28677 SERVICE DATE - LATE RELEASE DECEMBER 12, 1997
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB FINANCE DOCKET NO. 33491

INDIANA HI-RAIL CORPORATION TRUSTEE'S AMENDED PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT

Decided: December 11, 1997

By order served in this proceeding on November 5, 1997, the Board, by Secretary Williams, rejected as incomplete a petition filed on October 3, 1997, by Indiana Hi-Rail Corporation (IHRC). On November 17, 1997, IHRC submitted a new filing in this docket. While the new filing does not appeal the decision of the Secretary, the filing appends a November 17, 1997 order of the United States Bankruptcy Court for the Central District of Indiana (the Bankruptcy Court or the Court) seeking an advisory opinion from the Board by December 15, 1997. Because the matters as to which the Court seeks the Board's opinion are the same as those that were the subject of IHRC's October 3 filing, we will treat IHRC's latest submission as a petition for reconsideration of the Secretary's decision.

BACKGROUND

On October 3, 1997, IHRC filed a "Trustee's Amended Plan of Reorganization and Disclosure Statement" (the Plan and the Statement, respectively) with the Board, notifying us of a number of transactions involving the Trustee in Bankruptcy of the IHRC. Attached to the filing was an order, dated September 5, 1997, of the Bankruptcy Court, requesting us to issue an advisory opinion on the Trustee's Plan of Reorganization by December 5, 1997. The filing recited that the Court's September 5, 1997 order was not transmitted to the Board until October 3, 1997, because the Court did not transmit the order to IHRC until the end of September.

By letter to Special Counsel to the Trustee dated October 7, 1997, the Director of the Office of Proceedings of the Board noted that the Statement, at pages 16-17, and the Plan, at pages 6-7, recited a list of 14 transactions which IHRC stated had been or would be undertaken to allow the Trustee to carry out the Plan. IHRC, in its October 3, 1997 filing, recited that "the bulk" of the 14 transactions had already been approved by the Board or by its predecessor, the Interstate Commerce Commission (ICC). The filing also stated that the remainder of the transactions would be the subject of a contemporaneous filing. The Director noted that the October 3, 1997 filing failed to identify any of the 14 transactions by docket number or any other description and that, until IHRC did so, the Board would be unable to comply with the Court's order.

IHRC responded to the Director's letter by letter dated October 9, 1997. But, as the Director noted in a subsequent letter dated October 17, 1997, IHRC's October 9, 1997 letter failed to identify the 14 transactions as requested. The Director reiterated that, without the information, the Board would be unable to commence the process that would enable it to comply with the Court's order seeking an advisory opinion.

IHRC submitted a filing dated October 15, 1997, which was received by the Board's staff on October 17, 1997, after the Director transmitted his letter of the same date. IHRC's October 17, 1997 filing includes a chart that could be used by Board staff to identify some of the 14 transactions listed in the Statement and Plan. But, in his November 5 order rejecting the IHRC's petition, the Secretary noted that the chart contained inaccuracies. Specifically, the Secretary noted that the most serious discrepancy involved the first item on the chart described as "IHRC's Discontinuance of IHRC Argos operating trackage rights." That listing related to the first listing on the IHRC Statement and Plan, which read:

> "1) IHRC's discontinuance of the IHRC operating trackage rights, between mileposts I 74.2 and I 108.6, permitting NW's abandonment between I-58.5 and I-95.6, and IHRC's discontinuance of the lease between mileposts TS-144.2 and TS-152.22, which previously expired by its terms on May 3, 1993."

The Secretary noted that IHRC's chart seemed designed to convey the impression that the Board had already taken action with respect to IHRC's proposed discontinuance. The Board action authorizing the discontinuance is stated to be "AB-289 and AB-290" by "Order entered April 26, 1996." The Secretary noted that a Board decision dated April 26, 1996, and served on May 14, 1996, in STB Docket No AB-289 (Sub-No. 3X) and STB Docket No. 290 (Sub No. 168X), authorized the Norfolk and Western Railroad to abandon its line between Peru, IN (milepost I 74.2) and Rochester, IN (milepost I-95.6). However, that decision did not authorize discontinuance of any track by IHRC; nor did it authorize any action by IHRC at all. The cited order did not reflect the description of the Board's action provided by IHRC. Moreover, neither that order nor any proceeding cited by IHRC discussed a leased line between mileposts TS-144.2 and TS-152.22.

The Board has processed 6 notices of exemption that are related to the Trustee's Amended Plan of Reorganization (STB Finance Docket Nos. 33475, 33476, 33477, 33478, and 33479, which were filed with the Board on October 8, 1997, and STB Finance Docket No. 33496, which was filed with the Board on October 17, 1997). Public notice of all of the exemptions was given by the Board's publication of each in the Federal Register on October 31, 1997. Protests against such notices are typically filed in the form of petitions to revoke the exemptions, that may be filed at any time. The Secretary observed that petitions to revoke are often filed between 20 and 30 days after a notice is published or later, and that this would not allow the Board sufficient time to consider any such petitions prior to the December 5, 1997 deadline for the Board's advisory opinion that had been requested by the Court.

Noting that the material before the Board was inaccurate and incomplete, despite repeated attempts by Board staff to solicit a complete and accurate filing, the Secretary rejected the IHRC's filing as untimely and incomplete.

DISCUSSION AND CONCLUSIONS

The new request of the Court asks the Board to provide an advisory opinion on the Plan "if it so chooses." The Court's order also establishes December 17, 1997, as the date "for IHRC to discontinue its various leases and trackage rights and to terminate its operation." The Court further directed the various parties to complete the conveyances anticipated by the Plan on December 18, 1997, and "for the new operating entities to commence operations on December 18, 1997."

The Court has left to the Board's discretion the question of whether to provide the advisory opinion contemplated by the statute. Moreover, the Court has already preliminarily approved the transactions as to which it seeks the Board's opinion. Nevertheless, the Board will issue, insofar as the record here permits, the opinion that the Court has requested and for which the statute at 11 U.S.C. 1172 provides.

The Plan specifies 14 transactions. A chart prepared by the Trustee and submitted to the Board on October 15, 1997, noted above, identified 11 of the 14 transactions as being the subject of 6 notices of exemption, STB Finance Docket No. 33475, 33476, 33477, 33478, 33479, and 33496. As discussed, public notice of all of those transaction was provided in the Federal Register on October 31, 1997. No objection to any of the transactions has been received to date. Because the Board has received no objections, no petitions to reject, and no petitions to revoke the transactions, we have no reason to believe that any of the transactions are contrary to the public interest. We note, however, that petitions to revoke notices such as these may be filed at any time.

Two of the transactions in the Plan, the IHRC's abandonment of the segment between mileposts TS-65.5 and TS-73.7 and IHRC's abandonment of the segment between milepost TS-77.5 and TS-117.8, were the subject of Board action in STB Docket No. AB-336 (Sub No. 6). Thus, those two abandonments have already been determined to be in the public interest.

The one remaining transaction is the first one listed in the Plan, the transaction cited above as the subject of the Board's November 5, 1997 order rejecting the Trustee's filing. That transaction is described as :

> "1)IHRC's discontinuance of the IHRC operating trackage rights, between mileposts I 74.2 and I 108.6, permitting NW's abandonment between I-58.5 and I-95.6, and IHRC's discontinuance of the lease between mileposts TS-144.2 and TS-152.22, which previously expired by its terms on May 3, 1993."

The Board's order of November 5, 1997, fully explains why the record in this case in insufficient to permit the Board to issue an advisory opinion on this transaction. Nothing in the material submitted

on November 17, 1997, sheds any light on the transactions or otherwise provides any information that would enable us to render an opinion. Without a record on which to base an opinion, we are unable to issue an advisory opinion as to this transaction.

This decision constitutes the advisory opinion of the Board pursuant to 11 U.S.C. 1172 as requested by the Bankruptcy Court. The Court is advised that of the 14 transactions embodied within the Plan of Reorganization that would otherwise require Board approval, 2 have already been found to have been permitted by the public interest, 11 have been the subject of Federal Register publications without objection for more than 30 days (so that we have no reason to believe these transactions are inconsistent with the public interest) and one, the IHRC's discontinuances, lacks a record upon which we could base an advisory opinion on the public interest.

It is ordered:

1. The November 17, 1997 petition for reconsideration is granted in part.

2. This proceeding is discontinued.

3. This decision is effective on its service date.

4. A copy of this decision will be mailed to:

The Honorable Larry Lessen
Judge, U.S. Bankruptcy Court
for the Central District of Indiana
U.S. Courthouse, Room 235
600 East Monroe Street
Springfield, IL 62705

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

28677 SERVICE DATE - LATE RELEASE DECEMBER 12, 1997
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB FINANCE DOCKET NO. 33491

INDIANA HI-RAIL CORPORATION TRUSTEE'S AMENDED PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT

Decided: December 11, 1997

By order served in this proceeding on November 5, 1997, the Board, by Secretary Williams, rejected as incomplete a petition filed on October 3, 1997, by Indiana Hi-Rail Corporation (IHRC). On November 17, 1997, IHRC submitted a new filing in this docket. While the new filing does not appeal the decision of the Secretary, the filing appends a November 17, 1997 order of the United States Bankruptcy Court for the Central District of Indiana (the Bankruptcy Court or the Court) seeking an advisory opinion from the Board by December 15, 1997. Because the matters as to which the Court seeks the Board's opinion are the same as those that were the subject of IHRC's October 3 filing, we will treat IHRC's latest submission as a petition for reconsideration of the Secretary's decision.

BACKGROUND

On October 3, 1997, IHRC filed a "Trustee's Amended Plan of Reorganization and Disclosure Statement" (the Plan and the Statement, respectively) with the Board, notifying us of a number of transactions involving the Trustee in Bankruptcy of the IHRC. Attached to the filing was an order, dated September 5, 1997, of the Bankruptcy Court, requesting us to issue an advisory opinion on the Trustee's Plan of Reorganization by December 5, 1997. The filing recited that the Court's September 5, 1997 order was not transmitted to the Board until October 3, 1997, because the Court did not transmit the order to IHRC until the end of September.

By letter to Special Counsel to the Trustee dated October 7, 1997, the Director of the Office of Proceedings of the Board noted that the Statement, at pages 16-17, and the Plan, at pages 6-7, recited a list of 14 transactions which IHRC stated had been or would be undertaken to allow the Trustee to carry out the Plan. IHRC, in its October 3, 1997 filing, recited that "the bulk" of the 14 transactions had already been approved by the Board or by its predecessor, the Interstate Commerce Commission (ICC). The filing also stated that the remainder of the transactions would be the subject of a contemporaneous filing. The Director noted that the October 3, 1997 filing failed to identify any of the 14 transactions by docket number or any other description and that, until IHRC did so, the Board would be unable to comply with the Court's order.

IHRC responded to the Director's letter by letter dated October 9, 1997. But, as the Director noted in a subsequent letter dated October 17, 1997, IHRC's October 9, 1997 letter failed to identify the 14 transactions as requested. The Director reiterated that, without the information, the Board would be unable to commence the process that would enable it to comply with the Court's order seeking an advisory opinion.

IHRC submitted a filing dated October 15, 1997, which was received by the Board's staff on October 17, 1997, after the Director transmitted his letter of the same date. IHRC's October 17, 1997 filing includes a chart that could be used by Board staff to identify some of the 14 transactions listed in the Statement and Plan. But, in his November 5 order rejecting the IHRC's petition, the Secretary noted that the chart contained inaccuracies. Specifically, the Secretary noted that the most serious discrepancy involved the first item on the chart described as "IHRC's Discontinuance of IHRC Argos operating trackage rights." That listing related to the first listing on the IHRC Statement and Plan, which read:

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The Secretary noted that IHRC's chart seemed designed to convey the impression that the Board had already taken action with respect to IHRC's proposed discontinuance. The Board action authorizing the discontinuance is stated to be "AB-289 and AB-290" by "Order entered April 26, 1996." The Secretary noted that a Board decision dated April 26, 1996, and served on May 14, 1996, in STB Docket No AB-289 (Sub-No. 3X) and STB Docket No. 290 (Sub No. 168X), authorized the Norfolk and Western Railroad to abandon its line between Peru, IN (milepost I 74.2) and Rochester, IN (milepost I-95.6). However, that decision did not authorize discontinuance of any track by IHRC; nor did it authorize any action by IHRC at all. The cited order did not reflect the description of the Board's action provided by IHRC. Moreover, neither that order nor any proceeding cited by IHRC discussed a leased line between mileposts TS-144.2 and TS-152.22.

The Board has processed 6 notices of exemption that are related to the Trustee's Amended Plan of Reorganization (STB Finance Docket Nos. 33475, 33476, 33477, 33478, and 33479, which were filed with the Board on October 8, 1997, and STB Finance Docket No. 33496, which was filed with the Board on October 17, 1997). Public notice of all of the exemptions was given by the Board's publication of each in the Federal Register on October 31, 1997. Protests against such notices are typically filed in the form of petitions to revoke the exemptions, that may be filed at any time. The Secretary observed that petitions to revoke are often filed between 20 and 30 days after a notice is published or later, and that this would not allow the Board sufficient time to consider any such petitions prior to the December 5, 1997 deadline for the Board's advisory opinion that had been requested by the Court.

Noting that the material before the Board was inaccurate and incomplete, despite repeated attempts by Board staff to solicit a complete and accurate filing, the Secretary rejected the IHRC's filing as untimely and incomplete.

DISCUSSION AND CONCLUSIONS

The new request of the Court asks the Board to provide an advisory opinion on the Plan "if it so chooses." The Court's order also establishes December 17, 1997, as the date "for IHRC to discontinue its various leases and trackage rights and to terminate its operation." The Court further directed the various parties to complete the conveyances anticipated by the Plan on December 18, 1997, and "for the new operating entities to commence operations on December 18, 1997."

The Court has left to the Board's discretion the question of whether to provide the advisory opinion contemplated by the statute. Moreover, the Court has already preliminarily approved the transactions as to which it seeks the Board's opinion. Nevertheless, the Board will issue, insofar as the record here permits, the opinion that the Court has requested and for which the statute at 11 U.S.C. 1172 provides.

The Plan specifies 14 transactions. A chart prepared by the Trustee and submitted to the Board on October 15, 1997, noted above, identified 11 of the 14 transactions as being the subject of 6 notices of exemption, STB Finance Docket No. 33475, 33476, 33477, 33478, 33479, and 33496. As discussed, public notice of all of those transaction was provided in the Federal Register on October 31, 1997. No objection to any of the transactions has been received to date. Because the Board has received no objections, no petitions to reject, and no petitions to revoke the transactions, we have no reason to believe that any of the transactions are contrary to the public interest. We note, however, that petitions to revoke notices such as these may be filed at any time.

Two of the transactions in the Plan, the IHRC's abandonment of the segment between mileposts TS-65.5 and TS-73.7 and IHRC's abandonment of the segment between milepost TS-77.5 and TS-117.8, were the subject of Board action in STB Docket No. AB-336 (Sub No. 6). Thus, those two abandonments have already been determined to be in the public interest.

The one remaining transaction is the first one listed in the Plan, the transaction cited above as the subject of the Board's November 5, 1997 order rejecting the Trustee's filing. That transaction is described as :

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The Board's order of November 5, 1997, fully explains why the record in this case in insufficient to permit the Board to issue an advisory opinion on this transaction. Nothing in the material submitted

on November 17, 1997, sheds any light on the transactions or otherwise provides any information that would enable us to render an opinion. Without a record on which to base an opinion, we are unable to issue an advisory opinion as to this transaction.

This decision constitutes the advisory opinion of the Board pursuant to 11 U.S.C. 1172 as requested by the Bankruptcy Court. The Court is advised that of the 14 transactions embodied within the Plan of Reorganization that would otherwise require Board approval, 2 have already been found to have been permitted by the public interest, 11 have been the subject of Federal Register publications without objection for more than 30 days (so that we have no reason to believe these transactions are inconsistent with the public interest) and one, the IHRC's discontinuances, lacks a record upon which we could base an advisory opinion on the public interest.

It is ordered:

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The Honorable Larry Lessen
Judge, U.S. Bankruptcy Court
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U.S. Courthouse, Room 235
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By the Board, Chairman Morgan and Vice Chairman Owen.

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on November 17, 1997, sheds any light on the transactions or otherwise provides any information that would enable us to render an opinion. Without a record on which to base an opinion, we are unable to issue an advisory opinion as to this transaction.

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By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
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