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EB

SERVICE DATE - JANUARY 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33474

IOWA INTERSTATE RAILROAD, LTD.--LEASE AND OPERATION EXEMPTION--UNION  
PACIFIC RAILROAD COMPANY

Decided: January 12, 1998

By petition filed October 23, 1997, Iowa Interstate Railroad, Ltd. (IAIS) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to enter into a lease to manage, maintain, dispatch, and operate over a line of railroad owned by Union Pacific Railroad Company (UP) in Polk County, IA. The line consists of 6.4 miles of railroad between milepost 358.568 in Des Moines, IA, and milepost 365.0 at West Des Moines, IA, together with all appurtenances thereto, connecting tracks and industrial tracks, and fixed improvements thereon. We will grant the exemption, subject to labor protective conditions.

BACKGROUND

IAIS is a Class II rail carrier and subsidiary of Heartland Rail Corporation (Heartland). Heartland owns and IAIS operates lines of railroad in Iowa and Illinois. Petitioner obtained overhead trackage rights from UP in 1984 over the line it now seeks to lease.<sup>1</sup>

IAIS avers that UP presently provides service to the line's shippers on an "as needed" basis, and will continue to do so by retaining the right to operate over the line. Under the terms of the parties' agreement, IAIS will lease, manage, dispatch, maintain, and also operate over the line as an integral part of other IAIS train operations on its east/west mainline which is located on each end of the line.<sup>2</sup>

DISCUSSION AND CONCLUSIONS

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<sup>1</sup> See Finance Docket No. 30554, in which a decision was served on September 28, 1984.

<sup>2</sup> Under their agreement, UP will continue to exclusively serve all industries on the line, while IAIS will continue to serve industries previously served by the Norfolk Southern and/or Burlington Northern railroads at milepost 359.6.

Under 49 U.S.C. 10902, our prior approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed lease under 49 U.S.C. 10902 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the administrative expense of the application process, thus reducing regulatory barriers to entry and exit [49 U.S.C. 10101(2) and (7)]. An exemption also will foster sound economic conditions and encourage efficient management by enabling petitioner to integrate operations, better utilize resources, and improve transit time and routing options [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, an exemption will preserve competition by ensuring that a sound rail transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)].

Regulation is not necessary to protect shippers from an abuse of market power. UP will continue to service businesses on the line. There will be no loss of rail competition and no adverse change in the competitive balance in the relevant regional transportation market. However, to ensure that the shippers are informed of our action, we will require IAIS to serve a copy of this decision on them within 5 days of its service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g)(2), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, any employees affected by the transaction will be protected as required by 49 U.S.C. 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company, STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (WCL Exemption).

In Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions, STB Ex Parte No. 562, (STB served Sept. 9, 1997), published in the Federal Register on September 10, 1997, the Board adopted an amendment to its exemption procedures. Specifically, the Board decided to require a new owner or operator of certain transferred lines to provide notice to employees of its general intentions in hiring a workforce 60 days before consummating a transaction authorized under our exemption procedures. Although the lease transaction at issue here is subject to the new rule at 49 CFR 1121.4(h) that became effective on October 10, 1997, requiring such notice, IAIS has given no indication of its compliance with the requirement. Consequently, the exemption granted here will not become effective until 60 days after IAIS certifies to the Board that it has provided notice in a manner consistent with the new rule.

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).<sup>3</sup>

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10902 the lease by IAIS of the above-described line segment, subject to the employee protective conditions required by 49 U.S.C. 10902(d) and the standards and procedures established in WCL Exemption.

2. Notice will be published in the Federal Register on January 23, 1998.

3. IAIS must serve a copy of this decision on each shipper on the line within 5 days of the service date of this decision and certify to the Board that it has done so.

4. The exemption granted by this decision will be effective 60 days after IAIS certifies to the Board that it has posted at the workplace of the employees on the affected line, and served on the national offices of the labor unions with employees on the affected line, a notice of the transaction, setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the line that is to be leased.

5. Petitions to stay must be filed by February 23, 1998 and petitions to reopen must be filed by March 16, 1998.<sup>4</sup>

By the Board, Chairman Morgan and Vice Chairman Owen.

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<sup>3</sup> This transaction does not involve a significant change in operations, IAIS has no plans to dispose of or alter historic properties, and further Board approval would be required for IAIS to abandon any service.

<sup>4</sup> The due dates for petitions for stay and reopening presuppose that IAIS will promptly certify that the required notice to employees has been given, and that the employees therefore have a reasonable period of time in which to file any petition. Should IAIS be delayed for a significant period of time in making that certification, we will entertain requests to extend the period of time for filing petitions to stay or reopen.

STB Finance Docket No. 33474

Vernon A. Williams  
Secretary

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Under 49 U.S.C. 10902, our prior approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

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