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SERVICE DATE - LATE RELEASE DECEMBER 27, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34145

BULKMATIC RAILROAD CORPORATION  
– ACQUISITION EXEMPTION –  
BULKMATIC TRANSPORT COMPANY

STB Finance Docket No. 34146

CHICAGO HEIGHTS SWITCHING COMPANY  
– OPERATION EXEMPTION –  
BULKMATIC RAILROAD CORPORATION

Decided: December 27, 2001

By notices filed on December 21, 2001, in STB Finance Docket Nos. 34145 and 34146, under 49 CFR 1150.31, the Bulkmatic Railroad Corporation (BRC), a noncarrier, seeks to acquire by sublease, and the Chicago Heights Switching Company (CHSC), also a noncarrier, seeks to operate, approximately 3.9 miles of railroad right-of-way and trackage at Chicago Heights, IL. By petition filed on December 26, 2001, Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), requests that the exemptions be stayed pending consideration of its anticipated petition to revoke the exemptions.

In its stay request, UTU-IL argues that it is likely to prevail on the merits of its contentions that: (1) the notices fail to comply with Board regulations requiring the filing of a map of the transaction and an agreement between the parties; (2) the transaction is outside Board jurisdiction because the track is excepted switching track under 49 U.S.C. 10906; and (3) regulation is necessary to carry out the provisions of the rail transportation policy of 49 U.S.C. 10101. UTU-IL also argues that railroad employees would suffer irreparable injury in the absence of a stay, that a stay would injure no other parties, and that the public interest warrants a stay.<sup>1</sup> BRC and CHSC submitted a reply to the stay request on December 27, 2001.

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<sup>1</sup> In STB Finance Docket No. 34147, individuals who currently control the Central Illinois Railroad Company seek an exemption to continue in control of CHSC when CHSC becomes a common carrier pursuant to STB Finance Docket No. 34146. UTU-IL does not seek a stay of the exemption in STB Finance Docket No. 34147.

## DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). Here, that burden has not been met.

UTU-IL has not shown that the notices fail to comply with Board regulations. The map and the description of trackage describe the transaction adequately. Also, BRC and CHSC have stated that an agreement has been reached with respect to BRC’s acquisition and that an agreement in principle has been reached for CHSC’s operation of the trackage. The Board’s regulations have thus been satisfied on that point.

UTU-IL also has not shown that it is likely to prevail on the merits of its contention that the track is outside Board jurisdiction. Whether track is excepted under section 10906 is a complex, fact bound issue that must be resolved in light of precedents that require considerable analysis. Petitioner has not come forward with sufficient evidence and argument necessary to convince the Board that it is likely to prevail in its argument that this transaction is beyond Board jurisdiction due to the nature of the track.

Nor has UTU-IL shown that railroad employees would suffer irreparable injury in the absence of a stay. UTU-IL asserts that the BRC/CHSC operation would displace work currently performed by crews employed by the Union Pacific Railroad Company and that the exercise of seniority could result in adverse effects on other employees, but UTU-IL has not demonstrated that any harm would be irreparable.

Because UTU-IL has failed to meet the criteria for stay, its request for stay will be denied.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary