to negotiate the terms of an agreement. They contend, however, that a 15-day negotiating period is inordinately abbreviated. Petitioners suggest that the Board hold the proceedings in abeyance for 30 days and order the parties to report back to the Board on the status of the negotiations at the end of the 30-day period. Additionally, petitioners request that the parties at any time during the 30-day period be permitted to ask the Board: (1) to return the proceedings to active status if they believe the negotiations will not be successful and (2) to mediate or arbitrate any unresolved issues. CORP, in a letter filed on September 9, 2008, agrees to petitioners' requested 30-day negotiating period.

CORP's request to hold these proceedings in abeyance, as modified by petitioners' proposal, is reasonable and consistent with the Board's preference for private-sector negotiation and resolution of disputes. Consequently, the request will be granted.

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

It is ordered:

1. These proceedings are held in abeyance until October 20, 2008. During this period, the parties individually may ask the Board to return the proceedings to active status or jointly ask for Board mediation or arbitration of any unresolved issues.
2. The parties are directed to report back to the Board on the status of the negotiations on October 20, 2008.
3. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary