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SERVICE DATE – DECEMBER 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35088

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION–ACQUISITION  
EXEMPTION–LINE OF BNSF RAILWAY COMPANY

Decided: November 28, 2007

By petition filed on October 16, 2007, Iowa, Chicago & Eastern Railroad Corporation (IC&E or petitioner)<sup>1</sup> seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire approximately 18.5 miles of rail line owned by BNSF Railway Company (BNSF) that IC&E currently operates via trackage rights.<sup>2</sup> The rail line extends from a connection with another BNSF line at milepost 1.74 near East Moline, IL, to the end of the line at milepost 20.31 at Ceffcoco, IL, near Albany, IL (the Albany Line). The Board will grant the exemption, subject to the labor protection required by 49 U.S.C. 10902(d), including a 60-day notice requirement.

Petitioner has requested expedited consideration of the petition and asks that the exemption be effective on or before December 28, 2007.

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<sup>1</sup> IC&E is a wholly owned, indirect subsidiary of Dakota, Minnesota & Eastern Railroad Corporation (DM&E), a Class II rail carrier that operates lines of railroad in Minnesota, South Dakota, Wyoming, Nebraska, and Iowa. See Dakota, MN & Eastern et al.–Control–Iowa, Chicago & Eastern, 6 S.T.B. 511 (2003). On October 5, 2007, Canadian Pacific Railway Company (CPRC), Soo Line Holding Company, a Delaware corporation and indirect subsidiary of CPRC (Soo Holding), DM&E, and IC&E filed an application in Canadian Pacific Railway Company, et al.–Control–Dakota, Minnesota & Eastern Railroad Corp., et al., STB Finance Docket No. 35081, for the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). Soo Line Properties Company, a Delaware corporation and wholly owned subsidiary of Soo Holding, merged with and into DM&E. According to IC&E, the common shares of DM&E were placed in a voting trust pending Board approval of Soo Holding's control of DM&E and IC&E. The Board issued a decision on November 2, 2007, determining that the proposed acquisition would be a significant transaction under 49 CFR 1180.2(b). According to the statute, a merger of this type is reviewed within 10 months after the application is filed.

<sup>2</sup> IC&E states that the proposed acquisition by IC&E of the Albany Line is unrelated to the proceeding in STB Finance Docket No. 35081, and will proceed independently of that transaction.

## BACKGROUND

IC&E is a Class II rail carrier that owns or operates approximately 1,300 route miles of rail line in Iowa, Illinois, Kansas, Missouri, Minnesota, and Wisconsin. IC&E's principal routes extend from Chicago, IL, to Sabula Junction, IA, which then continue through Davenport, IA, to Kansas City, MO, and north to Minneapolis/St. Paul, MN. IC&E's secondary routes extend across southern Minnesota from Ramsey to Jackson and across northern Iowa from Marquette to Sheldon. Its branch lines extend from Davis Junction, IL, through Rockford, IL, and Beloit, WI, to Janesville, WI; from Mason City, IA, to Comus, MN; from Wells to Minnesota Lake, MN; from Davenport to Eldridge, IA; and from Davenport to Albany (via trackage rights on BNSF's line). The latter branch includes the Albany Line which is the subject of the proposed transaction in this proceeding.

BNSF is a Class I rail carrier that owns or operates approximately 32,000 route miles of rail line in 28 states in the central and western United States and in two Canadian provinces.

The Albany Line historically was part of a through route, known as the Nitrin Line, of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (the Milwaukee Road) between Davenport and Savanna, IL. The portion of the line between Albany and Savanna was abandoned in the 1970s and early 1980s, and the remainder of the line was acquired by the Soo Line Railroad Company (Soo) in 1985 as part of Soo's broader acquisition of the remaining core of the Milwaukee Road out of bankruptcy.

In 1995, Soo and Burlington Northern Railroad Company (BN), a predecessor of BNSF, undertook a restructuring of their operations in the Davenport area as part of the dissolution of the Davenport, Rock Island & North Western Railway Company (DRI), a switching carrier jointly owned by Soo and BN. As part of the restructuring, BN acquired the Albany Line from Soo,<sup>3</sup> and also acquired from DRI the line running from a connection with Soo's main line in Davenport to East Moline (the Davenport-East Moline Line). Soo retained local trackage rights over the Albany Line and trackage rights over the Davenport-East Moline Line to access the Albany Line and serve local traffic.<sup>4</sup>

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<sup>3</sup> See Canadian Pacific Limited, Canadian Pacific (U.S.) Holdings Inc., Soo Line Corporation and Soo Line Railroad Company—Control—Davenport, Rock Island and North Western Railway Company, Finance Docket No. 32579 (ICC served Feb. 10, 1995), which also, among others, embraced Finance Docket No. 32579 (Sub-No. 2), Burlington Northern Railroad Company—Acquisition—Certain Lines of Soo Line Railroad Company, which covered BN's acquisition of the Albany Line.

<sup>4</sup> See Soo Line Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company, Finance Docket No. 32579 (Sub-No. 5) (ICC served Oct. 24, 1994).

Soo's trackage rights on the Albany Line and the Davenport-East Moline Line were assigned to I&M Rail Link, LLC (IMRL) when IMRL acquired Soo's rail lines in the area in 1997.<sup>5</sup> Those rights then were assigned to IC&E when it acquired IMRL's lines in 2002. IC&E began operations in July 2002, upon the acquisition of the rail lines of IMRL.<sup>6</sup> In 2006, BNSF and IC&E obtained exemption authority to abandon and discontinue service<sup>7</sup> over the outer 5 miles of the Albany Line, from milepost 20.31 at Ceffco to milepost 25.40 in Albany.<sup>8</sup>

IC&E has provided all rail services on the Albany Line since IC&E began operations in 2002, and, according to IC&E, it is believed that BNSF had not conducted rail operations on the line for several years prior to that time. According to IC&E, there are four active shippers on the Albany Line at Cordova and Ceffco: 3M Logistics, CF Industries, Inc., Plains Marketing Canada, L.P., and Westway Trading Corporation. IC&E submits that these four shippers generate approximately 1,800 annual carloads of traffic. IC&E states that it currently provides rail service on the line 3 days per week, utilizing an IC&E switching job based in East Moline.

Pursuant to a Purchase and Sale Agreement (the Agreement) which has been agreed to and currently is being executed by BNSF and IC&E, IC&E proposes to acquire BNSF's ownership interest in the Albany Line. IC&E indicates that this transaction resulted from BNSF's notice under the existing trackage rights agreement between the parties that BNSF intended to abandon the Albany Line. This notice triggered a right of first refusal for IC&E to

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<sup>5</sup> See I&M Rail Link, LCC–Acq. & Oper. Exem.–Canadian Pacific Ry., 2 S.T.B. 167 (1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

<sup>6</sup> See Iowa, Chicago & Eastern Railroad Corporation–Acquisition and Operation Exemption–Lines of I&M Rail Link, LLC, STB Finance Docket No. 34177 (STB served June 12, 2002, and July 22, 2002), and Iowa, Chicago & Eastern RR.–Acquire & Operate–I&M Link, 6 S.T.B. 499 (2003).

<sup>7</sup> See BNSF Railway Company–Abandonment Exemption–in Rock Island and Whiteside Counties, IL, STB Docket No. AB-6 (Sub-No. 435X) (STB served Dec. 27, 2005) (Rock Island-Whiteside decision). Pending final resolution of a final environmental condition, BNSF has not consummated its abandonment authority of the segment, and the Board, in a decision served on December 14, 2006, has extended the consummation date for the abandonment to December 31, 2007. BNSF anticipates consummating the abandonment by the end of the year. The Rock Island-Whiteside decision also embraced STB Docket No. AB-987X, Iowa, Chicago & Eastern Railroad Corporation–Discontinuance of Service Exemption–in Rock Island and Whiteside Counties, IL. IC&E consummated its discontinuance authority on the segment on April 12, 2006.

<sup>8</sup> The mileposts on the Albany Line were redesignated after the 1994 operational restructuring. Previously, mileposts increased in a southward direction, with milepost 0 at the historic origin of the line in Savanna. Today, milepost 0 is at East Moline, and the milepost numbers rise as the line extends towards Albany.

acquire the Albany Line, which IC&E has chosen to exercise. IC&E states that its existing trackage rights on the Albany Line will merge into its ownership of the line once the proposed transaction herein is consummated, but that it will continue to have trackage rights over BNSF's Davenport-East Moline Line to reach the Albany Line.

IC&E states that no changes in existing rail freight operations and service will result from the proposed transaction. IC&E indicates that it will continue to provide service to shippers on the Albany Line in the same manner that it does today. As a result of the proposed acquisition transaction, IC&E will now be the owner of, rather than a tenant on, a rail line on which IC&E has been the sole service provider for several years. IC&E indicates that its ownership of the Albany Line will help ensure that IC&E can continue to provide adequate service to shippers in the future.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the acquisition of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it is found that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 10902 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction [49 U.S.C. 10101(2)], ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)], fostering sound economic conditions in transportation [49 U.S.C. 10101(5)], reducing regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], encouraging efficient management of railroads [49 U.S.C. 10101(9)], and providing for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part [49 U.S.C. 10101(15)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. IC&E's acquisition of the Albany Line will have no adverse impact on competition. The proposed transaction simply will bring the line under control of the only operator that currently is using it to provide rail service. Rail operations on the Albany Line will not change in any manner and no shipper will lose access to any rail service which it currently receives. Given our market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997), aff’d in relevant part sub nom. Association of American R.R. v. STB, 162 F.3d 101 (D.C. Cir. 1998). As required by 49 CFR 1121.4(h), IC&E, on October 26, 2007, certified to the Board that, on October 22, 2007, it had posted a notice of the transaction at the workplaces of BNSF employees on the Albany Line, and, on October 26, 2007, it served the same on the national offices of the labor unions representing BNSF employees on the Albany Line. IC&E’s October 26, 2007 certification satisfies the Board’s notice requirements, and the 60-day notice period will have run by December 25, 2007. IC&E has made its certification 60 days prior to the December 28, 2007 date that it requests the exemption to be effective, and therefore the requirements of section 1121.4(h) will have been met for the exemption to be effective on December 28, 2007.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because IC&E’s acquisition of the Albany Line is for the purpose of continued rail operations and further Board approval is required to abandon or discontinue service and there are no plans to alter or dispose of properties subject to the Board’s jurisdiction that are 50 years old or older.

As previously noted, IC&E has requested expedited consideration of this petition for exemption. IC&E indicates that it wishes to exercise full control of the Albany Line as soon as possible. IC&E asks that the exemption be effective on or before December 28, 2007. IC&E states that expedited closing of the transaction will allow BNSF and IC&E to consummate the transaction by the end of the year, in accordance with the terms of the Agreement between the parties. The request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption will become effective on December 28, 2007, rather than the normal 30 days after service of the decision and publication in the Federal Register.

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

It is ordered:

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to IC&E’s compliance with the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.

2. Petitioner shall serve a copy of this decision on 3M Logistics, CF Industries, Inc., Plains Marketing Canada, L.P., and Westway Trading Corporation within 5 days of the service date of this decision and certify to the Board that it has done so.

3. Notice will be published in the Federal Register on December 4, 2007.

4. The exemption will become effective on December 28, 2007.

5. Petitions to stay must be filed by December 14, 2007. Petitions to reopen must be filed by December 21, 2007.

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

Vernon A. Williams  
Secretary