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SERVICE DATE - NOVEMBER 17, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33300

NEW YORK & ATLANTIC RAILWAY COMPANY--OPERATION EXEMPTION--
THE LONG ISLAND RAIL ROAD COMPANY

STB Finance Docket No. 33301

PETER A. GILBERTSON, H. TERRY HEARST, BRUCE A. LIEBERMAN,
R. LAWRENCE MCCAFFREY, JR., AND HAROLD F. PARMLY--CONTINUANCE IN
CONTROL EXEMPTION--NEW YORK & ATLANTIC RAILWAY COMPANY

Decided: October 31, 1997

BACKGROUND

On December 5, 1996, notices of exemption were filed in the above-captioned matters by the New York & Atlantic Railway Company (NYAR) to cover its acquisition of the freight operations of The Long Island Rail Road Company (LIRR) and by Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly to cover their continuance in control of NYAR upon NYAR's becoming a rail carrier. Through the proposed transaction between NYAR and LIRR, NYAR would acquire the right to operate the rail freight business on an exclusive basis, and conduct other rail freight operations, on approximately 268.6 route miles owned by LIRR in the State of New York.

On December 11, 1996, a letter in opposition¹ to the notices of exemption was filed by Claire Shulman, President of the Borough of Queens, City of New York (Shulman).² By decision

¹ By letter filed with the Board on January 23, 1997, Claire Shulman clarified her intent that her filing be treated as a formal petition to reject or revoke the notices of exemption.

² In addition to the Shulman letter, the Board received letters from the following local governments, officials, and community leaders who were concerned with the movement of municipal solid waste (MSW) through their communities: Thomas V. Ognibene, City of New York Council Minority Leader, Council Member District 30; George Delis, District Manager, Community Board #1, Borough of Queens; Serphin R. Maltese, New York State Senator, Queens County; Edward T. Coyne, President, Woodside Community Council; Richard Italiano,

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served on December 20, 1996, NYAR was granted an extension until January 10, 1997, to file a reply to Shulman's letter in opposition. On December 31, 1996, the International Brotherhood of Locomotive Engineers (IBLE) filed a petition to reject or to revoke the notices of exemption. Notices of the exemptions were served on January 10, 1997, and were published in the *Federal Register* on the same date at 62 FR 1487 and 1488.³

Because of the initial environmental concerns raised in the Shulman letter in opposition, the Board's Section of Environmental Analysis (SEA) contacted LIRR's attorney, Mr. Charles A. Patrizia. Mr. Patrizia, on behalf of LIRR, submitted an environmental assessment (EA), which was prepared under the New York State Environmental Quality Review Act by LIRR with the assistance of ICF Kaiser Consulting Group, as well as summary information drawn from the EA. As noted in the Board's decision of January 10, 1997, SEA carefully reviewed the EA and summary information submitted by LIRR. SEA determined that the information satisfied the Board's obligations under the National Environmental Policy Act and provided the sufficient analysis that would normally be prepared by SEA in railroad operations that exceed the Board's thresholds at 49 CFR 1105.7(e)(4) and (5). The EA and summary information were adopted as the Board's own with a finding that there were no significant environmental impacts associated with the proposed transaction.

On January 10, 1997, LIRR and NYAR filed separate replies to the Shulman letter and the IBLE petition. Petitions to reopen, reconsider and/or revoke also were filed by the Village of Garden City (Garden City), on January 21, 1997, and the Incorporated Village of Floral Park (Floral Park), on January 31, 1997. NYAR replied in opposition to the Garden City petition on January 31, 1997.

By letter filed on April 1, 1997, Shulman informed the Board that numerous discussions had been held with the LIRR, the NYAR, and other elected officials in Queens County, that resolution of the issues raised in her petition had been reached, and that an agreement was executed on March 7, 1997, by her office, the LIRR and the NYAR, and was approved by the Metropolitan Transportation Authority (MTA) on March 20, 1997. Based on the commitments in that agreement, Shulman withdrew her petition to reject or revoke the notices of exemption.

By letter filed on April 30, 1997, Garden City similarly informed the Board that numerous discussions had been held with the LIRR, the NYAR, and other elected officials in Nassau County,

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Chairperson, Community Board No. 4Q; and Karen Koslowitz, Council Member, 29th District, Queens. On December 16, 1996, the United Transportation Union filed a protest to the notices of exemption.

³ The exemptions had become effective on December 12, 1996, and were expected to be consummated in the first quarter of 1997. The notices indicated that the Shulman and IBLE filings, as well as any replies, would be considered by the entire Board in a separate decision.

that resolution of the issues raised in its petition had been reached, and that an agreement was executed on February 28, 1997, by Garden City, the LIRR and the NYAR (Garden City Agreement), and was approved by the MTA on March 20, 1997. Based on the commitments in that agreement, Garden City withdrew its petition to reject or revoke the notices of exemption.

By letter filed on May 9, 1997, NYAR supplemented the record to note that it initially will conduct no operations on two of the rail segments, totaling approximately 7.3 miles--the Central Extension (milepost 19.1 to milepost 21.2) and the Hempstead Branch (milepost 13.3 to milepost 18.7)--pending the completion of additional environmental review. Upon completion of the environmental review, LIRR will transfer the freight operations on these segments to NYAR unless the adverse impact on the affected communities, if any, identified in the environmental review cannot be appropriately mitigated. NYAR estimates that the review could take approximately 9 months to complete. In the interim, LIRR will continue to provide freight service on these segments. If freight service on the two segments is transferred to NYAR, NYAR states that it will provide advance notification of the date on which it will initiate service.

The Floral Park⁴ and IBLE petitions remain at issue and will be addressed in this decision. Floral Park maintains that the exemptions should be revoked as they are contrary to the public health and safety. IBLE maintains that the exemptions should be rejected, arguing that they were void *ab initio* as the notices allegedly contained false and misleading information or that they should be revoked, arguing that they violate the national transportation policy set forth in 49 U.S.C. 10101 and would be contrary to the public interest.

DISCUSSION AND CONCLUSIONS

Rejection of the Notice of Exemption in STB Finance Docket No. 33300. As grounds for rejection, IBLE maintains that the notice in STB Finance Docket No. 33300 contains false or misleading information. IBLE states that the notice fails to disclose a substantial increase in traffic, particularly municipal solid waste (MSW), that could have an impact on the health and environment of railroad employees.

NYAR's notice is in full compliance with our regulations. There is no requirement under 49 CFR 1150, Subpart D—Exempt Transactions Under 49 U.S.C. 10901, that, in order to qualify for an exemption, an applicant must disclose any projected increase in traffic. As noted in NYAR's reply, at p. 4, the transaction was designed merely to effect a change in the entity conducting freight

⁴ As noted in the Garden City agreement, at p. 2, Garden City was to be the coordinator for the other villages on the Central Extension and the Hempstead Branch and was to request that the other villages (one of which was Floral Park) withdraw their revocation requests. While it is not clear that Floral Park remains interested in pursuing its opposition, it has not withdrawn its petition, and thus we will proceed on the record before us.

operations. Through the transaction, NYAR would take over the freight service formerly provided by LIRR, with no significant operational changes contemplated.

IBLE states that the notice is misleading due to NYAR's alleged failure to fully disclose environmental information by not providing LIRR's environmental analysis as part of its filing of the notice. Environmental assessments may be required in connection with applications filed under 49 U.S.C. 10901. *See* 49 CFR 1105.6(b)(4). But a transaction of this type may be exempt from environmental reporting requirements if it does not result in significant changes in carrier operations that would exceed any of the environmental thresholds in 49 CFR 1105.7(e)(4) or (5). NYAR's verified notice certified that the operations would not result in changes in carrier operations that exceed the environmental thresholds and, therefore, NYAR was not required to file environmental documentation. NYAR was under no obligation to provide LIRR's environmental analysis with its notice. As noted above, LIRR's EA and summary information were provided to the Board at the request of SEA. The EA and summary information were adopted as the Board's own with a finding that there were no significant environmental impacts associated with the proposed transaction.

Revocation of the Exemption of STB Finance Docket No. 33300. Under 49 U.S.C. 10502(d), the Board may revoke an exemption when it finds that regulation is needed to carry out the rail transportation policy set forth at 49 U.S.C. 10101. The party seeking revocation has the burden of proving that regulation of the transaction is necessary.

Floral Park maintains that the exemption in STB Finance Docket No. 33300 should be revoked because the EA presented on behalf of the LIRR was fatally flawed in the assumptions presented in that it presented significantly higher freight operations than actually existed in order to ensure that a comparison to projected use would show little impact on the communities adjoining the railroad. Floral Park also maintains that the transportation of hazardous waste, municipal solid waste and propane is a direct threat to the residents of the community.

IBLE argues that the exemption in STB Finance Docket No. 33300 should be revoked as it would be detrimental to the public health and safety [49 U.S.C. 10101(8)] and to the health and safety of rail employees [49 U.S.C. 10101(11)], as the change in operators would allow for the transportation of MSW.

As noted, the Board previously considered the concerns raised as to environmental implications of the exemption, and found no significant impact. In addition, the health, safety, and environmental issues and concerns raised in the petitions of Shulman and Garden City have been resolved. As far as we can tell, Floral Park's concerns are similar to those raised in the Shulman and Garden City petitions. If that is so, when those concerns were resolved by the various agreements between the communities and NYAR and LIRR, Floral Park's concerns should also have been alleviated. In any event, Floral Park has not demonstrated through evidence or argument that there is any basis for revocation of the exemption. Similarly, IBLE has not supported its claims that either public health and safety or employee health and safety would be adversely affected by the transactions.

We find no merit to the arguments and will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33300.

Rejection of the Notice of Exemption in STB Finance Docket No. 33301. Although the IBLE petition requests that we reject the notice in STB Finance Docket No. 33301 (continuance in control transaction), the pleading fails to supply grounds for rejection or to address rejection in any way.

Revocation of the Exemption of STB Finance Docket No. 33301. IBLE contends that the exemption in STB Finance Docket No. 33301 should be revoked for failure of Peter A. Gilbertson, *et al.* (Gilbertson) to fully disclose their interest and involvement in other rail entities. IBLE maintains that Gilbertson is affiliated through Anacostia & Pacific Co., Inc. (APCI), with Rail Logistic Service Co. (RLS),⁵ which IBLE alleges operates the rail service for Port of Long Beach, CA. IBLE asserts that Port of New York is competitive with Pacific Coast Ports on containerized traffic and that NYAR's acquisition of exclusive freight rights is anticompetitive.

Gilbertson properly invoked the class exemption, which provides an exemption from the requirements of section 11323 for the proposed continuance in control.⁶ Under section 11324(d), the Board shall approve an application unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. The Board's predecessor, the Interstate Commerce Commission, expanded its class exemption at 49 CFR 1180.2(d)(2) to include the continuance in control of a nonconnecting carrier. It found that regulation of continuance of control transactions was not necessary to carry out the national rail transportation policy and stated: "If anything, the exemption should assist in stimulating competition . . ." *Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier*, 2 I.C.C.2d 677, 680 (1986).

IBLE has failed to provide any relevant evidence beyond a generalized statement of possible anticompetitive effects, and thus has failed to establish that the continuance in control transaction will have any adverse impact on competition, let alone a substantial adverse impact on competition.

⁵ NYAR's reply, at p. 11, notes that APCI is a merchant banking concern that facilitates financial arrangements, provides industry expertise, structuring advice and consulting to investors in the railroad industry. RLS is a service company that provides on-site logistical support at the Port of Long Beach, CA, including, for example, communicating with dispatchers (but not dispatching), facilitating train movements through the port complex, and similar functions. NYAR further notes that neither APCI nor RLS is, operates, or controls a railroad.

⁶ Gilbertson's verified notice of exemption met the requirements of 49 CFR 1180.4(g) by providing all of the information required in section 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii).

Although Gilbertson's interests may provide some services on both the east and west coast, they are not a significant factor in either. IBLE has not otherwise shown that regulation is needed to carry out the rail transportation policy.

Floral Park has similarly failed to provide any evidence or grounds to support revocation of the exemption and has failed to demonstrate that regulation of the transaction is necessary.

Accordingly, we will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33301.

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

It is ordered,

1. The Shulman and Garden City petitions to reject or revoke are dismissed
2. The Floral Park petition to revoke is denied.
3. The IBLE petition to reject or revoke is denied.
4. This decision is effective 30 days from date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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DISCUSSION AND CONCLUSIONS

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As noted, the Board previously considered the concerns raised as to environmental implications of the exemption, and found no significant impact. In addition, the health, safety, and environmental issues and concerns raised in the petitions of Shulman and Garden City have been resolved. As far as we can tell, Floral Park's concerns are similar to those raised in the Shulman and Garden City petitions. If that is so, when those concerns were resolved by the various agreements between the communities and NYAR and LIRR, Floral Park's concerns should also have been alleviated. In any event, Floral Park has not demonstrated through evidence or argument that there is any basis for revocation of the exemption. Similarly, IBLE has not supported its claims that either public health and safety or employee health and safety would be adversely affected by the transactions.

We find no merit to the arguments and will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33300.

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Gilbertson properly invoked the class exemption, which provides an exemption from the requirements of section 11323 for the proposed continuance in control.⁶ Under section 11324(d), the Board shall approve an application unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. The Board's predecessor, the Interstate Commerce Commission, expanded its class exemption at 49 CFR 1180.2(d)(2) to include the continuance in control of a nonconnecting carrier. It found that regulation of continuance of control transactions was not necessary to carry out the national rail transportation policy and stated: "If anything, the exemption should assist in stimulating competition . . ." *Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier*, 2 I.C.C.2d 677, 680 (1986).

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Floral Park has similarly failed to provide any evidence or grounds to support revocation of the exemption and has failed to demonstrate that regulation of the transaction is necessary.

Accordingly, we will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33301.

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

It is ordered,

1. The Shulman and Garden City petitions to reject or revoke are dismissed
2. The Floral Park petition to revoke is denied.
3. The IBLE petition to reject or revoke is denied.
4. This decision is effective 30 days from date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

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On January 10, 1997, LIRR and NYAR filed separate replies to the Shulman letter and the IBLE petition. Petitions to reopen, reconsider and/or revoke also were filed by the Village of Garden City (Garden City), on January 21, 1997, and the Incorporated Village of Floral Park (Floral Park), on January 31, 1997. NYAR replied in opposition to the Garden City petition on January 31, 1997.

By letter filed on April 1, 1997, Shulman informed the Board that numerous discussions had been held with the LIRR, the NYAR, and other elected officials in Queens County, that resolution of the issues raised in her petition had been reached, and that an agreement was executed on March 7, 1997, by her office, the LIRR and the NYAR, and was approved by the Metropolitan Transportation Authority (MTA) on March 20, 1997. Based on the commitments in that agreement, Shulman withdrew her petition to reject or revoke the notices of exemption.

By letter filed on April 30, 1997, Garden City similarly informed the Board that numerous discussions had been held with the LIRR, the NYAR, and other elected officials in Nassau County,

²(...continued)

Chairperson, Community Board No. 4Q; and Karen Koslowitz, Council Member, 29th District, Queens. On December 16, 1996, the United Transportation Union filed a protest to the notices of exemption.

³ The exemptions had become effective on December 12, 1996, and were expected to be consummated in the first quarter of 1997. The notices indicated that the Shulman and IBLE filings, as well as any replies, would be considered by the entire Board in a separate decision.

that resolution of the issues raised in its petition had been reached, and that an agreement was executed on February 28, 1997, by Garden City, the LIRR and the NYAR (Garden City Agreement), and was approved by the MTA on March 20, 1997. Based on the commitments in that agreement, Garden City withdrew its petition to reject or revoke the notices of exemption.

By letter filed on May 9, 1997, NYAR supplemented the record to note that it initially will conduct no operations on two of the rail segments, totaling approximately 7.3 miles--the Central Extension (milepost 19.1 to milepost 21.2) and the Hempstead Branch (milepost 13.3 to milepost 18.7)--pending the completion of additional environmental review. Upon completion of the environmental review, LIRR will transfer the freight operations on these segments to NYAR unless the adverse impact on the affected communities, if any, identified in the environmental review cannot be appropriately mitigated. NYAR estimates that the review could take approximately 9 months to complete. In the interim, LIRR will continue to provide freight service on these segments. If freight service on the two segments is transferred to NYAR, NYAR states that it will provide advance notification of the date on which it will initiate service.

The Floral Park⁴ and IBLE petitions remain at issue and will be addressed in this decision. Floral Park maintains that the exemptions should be revoked as they are contrary to the public health and safety. IBLE maintains that the exemptions should be rejected, arguing that they were void *ab initio* as the notices allegedly contained false and misleading information or that they should be revoked, arguing that they violate the national transportation policy set forth in 49 U.S.C. 10101 and would be contrary to the public interest.

DISCUSSION AND CONCLUSIONS

Rejection of the Notice of Exemption in STB Finance Docket No. 33300. As grounds for rejection, IBLE maintains that the notice in STB Finance Docket No. 33300 contains false or misleading information. IBLE states that the notice fails to disclose a substantial increase in traffic, particularly municipal solid waste (MSW), that could have an impact on the health and environment of railroad employees.

NYAR's notice is in full compliance with our regulations. There is no requirement under 49 CFR 1150, Subpart D—Exempt Transactions Under 49 U.S.C. 10901, that, in order to qualify for an exemption, an applicant must disclose any projected increase in traffic. As noted in NYAR's reply, at p. 4, the transaction was designed merely to effect a change in the entity conducting freight

⁴ As noted in the Garden City agreement, at p. 2, Garden City was to be the coordinator for the other villages on the Central Extension and the Hempstead Branch and was to request that the other villages (one of which was Floral Park) withdraw their revocation requests. While it is not clear that Floral Park remains interested in pursuing its opposition, it has not withdrawn its petition, and thus we will proceed on the record before us.

operations. Through the transaction, NYAR would take over the freight service formerly provided by LIRR, with no significant operational changes contemplated.

IBLE states that the notice is misleading due to NYAR's alleged failure to fully disclose environmental information by not providing LIRR's environmental analysis as part of its filing of the notice. Environmental assessments may be required in connection with applications filed under 49 U.S.C. 10901. *See* 49 CFR 1105.6(b)(4). But a transaction of this type may be exempt from environmental reporting requirements if it does not result in significant changes in carrier operations that would exceed any of the environmental thresholds in 49 CFR 1105.7(e)(4) or (5). NYAR's verified notice certified that the operations would not result in changes in carrier operations that exceed the environmental thresholds and, therefore, NYAR was not required to file environmental documentation. NYAR was under no obligation to provide LIRR's environmental analysis with its notice. As noted above, LIRR's EA and summary information were provided to the Board at the request of SEA. The EA and summary information were adopted as the Board's own with a finding that there were no significant environmental impacts associated with the proposed transaction.

Revocation of the Exemption of STB Finance Docket No. 33300. Under 49 U.S.C. 10502(d), the Board may revoke an exemption when it finds that regulation is needed to carry out the rail transportation policy set forth at 49 U.S.C. 10101. The party seeking revocation has the burden of proving that regulation of the transaction is necessary.

Floral Park maintains that the exemption in STB Finance Docket No. 33300 should be revoked because the EA presented on behalf of the LIRR was fatally flawed in the assumptions presented in that it presented significantly higher freight operations than actually existed in order to ensure that a comparison to projected use would show little impact on the communities adjoining the railroad. Floral Park also maintains that the transportation of hazardous waste, municipal solid waste and propane is a direct threat to the residents of the community.

IBLE argues that the exemption in STB Finance Docket No. 33300 should be revoked as it would be detrimental to the public health and safety [49 U.S.C. 10101(8)] and to the health and safety of rail employees [49 U.S.C. 10101(11)], as the change in operators would allow for the transportation of MSW.

As noted, the Board previously considered the concerns raised as to environmental implications of the exemption, and found no significant impact. In addition, the health, safety, and environmental issues and concerns raised in the petitions of Shulman and Garden City have been resolved. As far as we can tell, Floral Park's concerns are similar to those raised in the Shulman and Garden City petitions. If that is so, when those concerns were resolved by the various agreements between the communities and NYAR and LIRR, Floral Park's concerns should also have been alleviated. In any event, Floral Park has not demonstrated through evidence or argument that there is any basis for revocation of the exemption. Similarly, IBLE has not supported its claims that either public health and safety or employee health and safety would be adversely affected by the transactions.

We find no merit to the arguments and will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33300.

Rejection of the Notice of Exemption in STB Finance Docket No. 33301. Although the IBLE petition requests that we reject the notice in STB Finance Docket No. 33301 (continuance in control transaction), the pleading fails to supply grounds for rejection or to address rejection in any way.

Revocation of the Exemption of STB Finance Docket No. 33301. IBLE contends that the exemption in STB Finance Docket No. 33301 should be revoked for failure of Peter A. Gilbertson, *et al.* (Gilbertson) to fully disclose their interest and involvement in other rail entities. IBLE maintains that Gilbertson is affiliated through Anacostia & Pacific Co., Inc. (APCI), with Rail Logistic Service Co. (RLS),⁵ which IBLE alleges operates the rail service for Port of Long Beach, CA. IBLE asserts that Port of New York is competitive with Pacific Coast Ports on containerized traffic and that NYAR's acquisition of exclusive freight rights is anticompetitive.

Gilbertson properly invoked the class exemption, which provides an exemption from the requirements of section 11323 for the proposed continuance in control.⁶ Under section 11324(d), the Board shall approve an application unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. The Board's predecessor, the Interstate Commerce Commission, expanded its class exemption at 49 CFR 1180.2(d)(2) to include the continuance in control of a nonconnecting carrier. It found that regulation of continuance of control transactions was not necessary to carry out the national rail transportation policy and stated: "If anything, the exemption should assist in stimulating competition . . ." *Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier*, 2 I.C.C.2d 677, 680 (1986).

IBLE has failed to provide any relevant evidence beyond a generalized statement of possible anticompetitive effects, and thus has failed to establish that the continuance in control transaction will have any adverse impact on competition, let alone a substantial adverse impact on competition.

⁵ NYAR's reply, at p. 11, notes that APCI is a merchant banking concern that facilitates financial arrangements, provides industry expertise, structuring advice and consulting to investors in the railroad industry. RLS is a service company that provides on-site logistical support at the Port of Long Beach, CA, including, for example, communicating with dispatchers (but not dispatching), facilitating train movements through the port complex, and similar functions. NYAR further notes that neither APCI nor RLS is, operates, or controls a railroad.

⁶ Gilbertson's verified notice of exemption met the requirements of 49 CFR 1180.4(g) by providing all of the information required in section 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii).

Although Gilbertson's interests may provide some services on both the east and west coast, they are not a significant factor in either. IBLE has not otherwise shown that regulation is needed to carry out the rail transportation policy.

Floral Park has similarly failed to provide any evidence or grounds to support revocation of the exemption and has failed to demonstrate that regulation of the transaction is necessary.

Accordingly, we will deny the IBLE petition to reject or revoke and the Floral Park petition to revoke the exemption in STB Finance Docket No. 33301.

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

It is ordered,

1. The Shulman and Garden City petitions to reject or revoke are dismissed
2. The Floral Park petition to revoke is denied.
3. The IBLE petition to reject or revoke is denied.
4. This decision is effective 30 days from date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary