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SERVICE DATE - OCTOBER 31, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-295 (Sub-No. 5X)

THE INDIANA RAIL ROAD COMPANY—ABANDONMENT AND DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION—IN MONROE COUNTY, IN

Decided: October 29, 2003

By petition filed on July 14, 2003, The Indiana Rail Road Company (INRD) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 0.97-mile line of railroad, known as the Bloomington Southern, extending from milepost B 1.71 south to milepost B 2.68 in Bloomington, IN, and to discontinue trackage rights over approximately 2.87 miles of a CSX Transportation, Inc. (CSXT) line in Bloomington, extending from CSXT milepost 219.0 to CSXT milepost 221.87, and over approximately 150 feet of CSXT's track no. 68 and approximately 285 feet of CSXT's track no. 21 in CSXT's McDoel Yard in Bloomington, Monroe County, IN.¹ Notice of the filing was served and published in the Federal Register on August 1, 2003 (68 FR 45311-12). A request for imposition of a public use condition was filed by the City of Bloomington, acting by and through its Redevelopment Commission (referred to as the City).² The exemption will be granted, subject to public use, environmental, and standard employee protective conditions.

BACKGROUND

According to INRD, Indiana Warehouse is the only shipper on the line that received rail service in the past 3 years. Traffic consisted of refrigerators that were produced at the General Electric Company's (GE) refrigerator plant in Bloomington, and then moved to the Indiana Warehouse for

¹ In another proceeding, CSXT was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 2.95-mile line of railroad in CSXT's Western Region, Great Lakes Division, over which INRD's trackage rights run. CSXT described the line as extending from milepost 00Q-219.55 to milepost 00Q-222.50 in Bloomington, Monroe County, IN. See CSX Transportation, Inc.—Abandonment Exemption—in Monroe County, IN, STB Docket No. AB-55 (Sub-No. 634X) (STB served Oct. 17, 2003).

² The City also requested issuance of a notice of interim trail use (NITU), but later withdrew the request for a NITU in a letter filed on October 14, 2003.

temporary storage during 2001 and 2002. The number of cars moved totaled 1,748 cars in 2001, and 279 in 2002. GE ceased using the Indiana Warehouse for temporary storage in 2002. INRD states that the refrigerators continue to move directly by rail from the GE facility but not through the Indiana Warehouse.

INRD notes that another warehouse on the line, Thompson Warehouse, potentially could use rail service, but INRD is not aware of any interest by Thompson Warehouse in using the line.

The trackage rights that INRD seeks to discontinue in this proceeding are the means by which INRD accesses the line to be abandoned. In addition to the refrigerator traffic that moved to and from the Indiana Warehouse, INRD has a haulage agreement with CSXT under which it hauls CSXT traffic from Bloomington to Indianapolis. Currently, INRD picks up the traffic at CSXT's McDoel Yard and moves it to the INRD main line and then north to Bloomington. The traffic primarily consists of refrigerators from the GE manufacturing plant in Bloomington, but also has included other commodities such as lumber, paper, and plastics. INRD states that, after it discontinues the trackage rights, it will continue to haul CSXT's refrigerator traffic using a rehabilitated siding closer to the GE facility. According to INRD, the only CSXT traffic that INRD will not continue to handle is traffic that originates or terminates on the CSXT line that is the subject of the abandonment exemption in STB Docket No. AB-55 (Sub-No. 634X), and the discontinuance of trackage rights exemption here.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or rail service discontinued without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transactions is not necessary to protect shippers from the abuse of market power because there are no active shippers on the line, and the trackage rights to access the line are no longer necessary. Indiana Warehouse, the only shipper that has recently used the line, no longer receives refrigerators from GE for temporary storage. Another potential shipper on the line, Thompson Warehouse, has not indicated that it needs the line for rail service. Nevertheless, to ensure

that Indiana Warehouse and Thompson Warehouse are informed of the Board's action, INRD will be required to serve a copy of this decision on them within 5 days of the service date of this decision and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed transactions are limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979) will be imposed.

INRD has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on September 12, 2003, and requested comments by October 10, 2003.

In the EA, SEA notes the concerns raised by the U.S. Environmental Protection Agency, Region 5 (EPA), and in response to those concerns, SEA recommends that a pre-salvage condition be imposed on any decision granting abandonment authority requiring INRD to contact EPA, Region 5.

EPA filed a comment to the EA noting that INRD intends to sell the rail line proposed for abandonment to the City. EPA states that, if this sale is executed, INRD does not plan to conduct salvage activities. Rather, the salvage activities would be conducted by the City. Therefore, EPA requests that the outcome of any consultations that INRD conducts with EPA on salvage activities be conveyed by INRD to the City. Accordingly, in response to the comment filed by EPA, SEA has revised its previously recommended condition and recommends that the following revised condition be placed on any decision granting abandonment authority. To address the concerns raised by EPA, Region 5, INRD shall, prior to commencement of any salvage activities it may conduct for this project, contact EPA (Kenneth A. Westlake, 312-886-2910), concerning removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills, and stormwater runoff mitigation practices to be used during salvage activities. If INRD sells the subject line without conducting salvage activities, INRD shall inform the purchaser of EPA's consultation interest and supply the purchaser with the EPA contact information.

Accordingly, the revised condition recommended by SEA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. As noted, the City has filed a request for a public use condition. Specifically, the City seeks a condition prohibiting the carrier, for a period of 180 days, from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms. The City states that it intends to develop the corridor into a downtown trail, creating a safe, efficient route for bicyclists and pedestrians and mitigating traffic congestion. According to the City, it needs the full 180 days to review title information, complete its environmental evaluation, and conduct negotiations with INRD. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the line to be abandoned, commencing from the effective date of this decision, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, INRD is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold or subsidized under the OFA procedures, the petition for abandonment exemption will be dismissed and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process described above may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment and the discontinuance of trackage rights by INRD of the above-described lines is granted, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that INRD shall: (1)

leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except for track, ties, and signal equipment) for a period of 180 days from the effective date of this decision, to enable any State or local government agency or any other interested person to negotiate the acquisition of the line to be abandoned for public use; and (2) prior to commencement of any salvage activities it may conduct for this project, contact EPA (Kenneth A. Westlake, 312-886-2910), concerning removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills, and stormwater runoff mitigation practices to be used during salvage activities, and if INRD sells the subject line without conducting salvage activities, INRD shall inform the purchaser of EPA's consultation interest and supply the purchaser with the EPA contact information.

2. INRD is directed to serve a copy of this decision on Indiana Warehouse and Thompson Warehouse within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 10, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

5. Provided no OFA has been received, this exemption will be effective November 30, 2003. Petitions to stay must be filed by November 17, 2003, and petitions to reopen must be filed by November 25, 2003.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), INRD shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by INRD's filing of a notice of consummation by October 31, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of

the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary