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SERVICE DATE - DECEMBER 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-317 (Sub-No. 5X)

INDIANA HARBOR BELT RAILROAD COMPANY--ABANDONMENT AND
DISCONTINUANCE OF TRackage RIGHTS
EXEMPTION--IN COOK COUNTY, IL AND LAKE COUNTY, IN

Decided: December 7, 1998

By petition filed August 25, 1998,¹ Indiana Harbor Belt Railroad Company (IHB) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the East Chicago Belt Branch, extending from railroad Valuation Station (-0+17) beginning at a point 168 feet west of the Illinois/Indiana State line in Burnham, IL, near Brainard Avenue, extending generally eastward through Hammond, IN, to and including a point 100 feet east of the east edge of Indianapolis Boulevard in East Chicago, IN, at railroad Valuation Station (140 +00), a distance of 2.3 miles in Cook County, IL, and Lake County, IN. The line includes approximately 0.4-mile of track in Hammond, in the vicinity of Sohl Avenue and Hohman Avenue, owned by the Elgin, Joliet and Eastern Railway Company (EJ&E), over which IHB seeks to discontinue trackage rights. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to standard labor protective conditions.

BACKGROUND

IHB states that the active part of the railroad extends from Burnham to a point west of Calumet Avenue in Hammond. Petitioner also indicates that this portion of the line includes the trackage rights over the segment of track owned by EJ&E. IHB adds that, from a point west of Calumet Avenue in Hammond to a point 100 feet east of Indianapolis Boulevard in East Chicago, the line has been out of service for many years, and that no trains operate over this 1.5-mile segment.

Petitioner states that the only shipper on the line, George C. Meyer Company (Meyer), has shipped at most a few carloads of freight per week. IHB further states that Meyer has no objection to the abandonment.² IHB contends that Meyer's transportation needs will be met by service provided by Norfolk Southern Railway Company at an alternate facility owned by the shipper. Petitioner avers that it has operated this line at a loss and will continue to do so if abandonment is

¹ Notice of the filing was served and published in the Federal Register on September 14, 1998 (63 FR 49154).

² A letter from the shipper is attached to the petition.

not permitted. IHB contends that it should not be burdened with the high costs of maintaining a line of railroad that is clearly being used to provide minimal service. Finally, IHB avers that the valuable rail and other rail materials on the line can be more economically used by it at other locations on its system.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving IHB of the costs of owning and maintaining the line and allowing it to apply its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Meyer, the only shipper on the line, does not object to abandonment and has alternative transportation available to it.³ Nevertheless, to ensure that the shipper is informed of our action, we will require IHB to serve a copy of this decision on Meyer within 5 days of the service date of this decision and to certify to us that it has done so.

UTU requests imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

IHB has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA

³ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

served an environmental assessment (EA) on October 29, 1998, in which it recommended that no environmental conditions be imposed on any decision granting abandonment authority.

No comments were filed in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment and discontinuance, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA has indicated that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.⁴

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the above-described abandonment and discontinuance of trackage rights, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. IHB is directed to serve a copy of this decision on George C. Meyer Company within 5 days of the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by December 21, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

5. Provided no OFA has been received, this exemption will be effective on January 10, 1999. Petitions to stay must be filed by December 28, 1998, and petitions to reopen must be filed by January 5, 1999.

⁴ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by October 5, 1998.

⁵ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), IHB shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IHB's filing of a notice of consummation by December 11, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary