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SERVICE DATE - APRIL 2, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34282

WESTERN ILLINOIS RAILWAY COMPANY—ACQUISITION EXEMPTION—
TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION

STB Finance Docket No. 34283

RAILAMERICA, INC. ET AL.—CORPORATE FAMILY REORGANIZATION
EXEMPTION—WESTERN ILLINOIS RAILWAY COMPANY¹

Decided: April 1, 2003

In SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33995 et al. (STB served Oct. 17, 2002), we revoked the exemption that had been issued in February 2001 for SF&L Railway, Inc. (SF&L), to acquire from Toledo, Peoria & Western Railway Corporation (TP&W) the operating easement over, and the rail, ties and certain improvements on, a 71.5-mile rail line between milepost 194.5 at La Harpe and milepost 123.0 at Peoria (the La Harpe Line or Line).² We ordered SF&L to reconvey its interest in the Line to TP&W.

RailAmerica, Inc. (RailAmerica), TP&W's corporate parent, formed Western Illinois Railway Company (Western Illinois) to acquire the physical assets of the Line from TP&W following the reconveyance.³ Western Illinois invoked the notice of exemption in STB Finance Docket No. 34282, and a related notice of exemption was issued in STB Finance Docket No.

¹ These proceedings are not consolidated; they are being considered together for administrative convenience.

² We also revoked the related notice of exemption for Messrs. Kern W. Schumacher and Morris H. Kulmer to continue in control of SF&L once it became a rail carrier. See Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc., STB Finance Docket No. 33996.

³ TP&W was to retain the common carrier obligation, the permanent and exclusive right to operate, maintain, and renew the Line, and the right to sell the Line's physical assets in the event TP&W were to agree, or was required, to sell the Line under an offer of financial assistance. See 49 U.S.C. 10904.

34283, for RailAmerica to continue in control of Western Illinois once it became a rail carrier.⁴ On November 26, 2002, RailAmerica and Western Illinois filed a motion to dismiss these exemptions for lack of jurisdiction, contending that they involve only a transfer of rail assets and that Western Illinois would not become a rail carrier as a result of the transaction.

In response to a letter filed in STB Finance Docket No. 33995 by Mr. Kulmer,⁵ TP&W states in a pleading filed February 21, 2003, that Western Illinois was created to facilitate a settlement agreement that TP&W was negotiating with SF&L in November 2002, but that the agreement has been discarded, and that RailAmerica intends to dissolve Western Illinois. Because the Line's physical assets will not be transferred to Western Illinois, TP&W requests that the motion to dismiss filed November 26, 2002, by RailAmerica and Western Illinois be dismissed.⁶ We will grant TP&W's request. Finally, on our own motion, we will vacate the exemptions, because Western Illinois is not acquiring the Line, and in fact Western Illinois will be dissolved.

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

⁴ The notices of exemption were served and published at 67 FR 78039-41 on December 20, 2002.

⁵ Mr. Kulmer stated that the petitions for judicial review and motion to stay our decision issued in STB Finance Docket No. 33995 et al., have been withdrawn with prejudice, that the La Harpe Line has been reconveyed to TP&W, and that Petitioners have no further claims against TP&W. As a result, he requested that we vacate the "alienation conditions" imposed in our February 6, 2003 decision denying Petitioners' stay request. These conditions ordered Western Illinois not to exercise the authority obtained in STB Finance Docket No. 34282 and ordered TP&W not to transfer any portion of the reconveyed Line while judicial review is pending, unless authorized by us. TP&W supported Mr. Kulmer's request and made the request at issue here. The alienation conditions are being vacated in a decision being served today in STB Finance Docket Nos. 33995 and 33996.

⁶ The November 26 motion to dismiss embraced STB Finance Docket Nos. 34282 and 34283. In requesting dismissal of that motion, TP&W refers only to STB Finance Docket No. 34282. Nevertheless, because the Line will not be transferred to Western Illinois and Western Illinois will be dissolved, we are interpreting TP&W's request to dismiss as also including STB Finance Docket No. 34283.

It is ordered:

1. The motion to dismiss the exemptions issued in these proceedings is dismissed, and the exemptions are vacated.
2. This decision is effective on April 2, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary