

21275 Service Date- December 20, 1996  
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33180

INDIANA & OHIO RAILWAY COMPANY--ACQUISITION EXEMPTION--  
LINES OF THE GRAND TRUNK WESTERN RAILROAD INC.

STAY

Decided: December 18, 1996

On December 6, 1996, the Indiana & Ohio Railway Company (I O R Y), a Class III rail carrier, filed a notice of exemption under 49 C F R 1150, subpart E, which applies to qualifying transactions under 49 U S.C. 10902, to acquire from the Grand Trunk Western Railroad Inc. (G T W) rail lines totaling approximately 146.1 miles between Diann, MI, and Springfield, OH. The lines are located between: (1) milepost 39.7 at Diann, MI, and milepost 107.29 at XN Station near Leipsic, OH; (2) milepost 128.3 at DT&I Junction near Lima, OH, and milepost 202.7 at Springfield, OH; and (3) the Ottawa Loop between mileposts 110.8 and 114.88, south of XN Station.

As part of the acquisition, I O R Y will be assigned G T W's overhead trackage rights totaling 107.6 miles over: (1) 20.7 miles of C S X Transportation, Inc. (C S X T) line between C S X T Milepost 155.2 at XN Station and C S X T Milepost 134.5 at DT&I Junction; (2) 3.5 miles of Indiana & Ohio Central Railroad, Inc. (I O C R) line between I O C R Milepost 129.1 at Maitland Junction and I O C R Milepost 132.6 at Cold Springs, OH; and (3) 83.4 miles of Consolidated Rail Corporation (Conrail) line between CR Milepost at Springfield and CR Milepost 36.3 119.7 at Cincinnati, OH I O R Y maintains that these trackage rights connect the three G T W rail lines, enabling it to continue providing G T W's current rail service to and from Cincinnati

I O R Y will also acquire incidental overhead trackage rights over 22.5 miles of GTW's rail line .between G T O milepost 39.7 at Diann and GTW milepost 17.2 at Flat Rock, MI, assertedly to permit a more efficient interchange between the two carriers.

I O R Y states that it projects that its annual revenues resulting from this transaction will not result in its becoming a Class 11 or Class I rail carrier. On November 22, 1996, I O R Y filed a notice

of intent and provided information required by 49 C FR 1150.45, stating that its projected first year revenues "are close to the Class II revenue threshold."

.On November 27, 1996 the United Transportation Union (UTU) filed a petition to stay and/or revoke the transaction. UTU claims that the transaction is not subject to section 10902. That provision, UTU asserts, involves the acquisition or operation of one rail line and does not embrace the acquisition of trackage rights or acquisitions of rights over lines of different carriers. This transaction, UTU maintains, should be considered under 49 U.S.C. 11323, which governs acquisitions of trackage rights and transactions involving multiple carriers and which requires the imposition of appropriate labor protection under 49 U.S.C. 11326.

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On December 6 1996, G T W I responded to UTU's petition. G T W asserts that I O R Y will acquire lines and trackage rights which

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1 G T W filed a petition for leave to intervene claiming that it will be affected by issues raised by UTU, G T W's petition to intervene will be granted.

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were originally owned and operated by Detroit, Toledo & Ironton Railroad Company (DT&I) and subsequently acquired by G T W. See Norfolk & W. R Y Co.--Control Detroit, T. & I. R. Co. 360 I.C.C. 498 (1979). G T W states that the DT&I lines have been operated as single unit for more than 20 years. G T W notes that the segments operated under trackage rights have been recognized as being integral parts of the DT&I line. Id. at 501. G T W argues that inclusion of these rights in the notice filed pursuant to section 1150.41 is proper.

G T W indicates that it reached an agreement with UTU that provides protective benefits for affected employees. Under the agreement, adversely affected UTU employees would be eligible to receive either a lump sum payment in the amount provided for in the Washington Job Protection Agreement or continuing protective arrangements specified in the agreement.

G T W maintains that all UTU employees that might be adversely affected by the sale of the DT&I line can either apply for positions with I O R Y or receive benefits under the UTU's agreement with G T W. Additionally, G T W states that it will pay any labor protection imposed by the Board. G T W asserts that, because it is obligated to pay labor protection under the agreement or any imposed labor protection, UTU employees cannot be irreparably harmed by this transaction.

In its notice of intent, I O R Y indicates that it will require so employees to start operating the DT&I line, nine more than the 71 G T W employees who assertedly will be affected by the transaction, I O R Y confirms that it has invited all current G T W employees to apply for positions on the new railroad and has positions available for them .2

## **DISCUSSION AND CONCLUSIONS**

I O R Y has followed the procedures that would apply if a Class I or Class II carrier were to be created as a result of the transaction. The procedures provide for the exemption to become effective 21 days after the notice is filed. 49 C FR 1150.45(e). Thus, the transaction is scheduled to become..effective on December 27, 1996.

To enable the Board to make an informed decision on the issues in this proceeding, the effective date of the exemption will be stayed for 30 days, until January 26, 1997, and the parties will be directed to provide us with additional evidence and argument.

UTU is directed to provide further argument in support of its claim that the transaction should be handled under section 11323 rather than section 10902. UTU is also directed to show why G T W's offer to accept imposed labor protection is not sufficient to protect employees against irreparable harm.

I O R Y is directed to provide supporting data for its claim that the projected annual revenues of the line to be acquired, together with its projected annual revenue-, would not exceed the levels that would make it a Class II carrier, I O R Y and G T W are directed to address the labor protection which should be imposed should I O R Y become a Class II carrier as a result of this transaction.

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2 In its notice of intent, I O R Y indicates that UTU represents 26 trainmen who would be adversely affected by the transaction. I O R Y further states that the remaining 45 adversely affected G T W employees in other crafts are eligible for benefits under their respective collective bargaining agreements.

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

### It is ordered:

1. G T W's petition to intervene is granted .
2. The effective date of this exemption is stayed until January 26, 1997.

3. The parties are directed to file responses by January 10, 1997. Replies are due January 17, 1997.

4. This decision is effective on December 20, 1996.

By the Board, Linda J. Morgan, Chairman,

Vernon A. Williams

Secretary