

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33350

SOO LINE RAILROAD COMPANY—PETITION FOR DECLARATORY ORDER

Decided: July 11, 1997

In a decision served June 23, 1997, a declaratory order proceeding was instituted to determine whether Soo Line Railroad Company's (Soo) acquisition of a 33⅓% ownership interest in I&M Rail Link, LLC (I&M) requires approval under 49 U.S.C. 11323, *et seq.* The decision provided for reply comments to be due by July 13, 1997, and Soo's rebuttal comments to be due by July 24, 1997. The decision indicated that the declaratory order proceeding would address issues on which the Board had deferred ruling in *I&M Rail Link, LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway*, STB Finance Docket No. 33326 (STB served Apr. 2, 1997) (*I&M Acquisition*).

On June 30, 1997, the City of Ottumwa, Patrick C. Hendricks and Joseph C. Szabo¹ (jointly, respondents) filed an appeal to the June 23 decision. Respondents contend that the notice of the proceeding should be published in the *Federal Register* so that all interested persons could participate and provide evidence. Respondents assert further that the time period for filing replies does not permit discovery. They further suggest that Soo should have filed an application for authority under 49 U.S.C. 11323 to acquire control of I&M along with a motion to dismiss.

On July 7, 1997, Soo replied that interested parties have been afforded more than ample opportunity to participate in this proceeding. Soo indicates that its petition had been served on all parties in *I&M Acquisition* and related proceedings on May 29, 1997—46 days before reply comments are due in this proceeding. Soo further maintains that it and the respondents had already submitted evidence and argument on the issue of control in *I&M Acquisition*. Soo contends further that there is no merit to respondents' argument that the procedural schedule deprives them of discovery, noting that respondents already have obtained full discovery on this issue in *I&M Acquisition* and have not requested further discovery. Soo also rejects respondents' suggestion that it file an application under 49 U.S.C. 11323 and contends that it has no intention to control I&M.

Soo asserts that there is no reason to delay this proceeding by publishing notice in the *Federal Register*. It states that respondents' assertions that there may be interested persons who are uninformed of this proceeding are implausible, given the extensive proceedings and publicity in *I&M Acquisition*. Soo contends that those parties interested in this proceeding have received actual notice of this proceeding. Soo maintains that the issue of whether it controls I&M is largely a legal matter, and facts bearing on the issue are within the possession of the parties to this proceeding and *I&M Acquisition*.

DISCUSSION AND CONCLUSIONS

We will deny the appeal. Under 49 CFR 1115.9, an interlocutory appeal will be granted only if the ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party. Respondents have not shown that review of the June 23 decision is warranted under these standards.

We do not agree with respondents that notice of the declaratory order proceeding needs to be published in the *Federal Register*. All parties of interest in *I&M Acquisition* were served with copies of Soo's petition. In addition, the parties in *I&M Acquisition* were served with a copy of the

¹ Mr. Hendricks and Mr. Szabo are the Iowa Legislative Director and the Illinois Legislative Director, respectively, for the United Transportation Union.

June 23 decision. In these circumstances, *Federal Register* notice is not necessary. With respect to discovery, we note that the parties have already engaged in discovery on the issue of Soo's alleged control of I&M in *I&M Acquisition*, and respondents have not justified any need for additional time to conduct further discovery as to the issue of control or for further discovery itself.

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

It is ordered:

1. Respondents' interlocutory appeal is denied.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary