

SERVICE DATE - APRIL 15, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34549

ILLINOIS RAILNET, INC.–ACQUISITION AND OPERATION EXEMPTION–
BNSF RAILWAY COMPANY

Decided: April 14, 2005

By notice of exemption filed on September 27, 2004, under 49 CFR 1150.41, Illinois Railnet, Inc. (Illinois) sought to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF), and to operate two lines of railroad, totaling approximately 24.7 miles, in Ogle, La Salle, and Bureau Counties, IL, as follows: (1) a portion of BNSF's Oregon Subdivision between milepost 98.75 at Oregon, and milepost 105.78 at Mt. Morris, and (2) a portion of BNSF's La Salle Subdivision between milepost 25.7 at La Salle, and milepost 43.36 at Zearing.¹ The transaction was scheduled to be consummated on October 8, 2004. Notice of the filing was served and published in the Federal Register on October 18, 2004 (69 FR 61434).

On January 26, 2005, the United Transportation Union (UTU) filed a petition to revoke the exemption, questioning whether this was an "arm's length" transaction and whether it served the public convenience and necessity and the rail transportation policy, particularly concerning rail employees. On February 10, 2005, Illinois filed a reply to UTU's petition, asserting that UTU had failed to show any basis for a grant of the requested relief.

In its petition to revoke, UTU also stated that it intended to engage in discovery. UTU subsequently indicated that Illinois supplied it with various documents in response to its discovery requests, including a redacted version of the sale agreement between Illinois and BNSF. According to Illinois, the redacted agreement excluded the purchase price and "other

¹ This transaction is related to STB Finance Docket No. 34559, Illinois Railnet, Inc.–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, wherein BNSF granted Illinois: (1) limited local trackage rights for the purpose of servicing customers on BNSF in and around Oregon, and (2) limited overhead trackage rights for the purpose of interchanging traffic between BNSF and Illinois and accommodating light power moving over BNSF's lines between milepost 98.49 near Oregon, and milepost 86.57 near Flag Center, IL, and between milepost 43.36 near Zearing, and milepost 40.73 near Montgomery, IL. Notice of that filing was served and published in the Federal Register on October 18, 2004 at 69 FR 61434.

commercial terms” of the transaction. UTU says it subsequently requested the unredacted version of the document on several occasions, but that Illinois has refused to answer whether it will supply the document.

On March 9, 2005, UTU filed a motion to compel Illinois to provide an unredacted copy of the sale agreement. UTU also sought an extension of time to file its supplemental petition to revoke. UTU’s extension request was granted by decision served March 11, 2005. As set out in that decision, the deadline for the submission of a supplemental petition to revoke by UTU and the due date for Illinois’ reply were extended until the Board ruled on the motion to compel and established a procedural schedule for the submission of statements.

In its motion to compel, UTU asks the Board to direct Illinois to provide it with an unredacted version of the line sale agreement. UTU states that it has signed Illinois’ highly confidential agreement and that there is no reason why it should not receive the requested document. On March 29, 2005, Illinois filed a reply in opposition to the motion to compel, asserting that the sensitive, commercial information sought by UTU is of no relevance to UTU’s concerns here.

Under 49 CFR 1114.21(a), a party may obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding,” or if the information sought “appears reasonably calculated to lead to the discovery of admissible evidence.” Because the information sought by UTU may be relevant to matters in dispute in this proceeding, the motion to compel will be granted. The information is readily available from the carrier, and the production of the material should assure that UTU has adequate information available to pursue its revocation request.

UTU indicates that it has already signed a confidentiality agreement in this case. However, should either party believe that a protective order is also necessary, it may request the Board to issue one.

The March 11, 2005 decision indicated that, once the Board rendered a decision on UTU’s motion to compel, the Board would establish a procedural schedule for the submission of supplemental petitions to revoke and replies to the supplemental petitions. That ruling has been made here and, accordingly, the following procedural schedule will be established for this matter. By April 22, 2005, Illinois must provide UTU with an unredacted version of the line sale agreement. UTU’s supplemental petition to revoke will be due by May 9, 2005. Illinois’ reply will be due by May 23, 2005.

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

It is ordered:

1. UTU's motion to compel is granted.
2. Illinois is directed to produce the unredacted document requested by UTU by April 22, 2005.
3. UTU's supplemental petition to revoke is due by May 9, 2005.
4. Illinois' reply to the supplemental petition to revoke is due by May 23, 2005.
5. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary