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SEC

SERVICE DATE - NOVEMBER 5, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB FINANCE DOCKET NO. 33491

INDIANA HI-RAIL CORPORATION TRUSTEE'S
AMENDED PLAN OF REORGANIZATION
AND DISCLOSURE STATEMENT

Decided: November 4, 1997

On October 3, 1997, petitioner Indiana Hi-Rail Corporation (IHRC) filed a "Trustee's Amended Plan of Reorganization and Disclosure Statement" (the Plan and the Statement, respectively) with the Surface Transportation Board, notifying the Board of a number of transactions involving the Trustee in Bankruptcy of the IHRC. Attached to the filing was an order, dated September 5, 1997, of the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, requesting the Board to issue an advisory opinion on the Trustee's Plan of Reorganization by December 5, 1997. The filing recited that the court's September 5, 1997 order was not transmitted to the Board until October 3, 1997, because the court did not transmit the order to IHRC until the end of September.

By letter to Special Counsel to the Trustee dated October 7, 1997, the Director of the Office of Proceeding of the Board noted that the Statement, at pages 16-17, and the Plan, at pages 6-7, recite a list of 14 transactions which IHRC states have been or will be undertaken to allow the Trustee to carry out the Plan. IHRC, in its October 3, 1997 filing recited that "the bulk" of the 14 transactions had already been approved by the Board or by its predecessor, the Interstate Commerce Commission (ICC). The filing also stated that the remainder of the transactions would be the subject of a contemporaneous filing. The Director noted that the October 3, 1997 filing failed to identify any of the 14 transactions by docket number or any other description and that, until IHRC did so, the Board would be unable to comply with the Court's order.

IHRC responded to the Director's letter by letter dated October 9, 1997. But, as the Director noted in a subsequent letter dated October 17, 1997, IHRC's October 9, 1997 letter failed to identify the 14 transactions as requested. The Director reiterated that, without the information, the Board would be unable to commence the process that would enable it to comply with the Court's order seeking an advisory opinion.

IHRC submitted a filing dated October 15, 1997, which was received by the Board's staff on October 17, 1997, after the Director transmitted his letter of the same date. IHRC's October 17, 1997 filing includes a chart that could be used by Board staff to identify some of the 14 transactions listed in the Statement and Plan. But a review of the filing indicates that the chart contains inaccuracies.

What appears to be the most serious discrepancy is found on the first item on the chart described as "IHRC's Discontinuance of IHRC Argos operating trackage rights." This listing evidently relates to the first listing on the IHRC Statement and Plan, which reads:

"1) IHRC's discontinuance of the IHRC operating trackage rights, between mileposts I 74.2 and I 108.6, permitting NW's abandonment between I-58.5 and I-95.6, and IHRC's discontinuance of the lease between mileposts TS-144.2 and TS-152.22, which previously expired by its terms on May 3, 1993."

The IHRC's chart seems designed to convey the impression that the Board has already taken action with respect to IHRC's proposed discontinuance. The Board action authorizing the discontinuance is stated to be "AB-289 and AB-290" by "Order entered April 26, 1996." A Board decision dated April 26, 1996, and served on May 14, 1996, in STB Docket No AB-289 (Sub-No. 3X) and STB Docket No. 290 (Sub No. 168X), authorized the Norfolk and Western Railroad to abandon its line between Peru, IN (milepost I 74.2) and Rochester, IN (milepost I-95.6), but did not authorize discontinuance of any track by IHRC; nor does it authorize any action by IHRC at all. Footnote number 4 in the order noted that IHRC "has trackage rights over the 21.4-mile segment of this line between Peru (milepost I-74.2) and Rochester" and noted that the petitioners stated that the line over which IHRC has trackage rights would not be salvaged until IHRC received authority from the U.S. Bankruptcy Court to discontinue those rights. The order recited that the Board advises the court whether the abandonment or discontinuance is in the public interest. But nothing in the order recited that such advice had been requested, that the Board had provided it, or that the court had acted to permit the discontinuance. The cited order simply does not reflect the description of the Board's action provided by IHRC. Moreover, neither that order nor any proceeding cited by IHRC seems to shed any light on a leased line between mileposts TS-144.2 and TS-152.22.

The Board staff has twice corresponded with IHRC, pointing out that IHRC submissions were inadequate to permit the Board to comply with the September 5, 1997 order of the Bankruptcy Court. For whatever reason IHRC did not transmit the Court's order until a month after it had been issued. Another month has passed in fruitless attempts by the Board staff to elicit full and complete information from IHRC that would enable the Board to comply with the Court's order. As noted, the information that has been provided is incomplete and erroneous. Only a month remains before the deadline set by the Court to receive the Board's advisory opinion.

The Board has processed 6 notices of exemption that are related to the Trustee's Amended Plan of Reorganization (STB Finance Docket Nos. 33475, 33476, 33477, 33478, and 33479, which were filed with the Board on October 8, 1997, and STB Finance Docket No. 33496, which was filed with the Board on October 17, 1997). Public notice of all of the exemptions was given by the Board's publication of each in the Federal Register on October 31, 1997. Protests against such notices are typically filed in the form of petitions to revoke the exemptions. These may be filed at any time, but are often filed between 20 and 30 days after a notice is published or later. Thus, the Board might not even receive, let alone have time to consider, any such petitions before the deadline set by the court. The Board cannot advise on the public interest of transactions that are

pending before it until the procedures established for public notice and comments and reasoned decisionmaking have been completed.

For these reasons the Board is unable to process the October 3, 1997 petition filed by IHRC. The filing must therefore be rejected as untimely and incomplete.

It is ordered:

1. The October 3, 1997 filing of IHRC is rejected.
2. This proceeding is discontinued.
3. This decision is effective on its service date.
4. A copy of this decision will be mailed to:

The Honorable Larry Lessen
Judge, U.S. Bankruptcy Court
for the Central District of Indiana
U.S. Courthouse, Room 235
600 East Monroe Street
Springfield, IL 62705

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

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By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary