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SERVICE DATE - JUNE 26, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33585

RAILTEX, INC.--CONTROL EXEMPTION--CENTRAL PROPERTIES, INC.,
THE CENTRAL RAILROAD COMPANY OF INDIANAPOLIS, AND
THE CENTRAL RAILROAD COMPANY OF INDIANA

Decided: June 22, 1998

By petition filed April 29, 1998, RailTex, Inc.(RailTex), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for its acquisition of control of The Central Railroad Company of Indianapolis (CERA) and The Central Railroad Company of Indiana (CIND) through the purchase of all of the stock of their noncarrier parent holding company, Central Properties, Inc. (CPI).¹

PRELIMINARY MATTER

In a motion filed May 15, 1998, Norfolk and Western Railway Company (N&W), which identifies itself as the lessor of certain property operated by CERA, interposed a number of objections to the petition. By letter filed June 2, 1998, N&W withdrew its motion, indicating it had reached a satisfactory agreement with RailTex.

BACKGROUND

RailTex is a noncarrier that currently controls 20 Class III railroads operating in 22 states. As most pertinent here, RailTex's subsidiary Indiana Southern Railroad, Inc. (ISRR) operates over approximately 176 miles of rail lines between Indianapolis and Evansville, IN, in southwestern Indiana, and RailTex's subsidiary Indiana & Ohio Railway Company (IORY) operates over

¹ In a decision in Kokomo Grain Co., Inc.--Control Exemption--The Central Railroad Company of Indianapolis and The Central Railroad Company of Indiana, STB Finance Docket No. 33546 (STB served Apr. 29, 1998), the Board exempted from the statutory prior approval requirements the acquisition of control by Kokomo Grain Co., Inc. (KGC) of CERA and CIND through the purchase of a controlling stock interest in CPI. The Board has not been informed as to whether KGC consummated its proposed acquisition, and RailTex does not name the parties from whom it proposes to acquire CPI's stock. These facts are no bar to a grant of an exemption here as the Board's exemptions are permissive and do not establish legal rights or obligations to acquire stock.

approximately 475 miles of rail lines stretching from Flat Rock, MI, to Cincinnati, OH, primarily serving points in western Ohio.

CERA, a Class III railroad, operates over approximately 85 miles of rail lines in north central Indiana. It leases about 71 miles of line from Norfolk Southern Railway Company (NS), and it operates a 13-mile line owned by KGC. CERA handled 11,550 carloads of various commodities in 1996 and 11,200 carloads in 1997. Approximately 83% of its traffic originates or terminates on its lines and is interchanged with other carriers, 8% of its traffic is overhead, and 9% is local.

CIND, also a Class III railroad, owns and operates an approximately 81-mile line between Shelbyville, IN, and Cincinnati. CIND also has overhead trackage rights over a line owned by Consolidated Rail Corporation between Shelbyville and Frankfort, IN. CIND handled some 7,700 carloads of various commodities in 1996 and 6,600 carloads in 1997. Approximately 76% of CIND's traffic originates or terminates on its lines, 16% is overhead, and 8% is local. Among the carriers with which CIND interchanges is its sister railroad CERA, which interchanges traffic with CIND at Frankfort.

On April 10, 1997, CIND embargoed a 16-mile segment of its line. CIND is not currently operating over the 58-mile portion of its track known as the Shelbyville Line, between milepost 23.0 at Thatcher Station and milepost 81.0 at Shelbyville.²

CIND connects and interchanges traffic with IORY's Brookville Branch at Valley Junction, OH. CIND also has rights to interchange traffic with IORY in Cincinnati by intermediate switch via NS. ISRR has the potential to connect with CIND at Indianapolis and currently is seeking the ability to do so in a pending proceeding.³ None of RailTex's subsidiaries connects with CERA.

² On April 2, 1997, certain parties, including shippers and government entities, filed a complaint alleging, inter alia, that CIND had unlawfully abandoned the embargoed segment. The complaint is pending before the Board in STB Finance Docket No. 33386, Decatur County Commissioners, et al. v. Central Railroad Company of Indiana.

On January 14, 1998, CIND filed a petition for an exemption to abandon its Shelbyville Line. The Board recently denied that petition in Central Railroad Company of Indiana--Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998).

³ STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc., and Consolidated Rail Corporation.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over this transaction [49 U.S.C. 10101(2)]. Also, by permitting integration of the operations of CIND and CERA with those of IORY and possibly ISRR, an exemption will enable RailTex to improve service and reduce costs, which will redound to the benefit of shippers and receivers in the four carriers' service areas. This will promote the policy goals of ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)], and of fostering sound economic conditions in transportation, ensuring effective coordination among carriers, and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be affected adversely.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. CIND and CERA have only one customer (Consolidated Grain and Barge Company) that could be directly served by a carrier now controlled by RailTex (IORY), and that shipper has informed RailTex that it supports the proposed transaction. Further, the proposed transaction involves the common control of carriers that have only one direct connection and do not compete with each other. Rather than resulting in the possibility for market abuses, then, the proposed transaction will improve the competitive options for shippers served by CIND and CERA by providing them extended single-line hauls and more interchange opportunities; and the proposed transaction similarly may benefit the shippers of IORY and possibly those of ISRR. Finally, the transaction will enable RailTex to coordinate the operations of CIND and CERA with those of IORY and possibly ISRR, resulting in operating efficiencies and economics that will benefit shippers served by all four carriers.

Because we have found that regulation is not needed to protect shippers from the abuse of market power, we need not decide whether the transaction is limited in scope. We note, however, that CIND's operations are concentrated in the limited geographical area of southeastern Indiana and the Cincinnati area of Ohio, and CERA's are concentrated in the limited area of north central Indiana.

To ensure that CIND's and CERA's shippers are informed of our action, we will require RailTex to serve a copy of this decision on them within 5 days of the service date of this decision and to certify to us that it has done so.

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, we may not, under the statute, impose labor protective conditions.

This control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

This action 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. 11323-25 the acquisition of control by RailTex of CPI, CERA, and CIND.
2. RailTex shall serve a copy of this decision on CERA's and CIND's shippers within 5 days of the service date and certify to the Board that it has done so.
3. Notice will be published in the Federal Register on June 26, 1998.
4. This exemption will be effective on July 26, 1998. Petitions to stay must be filed by July 13, 1998. Petitions to reopen must be filed by July 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary