

36582
EB

SERVICE DATE – APRILL 11, 2006

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34783

THE INDIANA RAIL ROAD COMPANY
– ACQUISITION –
SOO LINE RAILROAD COMPANY

Decision No. 4

Decided: April 6, 2006

By application filed on December 15, 2005 (Application), The Indiana Rail Road Company (INRD) and Soo Line Railroad Company (Soo) seek Board approval under 49 U.S.C. 11323-26 for INRD's acquisition of (a) Soo's Latta Subdivision, a 92.3-mile railroad line extending from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, (b) certain overhead trackage rights currently held by Soo between Chicago, IL, and Terre Haute, IN, and between Bedford, IN, and Louisville, KY (Main Line Trackage Rights), and (c) certain Ancillary Trackage Rights. This proposal is referred to as the Transaction, and INRD and Soo are referred to collectively as applicants. The Transaction is classified as a minor transaction. See 49 CFR 1180.2(c) (classification of transactions under 49 U.S.C. 11323).

In Decision No. 2 (served January 13, 2006, and published in the Federal Register on January 13, 2006, at 71 FR 2295-2300), we accepted the Application for consideration, and we established a procedural schedule that set February 21, 2006, as the due date for the filing of comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application. No such pleadings have been filed in this proceeding.

BACKGROUND

Soo, a Class I railroad, is a Minnesota Corporation that operates approximately 3,500 miles of track in the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. Soo is a wholly owned subsidiary of Canadian Pacific Railway Company (CPRC).¹ CPRC is a Canadian corporation whose stock is publicly held and traded on the New York and Toronto stock exchanges. Soo acquired its Chicago-Louisville line on February 20, 1985, as part of its purchase of the core rail system of the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee).²

¹ Soo, its parent, CPRC, and its affiliate, Delaware and Hudson Railway Company, Inc., collectively do business under the name "Canadian Pacific Railway."

² See Milwaukee—Reorganization—Acquisition by GTC, 2 I.C.C.2d 161 (1984); Milwaukee—Reorganization—Acquisition by GTC, 2 I.C.C.2d 427 (1985), aff'd sub nom. In

INRD currently owns and operates a line of railroad running between Indianapolis, IN, and Newton, IL, a total distance of 155 miles. This line intersects Soo's Chicago-Louisville line at Linton, IN. INRD was formed in 1986 and has built its traffic base from approximately 12,000 carloads in its first full year of operation to 105,810 carloads in 2004. INRD's revenues are generated primarily (i) from coal moves to Indianapolis Power & Light's (IP&L) Harding Street power plant at Indianapolis, IN, to Ameren's power plant at Lis, IL, and to Hoosier Energy's power plant at Merom, IN, and (ii) from chemical, plastics, and petroleum feedstock movements to and from plants in Robinson, IL. INRD reports in the Application, that, by the end of 2005, its revenues would have exceeded the threshold for Class II carrier status for 3 consecutive years, and that accordingly, INRD would be reclassified as a Class II carrier under the Board's regulations.

CSX Transportation, Inc. (CSXT) currently owns 85% of the common stock of Midland United,³ which in turn owns 100% of the common stock of INRD. Thomas G. Hoback, president of INRD and of Midland United, owns the remaining 15% of Midland United's common stock. The applicants submit that, at the time CSXT acquired control of INRD, it was contemplated that INRD would remain a separate short line or regional railroad and would not be functionally integrated into CSXT. The applicants state that this approach has been followed, and INRD retains its separate engineering, operating, mechanical, marketing, accounting and labor relations functions.

The Transaction for which the applicants seek approval consists of INRD's: (a) purchase of Soo's Latta Subdivision; (b) acquisition by assignment of all of Soo's right, title and interest in and to the Main Line Trackage Rights; and (c) acquisition by assignment of all of Soo's right, title and interest in and to the Ancillary Trackage Rights. Collectively, the Latta Subdivision, the Main Line Trackage Rights, and the Ancillary Trackage Rights are referred to here as the Acquired Lines.

The Latta Subdivision. The Latta Subdivision extends from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, a distance of 92.3 miles. The Latta Subdivision includes the Latta Branch, which runs westerly from the main line of the Latta Subdivision for approximately 8.5 miles, commencing at approximately milepost 204.3 on the Latta Subdivision. The Latta Subdivision also includes Soo's Latta Yard and the shop facilities located there, as well as various side tracks, spur tracks, connections and other related rail properties.

The Main Line Trackage Rights. The Main Line Trackage Rights to be assigned to INRD consist of the following:

the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad, Debtor, 799 F.2d 317 (7th Cir. 1986).

³ See CSX Corporation and CSX Transportation, Inc.,—Control—The Indiana Rail Road Company, STB Finance Docket No. 32892 (STB served Nov. 7, 1996).

- (i) Overhead trackage to operate over and use certain trackage of Union Pacific Railroad Company (UP) between 80th Street, Chicago, and Dolton Junction, IL, on terms established pursuant to the trackage rights agreement between Soo and Missouri Pacific Railroad Company, dated August 23, 1995, as amended, a distance of 8.32 miles. The trackage rights are assignable with the consent of UP, which should not be unreasonably withheld;
- (ii) Overhead trackage rights to operate over and use certain trackage of CSXT and UP from Dolton Junction, IL, to Woodland Junction, IN, on terms established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 65.7 miles. The trackage rights are assignable with the consent of CSXT;
- (iii) Overhead trackage rights to operate over and use certain trackage of CSXT from Woodland Junction, IN, to Terre Haute, IN, as established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 99.6 miles. The trackage rights are assignable with the consent of CSXT;
- (iv) Overhead trackage rights to operate over and use certain trackage of CSXT from Bedford, IN, to New Albany, IN, on terms established by the agreement between Louisville & Nashville Railroad Company (L&N) and Milwaukee, dated July 17, 1973, as amended, a distance of 71.77 miles. The trackage rights are assignable with the consent of CSXT; and
- (v) Rights to use the property of the former Kentucky & Indiana Terminal Company (K&ITC) between New Albany, IN, and Louisville, KY, and within Louisville, KY, on terms originally set forth in the agreement dated March 1, 1973, by and among K&ITC, the Baltimore & Ohio Railroad Company, L&N, Southern Railway Company and Milwaukee. Soo's rights under the Louisville Terminal Agreement are assignable without the approval of Norfolk Southern Railway Company (successor to Southern).

The Ancillary Trackage Rights. The Ancillary Trackage Rights to be assigned to INRD are as follows:

- (i) Overhead trackage rights to operate over and use certain trackage rights of Indiana Southern Railroad (ISRR) from Elnora, IN, to Maysville, IN, on terms established by the agreement governing Soo's grant of trackage rights to ISRR, dated April 15, 1993, a distance of 19.6 miles. The agreement is assignable without ISRR's consent in connection with a sale of all or substantially all of Soo's interest in its line between Terre Haute and Bedford;
- (ii) Overhead trackage rights to operate over and use certain trackage of ISRR from Beehunter, IN, to Sandborn, IN, on terms established by the agreement between Consolidated Rail Corporation (Conrail) and Milwaukee, dated June 28, 1985, as amended, a distance of 6.12 miles. ISRR's consent is required for the assignment

- of the trackage rights except in connection with the sale or assignment of all or substantially all of Soo's properties; and
- (iii) The option to acquire trackage rights under specified conditions on ISRR's line between Elnora, IN, and Evansville, IN, on terms established by the agreement between Soo and ISRR, dated April 15, 1993, whereby Soo obtained the option to acquire such trackage rights in exchange for ISRR's receipt of trackage rights over Soo's line between Beehunter, IN, and Elnora, IN.

The applicants are in the process of obtaining consents for the assignments where required and anticipate receiving them prior to the closing of the Transaction.

In addition, INRD and Soo have entered into three agreements dealing with their future relationship: (1) the "Power Run Through Agreement," which establishes terms under which CPRC will supply run-through power for potash trains originating on CPRC and destined for Jeffersonville, IN, and the terms under which INRD will supply run-through power for petroleum coke trains originating in Rosemount, MN, and destined for the gasification facility at Fayette, IN; (2) the "Interchange Agreement," which establishes terms under which CPRC and INRD will interchange traffic at Chicago; and (3) the "Marketing and Divisions Agreement," which establishes divisions and other commercial arrangements between INRD and CPRC.

DISCUSSION AND CONCLUSIONS

Statutory Criteria. Under 49 U.S.C. 11323(a)(2), a purchase, lease, or contract to operate property of one rail carrier (Soo) by another rail carrier (here, INRD) requires prior Board approval under criteria set forth in 49 U.S.C. 11324. Because the Transaction does not involve the merger or control of two or more Class I railroads, this transaction is governed by § 11324(d), under which we must approve the Application unless we find that: (1) as a result of the Transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the Transaction outweigh the public interest in meeting significant transportation needs.

In assessing transactions subject to § 11324(d), our primary focus is on the anticipated competitive effects. We must grant the application unless there will be adverse competitive impacts that are both "likely" and "substantial." And, even if there will be likely and substantial anticompetitive impacts, we may not disapprove the Transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions. See Canadian National, et al.—Control—Wisconsin Central Transp. Corp., et al., 5 S.T.B. 890, 899 (2001); Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company, STB Finance Docket No. 33311, slip op. at 4 (STB served May 1, 1997); CSX Corporation and CSX Transportation, Inc.—Control—The Indiana Rail Road Company, STB Finance Docket No. 32892, slip op. at 5 (STB served Nov. 7, 1996).

Competitive Analysis. As explained in Decision No. 2, applicants asserted in their Application that, if approved, the Transaction would promote inter- and intramodal competition by producing significant operating efficiencies and service improvements. Applicants further contended that the Transaction would not result in a substantial lessening of competition. No one has filed any comments, protests or other evidence questioning applicants' contentions. Accordingly, we find that the evidence demonstrates that the acquisition of the Acquired Lines will not result in a substantial lessening of competition, the creation of a monopoly, or a restraint of trade in freight surface transportation in any region of the United States. Therefore, we will approve the Transaction.

Labor Protection. The Board did receive some letters from individual employees expressing concerns about the effects of this transaction. Under 49 U.S.C. 11326(a), we must impose labor protective conditions on our approval of the Transaction. The appropriate conditions are those set out in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), as clarified in Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C.2d 799, 814-826 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC., 930 F.2d 511 (6th Cir. 1991). We believe those conditions are adequate to protect employees in this case.

Environmental Issues. As noted in Decision No. 2, the Board's Section of Environmental Analysis (SEA) has concluded, based on the information presented in the Application and the related filings, that this proceeding is "categorically excluded" from the need for an environmental review under the National Environmental Policy Act of 1969, see 49 CFR 1105.6(c)(2)(i), and that formal environmental review is not warranted in this case. SEA also agrees with applicants that the proposed action does not require historic review under the National Historic Preservation Act of 1966, because further approval would be required to abandon any service, and because applicants have advised the Board that there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. See 49 CFR 1105.8(b)(1). We have not received any comments disputing SEA's conclusions or expressing environmental concerns. Accordingly, we adopt SEA's conclusions.

We find:

1. The acquisition by INRD of Soo's Latta Subdivision, Main Line Trackage Rights, and Ancillary Trackage Rights will not substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States.
2. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. In STB Finance Docket No. 34783, the acquisition by INRD of Soo's Latta Subdivision, Main Line Trackage Rights, and Ancillary Trackage Rights is approved, subject to the conditions for the protection of railroad employees set out in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), as clarified in Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C.2d 799, 814-826 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. I.C.C., 930 F.2d 511 (6th Cir. 1991).

2. This decision shall be effective on May 11, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary