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SERVICE DATE - JANUARY 10, 1997

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33301]

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman,
R. Lawrence McCaffrey, Jr., and Harold F. Parmly--
Continuance in Control Exemption--New York & Atlantic
Railway Company

Peter A. Gilbertson, H. Terry Hearst, Bruce A.
Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly
(Applicants), noncarrier individuals, have filed a verified
notice of exemption to continue in control of New York &
Atlantic Railway Company (NYAR), upon NYAR's becoming a
Class III rail carrier.

The exemption was to become effective on December 12,
1996, and the transaction is expected to be consummated in
the first quarter of 1997.

This transaction is related to STB Finance Docket
No. 33300, New York & Atlantic Railway Company--Operation
Exemption---The Long Island Rail Road Company, wherein NYAR
seeks to acquire the freight operations of The Long Island

Rail Road Company, including the right to operate the freight business on an exclusive basis.¹

In addition to the filings mentioned in footnote 1, the Board received a number of letters from local governments, officials, and community leaders concerned with the movement of municipal solid waste (MSW) through their communities. LIRR submitted to the Board's Section of Environmental Analysis (SEA) an Environmental Assessment (EA), which was prepared under the New York State Environmental Quality Review Act by ICF Kaiser Consulting Group, and summary information drawn from its EA. The information provided by LIRR states that MSW carloads are projected to increase regardless of whether LIRR continues to conduct freight operations or the operations are transferred to NYAR.

SEA has carefully reviewed the EA and summary information submitted by LIRR. SEA has determined that the

¹ On December 31, 1996, International Brotherhood of Locomotive Engineers (IBLE) filed a petition to reject the notices of exemption filed in STB Finance Docket Nos. 33300 and 33301 or to revoke the exemptions. The petition also supports a statement by Claire Shulman, President of the Borough of Queens (Shulman), filed December 11, 1996, which IBLE characterizes as a petition for rejection or revocation. By decision served on December 20, 1996, NYAR was granted an extension until January 10, 1997, for its reply to Shulman. The Shulman and IBLE filings, as well as any replies, will be considered by the entire Board in a separate decision.

information satisfies the Board's obligations under the National Environmental Policy Act and provides the sufficient analysis which would normally be prepared by SEA in railroad operations that exceed the Board's thresholds at 49 CFR 1105.7(e)(4)(5). Therefore, the EA and summary information will be adopted as the Board's own with a finding that there will be no significant environmental impacts associated with the proposed transaction.

Applicants own and control two existing Class III common carriers by rail operating in three states: Chicago SouthShore & South Bend Railroad Co., operating in Northern Illinois and Northern Indiana; and Louisville & Indiana Railroad Company, operating in Southern Indiana and Northern Kentucky.

Applicants state that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

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, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33301, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Paul C. Oakley, Esq., Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005-4797.

Decided: January 7, 1997.

STB Finance Docket No. 33301

By the Board, David M. Konschnik, Director, Office of
Proceedings.

Vernon A. Williams
Secretary