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SERVICE DATE - OCTOBER 6, 1998

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33659]

Toledo, Peoria & Western Railway Corporation--Corporate Family Transaction Exemption--
-Marksman Corporation

Toledo, Peoria & Western Railway Corporation (TPW Railway), a Class III rail common carrier, has filed a notice of exemption to lease, by assignment, 17 miles of rail line from Marksman Corporation (Marksman), a Class III rail carrier, between milepost 183 near Monterey, IN, and milepost 199 near North Judson, IN (the Rail Line). The Rail Line is now leased from J.K. Lines, Inc., by Marksman. Marksman owns 100% of the capital stock of TPW Railway.¹ TPW Railway plans to operate as well as lease the Rail Line.²

The earliest the transaction could be consummated was September 17, 1998, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to simplify the arrangements for the operation of the Rail Line. Prior to filing the notice, TPW Railway already performed operations on the Rail Line on behalf of Marksman pursuant to an unwritten agreement with Marksman.

¹ See Marksman Corporation--Lease and Operation Exemption--J.K. Line, Inc., STB Finance Docket No. 33481 (STB served Oct. 16, 1997).

² See R.J. Corman Railroad Company/Pennsylvania Lines Inc.--Lease Exemption--Clearfield & Mahoning Railway Company, STB Finance Docket No. 32861 (STB served June 21, 1996), slip op. at 1 n.2.

Assignment of the lease to TPW Railway will allow it to assume common carrier responsibilities in conjunction with its other rail operations.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

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, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33659, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381-0796.

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Decided: September 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary