

28903  
EB

SERVICE DATE - APRIL 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33546

KOKOMO GRAIN CO., INC.--CONTROL EXEMPTION--THE CENTRAL  
RAILROAD COMPANY OF INDIANAPOLIS AND THE CENTRAL RAILROAD COMPANY  
OF INDIANA

Decided: April 20, 1998

By petition filed January 29, 1998, and supplemented by letter filed March 9, 1998, Kokomo Grain Co., Inc. (KGC), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to acquire control of The Central Railroad Company of Indianapolis (CERA) and The Central Railroad Company of Indiana (CIND), through the acquisition of controlling stock interest in their noncarrier holding company, Central Properties, Incorporated (CPI).<sup>1</sup> On March 13, 1998, KGC filed an amendment to its petition.<sup>2</sup>

BACKGROUND

KGC became a Class III rail carrier when it acquired a 12.59-mile line of railroad between Marion and Amboy, IN, in 1994. The line is operated by CERA pursuant to an operating agreement with KGC.<sup>3</sup> In addition, CERA operates 70.42 miles of rail line that it leases from Norfolk and Western Railway Company (NW). Those lines are located between Tipton and

---

<sup>1</sup> Common control of CERA and CIND was exempted in Central Properties Incorporated--Control--The Central Railroad Company of Indianapolis and The Central Railroad Company of Indiana, Finance Docket No. 31896 (ICC served July 25, 1991).

<sup>2</sup> KGC explains that, at the time it filed the petition, it was not aware that we do not impose labor protective conditions in control transactions that involve only Class III rail carriers. See Douglas M. Head, Kent P. Shoemaker and Charles H. Clay--Continuance in Control Exemption--Rutland Line, Inc., STB Finance Docket No. 33501 (STB served Jan. 7, 1998). KGC states that its proposed transaction involves only Class III rail carriers and, therefore, it requests that its petition be amended to reflect that labor protective conditions are not to be imposed.

<sup>3</sup> See Kokomo Grain Co., Inc.--Acquisition Exemption--Rail Line of Kokomo Rail Co., Inc., Finance Docket No. 32477 (ICC served Mar. 31, 1994).

Kokomo, IN (16.2 miles), and between Marion and Frankfort, IN (54.22 miles).<sup>4</sup> CERA connects with KGC's Marion-Amboy rail line at Marion and CIND connects with CERA at Frankfort. CIND operates the 76.3-mile line between Shelbyville, IN, and Frankfort, pursuant to trackage rights granted by Consolidated Rail Corporation<sup>5</sup> and owns the 85.4-mile line between Cincinnati, OH, and Shelbyville.<sup>6</sup>

KGC currently owns 33.02% of CPI's stock. An additional 11.13% of CPI's stock is owned by the children of Raymond L. Ortman,<sup>7</sup> president of KGC. The members of the Ortman family own 100% of KGC. Therefore, KGC and affiliated interests collectively own 44.15% of CPI's stock. None of the other stockholders of CPI is affiliated with the Ortman family or KGC. Under the proposed transaction, KGC proposes to acquire 11.66% of CPI's stock that is currently owned by Clarendon Richert.<sup>8</sup> In its March 9 letter, KGC states that, on or before March 6, 1998, it would acquire shares of CPI stock and the corresponding percentage ownership from the following individuals: Donald B. Brouillette (5.63%); Dan R. Frick (3.33%); Michael D. Winkler (1.12%); and Davis & Murrell Law Firm (2.79%).<sup>9</sup> Following the acquisition, KGC and affiliated interests

---

<sup>4</sup> See Central Railroad Company of Indianapolis--Lease & Operation Exemption--Line of the Norfolk and Western Railway Company, Finance Docket No. 31470 (ICC served July 25, 1989), wherein CERA leased from NW a total of 121.82 miles of rail line between Tipton and Argos, IN, and between Marion and Frankfort. CERA later discontinued service over 51.4 miles of the Tipton-Argos line, beginning at Kokomo. See Central Railroad Company of Indianapolis--Discontinuance of Service Exemption--Between Kokomo and Argos in Howard, Miami, Fulton, and Marshall Counties, IN, Docket No. AB-511 (Sub-No. 1X) (ICC served May 14, 1996) [redocketed by notice to the parties served May 19, 1997].

<sup>5</sup> See The Central Railroad Company of Indiana--Acquisition and Operation Exemption--Lines of Consolidated Rail Corporation, Finance Docket No. 31897 (ICC served July 25, 1991), petition for partial revocation denied (ICC served Dec. 10, 1991).

<sup>6</sup> On January 14, 1998, CIND filed a petition for exemption in Central Railroad Company of Indiana--Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X), seeking to abandon 58 miles of rail line between Thatcher, IN, and Shelbyville. Notice of the filing was served and published in the Federal Register on February 2, 1998, and the proceeding is pending a decision on the merits of the petition.

<sup>7</sup> Cynthia A. (Ortman) Meyer, Gregory A. Ortman, Jeffrey M. Ortman, John Bradley Ortman, Scot A. Ortman, Timothy M. Ortman, and Zachary T. Ortman.

<sup>8</sup> According to KGC, the stock of CPI is in an independent voting trust pending disposition of this proceeding. KGC filed a copy of the voting trust agreement on February 12, 1998.

<sup>9</sup> In its letter, petitioner stated that the shares of these individuals were added to the voting  
(continued...)

will own 68.67% of CPI's stock, placing KGC in control of CPI's two rail carriers, CERA and CIND.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(3), the acquisition of control of a rail carrier by any number of rail carriers requires prior approval by the Board. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over this transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)]; ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]; and fostering sound economic conditions in transportation, ensuring effective coordination among carriers and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be affected adversely.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. According to KGC, there will be no diminution of competition among rail carriers as a result of the transaction. The principal commodity transported by each of the rail carriers to be commonly controlled is grain. KGC states that there is intense competition with motor carriers in the origin territory for transportation of that commodity. Consequently, there will not be an undue concentration of transportation market power as a result of the proposed common control. However, to ensure that CERA's and CIND's shippers are informed of our action, we will require KGC to serve a copy of this decision on them within 5 days of the service date of this decision and to certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the 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 its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, we may not, under the statute, impose labor protective conditions.

---

<sup>9</sup>(...continued)  
trust covered by the voting trust agreement.

This control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-25, the acquisition of control by KGC of CERA and CIND.
2. KGC shall serve a copy of this decision on CERA's and CIND's shippers within 5 days of the service date and certify to the Board that it has done so.
3. Notice will be published in the Federal Register on April 29, 1998.
4. This exemption will be effective on May 29, 1998. Petitions to stay must be filed by May 14, 1998. Petitions to reopen must be filed by May 25, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary