SERVICE DATE - LATE RELEASE AUGUST 21, 1997

SURFACE TRANSPORTATION BOARD

REPORT

STB Docket No. AB-336 (Sub-No. 6)

INDIANA HI-RAIL CORPORATION, DEBTOR--ABANDONMENT--IN PUTNAM AND VAN WERT COUNTIES, OH, AND ADAMS COUNTY, IN

Decided: August 20, 1997

On July 8, 1997, the Trustee of Indiana Hi-Rail Corporation, Debtor (IHRC) filed with the Surface Transportation Board (Board) an application under the Bankruptcy Code, 11 U.S.C. 1170(b), to abandon two segments of a line of railroad known as the St. Mary's District Line. The line segments extend: (1) from milepost TS 65.5 near Douglas, OH, to milepost TS 73.7 at Delphos, OH (the Douglas Line Segment); and (2) from milepost TS 77.5 near Landeck, OH, to milepost TS 117.8 near Craigsville, IN (the Landeck Line Segment), a total distance of 48.5 miles, located in Putnam and Van Wert Counties, OH, and Adams County, IN. Notice of the application was served and published in the Federal Register (62 FR 39602-03) on July 23, 1997. Written comments and protests concerning the proposed abandonment were due by August 7, 1997. One comment was filed by the Ohio Department of Agriculture (OHDOA). The United Transportation Union (UTU) has requested imposition of labor protective conditions. We are recommending approval of the application.

BACKGROUND

IHRC is a Class III rail carrier that operates five Norfolk Southern Railway Company (NS) branch lines, known as the Maumee Line, Bluffton Line, Connersville Line, Rochester Line, and St. Mary's District Line. In 1994, IHRC petitioned the United States Bankruptcy Court, Southern District of Indiana (bankruptcy court), for reorganization under Chapter 11 of the Bankruptcy Code. Under the plan of reorganization submitted to the bankruptcy court, IHRC proposed that it would purchase the NS lines and then resell them--the Maumee Line to the Maumee and Western Railroad, the Bluffton Line to the Wabash Central Railroad Corp., the Connersville Line to C&NC Railroad Corporation, the Rochester Line to the Fulton County Railroad, Inc., and a small 3.8-mile segment of the St. Mary's District Line to Central Soya. IHRC also proposed that it should be permitted to abandon service on the remaining two segments of the St. Mary's District Line. Notice of the plan of reorganization was given to creditors, shippers, Federal and state governmental agencies, and all other interested parties. According to IHRC, at a hearing on the proposed reorganization, the bankruptcy court issued an order approving not only IHRC's purchase and resale of the NS lines to the various third parties, but also the abandonment of service on the remaining two segments of the St. Mary's District Line at issue here.

Under 11 U.S.C. 1170, the bankruptcy court has jurisdiction over abandonments by bankrupt railroads. Section 1170(a) provides that the bankruptcy court may authorize an abandonment if it is: (1) in the best interest of the bankrupt carrier's estate, or essential for the formation of a reorganization plan; and (2) consistent with the public interest. If an abandonment would require our approval, section 1170(b) requires the trustee to file an appropriate application with the Board and authorizes the bankruptcy court to fix a time for the Board to report on the application. Our role is to advise the bankruptcy court on whether the abandonment is in the public interest.[1] By order dated June 26, 1997, the bankruptcy court directed that we respond and issue an advisory opinion on the proposed abandonment application by August 18, 1997.

PUBLIC INTEREST

[1] See H.R. Rep. 595, 95th Cong. 2d Sess. 423 (1978).

To determine whether the abandonment is in the public interest, we will use the standard for regular abandonments under 49 U.S.C. 10903 and balance the potential burden on shippers and communities against the burden on IHRC from continued operation.[2]

The record indicates that continued operation of the line segments by IHRC is not economically justified. According to IHRC, when it began operations in 1989, traffic on the St. Mary's District Line was marginal. In recent years, IHRC states, it has experienced a dramatic decline in traffic on the line, which it attributes to a number of factors including the cost of maintenance and repairs. As a bankrupt carrier, IHRC apparently lacks the resources to repair and maintain its property and has limited repairs and maintenance to curing only those specific defects noted by the Federal Railroad Administration (FRA) during routine inspections.

IHRC has not operated the Douglas Line Segment since 1992. It has operated the Landeck Line Segment in excepted status for several years,[3] and an embargo was placed on the portion of the line between Craigsville, IN, and Willshire, OH, on October 11, 1996, because conditions had deteriorated to the point where continued operation was deemed to be unsafe. According to IHRC, it was able to maintain service to customers on the Landeck Line Segment despite the embargo by rerouting traffic to Consolidated Rail Corporation's (Conrail) Fort Wayne line at Delphos, OH.[4] IHRC indicates that virtually all of the traffic that has moved on the Landeck Line Segment since the embargo notice was issued has been on the 3.8-mile segment proposed for sale to Central Soya. The only other traffic was for a customer on the Landeck Line Segment that moved small amounts of fertilizer over the Conrail line at Delphos.

In addition to Conrail, IHRC states that the shippers have alternative rail service available from the Spencerville & Elgin Railroad Company. There is also motor carrier service available via U.S. Highways 27, 30, 33, 127, and 224. Thus, IHRC submits that abandonment will not have any material effect on the movement of traffic because of the alternative transportation available to the shippers, all of whom support its application.

The only entity not supporting the application is OHDOA. While acknowledging that the costs of operating the St. Mary's District Line may be substantial, OHDOA submits that the line serves a definite need of the agricultural community of northwest Ohio. OHDOA is concerned that the reduction of transportation alternatives will have a potential negative impact on rural and community development. As an alternative to abandonment, OHDOA proposes that the line be sold.

IHRC provided detailed traffic, revenue, and cost data to justify its abandonment application.[5] IHRC's revenue data show base year (March 1, 1996, through February 28, 1997) revenues of $20,648, consisting of $17,987 from freight operations and $2,661 other revenue and income. Using the same figure for other revenue and income in the forecast year (March 1, 1997, through February 28, 1998), IHRC projects revenues of $10,011, based on $7,350 in revenue from freight operations. Its freight operations estimate for the forecast year was based on a projected 15 carloads at $490 per carload. This projection appears to be a reasonable estimate of IHRC's future traffic when compared to current levels.

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[2] See Colorado v. United States, 271 U.S. 153, 168 (1926).

[3] Excepted track is track that does not meet the Federal Railroad Administration's minimum safety standards, but over which operations may be conducted, under certain conditions. See 49 CFR Part 213.

[4] The shippers on the Landeck Line Segment are Farmer's Grain at Wilshire, Mercer Landmark at Ohio City, OH, and United Equity Elevators, at Delphos.

[5] We note that IHRC sought and was granted a waiver of some of the revenue and cost data requirements of 49 CFR 1152.22(d) in the July 23, 1997 notice of the abandonment application.

IHRC's cost data show that in the base year IHRC incurred avoidable costs of $72,246. When base year revenues of $20,648 are subtracted, IHRC incurred an avoidable loss from operations of $51,598 in the base year. In the forecast year, the cost data show avoidable costs of $42,261. When forecast year revenues of $10,011 are subtracted, IHRC will incur an avoidable loss from operations of $32,250 in the forecast year.

IHRC's rehabilitation costs for the line of $4,079,739 are based on an estimate prepared by the Ohio Department of Transportation (OHDOT) on October 10, 1993.[6] Due to the number of ties recommended for replacement in that estimate, the line will slightly exceed FRA class 1 safety standards. Our regulations, however, state that rehabilitation costs are allowable only to bring the line up to FRA class 1 safety standards. Unless there are special conditions, which are not alleged here, that necessitate rehabilitation to a higher level, additional costs are not acceptable. By reducing the number of ties to the maximum permitted under FRA class 1 standards (approximately 1,000 ties per mile, assuming all ties are currently defective), we have restated the estimated rehabilitation costs to be $3,087,489.

IHRC calculates return on value or opportunity costs[7] in the base year to be $130,648. For the forecast year, IHRC estimates return on value to be $130,525. When economic costs are considered, IHRC's losses for the base year increase to $182,246 ($51,598 + $130,648). For the forecast year, the avoidable loss from operations, including return on value, would be $162,775 ($32,250 + $130,525).

The abandonment by IHRC of the two segments of the St. Mary's District Line appears consistent with the public interest. Sufficient traffic is not available to justify continued operation or further investment in the line. The application indicates that the shippers on the line support the abandonment and will not be adversely affected. Alternative rail and motor carrier transportation options are available to them. In view of the lack of shipper opposition to the proposed abandonment and the significant losses which applicant would sustain from a continuation of operations, we conclude that the burden from the continued operation of the line outweighs any adverse consequences that loss of IHRC's rail service may have on shippers and the community, notwithstanding OHDOA's opposition.[8]

BENEFIT TO ESTATE

Abandonment of the line would benefit IHRC's estate. IHRC would no longer be obligated to provide unprofitable service or incur expenses for rehabilitation and maintenance of the line. It would be able to dispose of the line and use the proceeds in its reorganization.

LABOR PROTECTION

The court is responsible for imposing employee labor protection under section 1170(e) of the Bankruptcy Code. We note that appropriate labor protective conditions are contained in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

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[6] The OHDOT estimate is for the rehabilitation of the Douglas Branch from Delphos, OH, to Bluffton, IN, and the Spenserville Elgin from Ohio City, OH, to Elgin, OH. We cannot ascertain from the mileposts or the points whether OHDOT's estimate is limited to the track at issue here.

[7] Opportunity costs reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets.

[8] Consistent with OHDOA's alternative proposal to sell the lines, IHRC is selling the 3.8-mile portion of the Landeck Line Segment where most of the recent traffic was located.

1. We recommend that the bankruptcy court authorize IHRC to abandon the two segments of railroad described above.

2. A copy of this report will be mailed to:

The Honorable Larry L. Lesser
United States Bankruptcy Judge
United States Bankruptcy Court, Southern
District of Indiana, Indianapolis Division
Room 116
U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary