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SERVICE DATE – DECEMBER 22, 2006

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34942

#### IOWA INTERSTATE RAILROAD, LTD.—ACQUISITION OF CONTROL EXEMPTION—LINCOLN & SOUTHERN RAILROAD COMPANY

Decided: December 15, 2006

By amended petition filed on October 30, 2006, Iowa Interstate Railroad, Ltd. (IAIS) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, to acquire control by stock purchase of Lincoln & Southern Railroad Company (L&S). IAIS also requests expedited consideration of the petition to permit closing of the transaction by December 31, 2006. We will grant the exemption, subject to standard labor protective conditions, but provide for the exemption to be effective 8 days after the date of publication in the Federal Register.

### BACKGROUND

IAIS is a Class II rail carrier that owns or operates approximately 552 miles of rail line in Iowa and Illinois. Its rail line extends from Council Bluffs, IA, in the west, to Blue Island, IL (near Chicago), in the east. From Bureau, IL, IAIS operates to Peoria, IL, and it is on this line that L&S's trackage (26.2 miles) is located between Henry, IL, and Peoria, IL. L&S is a Class III rail carrier that has no employees and no equipment or rolling stock. L&S is solely a stock company.

Pursuant to an Agreement for Purchase of Stock dated October 19, 2006, between IAIS and L&S, IAIS proposes to acquire all of L&S shares of stock (and, accordingly, its property, including a rail line), and petitioner will have 100% controlling interest in the corporation. The entire L&S line has been operated by IAIS since 1995 under a longstanding arrangement. The sole customer on the L&S line is an aggregates company, Galena Sand and Gravel (Galena Sand), that accounted for approximately 1,500 rail cars of sand per year in 2004 and 2005. IAIS asserts that Galena Sand will not lose any existing rail service or competitive rail options, and in fact, will gain transit options as a consequence of this transaction.

IAIS also claims that all of its current customers could benefit from the transaction as it plans to rehabilitate the L&S rail line after acquisition to handle loads up to 286,000 pounds. IAIS states that its main line has been rehabilitated to handle such loads, and claims that it is vital that the L&S line be upgraded to move 286,000 pound

loads of grain and other products to Peoria markets. IAIS asserts that the current owners of the line do not want to upgrade the line and prefer to sell it to IAIS.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(3), prior Board approval is required for a rail carrier to acquire control 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) 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 needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323(a)(3) for IAIS's acquisition of control of L&S is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], ensure the development and continuation of a sound rail transportation system [49 U.S.C. 10101(4)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage honest and efficient management of railroads [49 U.S.C. 10101(9)]. According to IAIS, the acquisition of the L&S rail line will benefit all of IAIS's current customers by rehabilitating the existing line to handle more weight and facilitate the movement of grain and other heavy load traffic to Peoria markets. Other aspects of the rail transportation policy are not adversely affected.

Regulation of this transaction is not necessary to protect shippers from the abuse of market power. IAIS's acquisition of control of L&S will have no adverse impact on competition, and rail operations on the line will not change in any manner. The sole shipper, Galena Sand, will not lose access to any rail service which it currently receives, and this transaction will not lessen competition or transportation options for the sole shipper. The proposed acquisition will ensure the continued efficiency of IAIS's service by providing IAIS with certainty about its ability to continue operating on the Peoria line. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Regarding labor protection, IAIS argues that, because the level of service on the L&S line will not be reduced, none of its employees will be adversely affected and no labor conditions need be imposed here. Under 49 U.S.C. 10502(g), however, we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction involves at least one Class II and one or more Class III rail carriers, our grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) because it will not result in significant changes in carrier operations,

i.e., changes that will exceed the thresholds of 49 CFR 1105.7(e)(4) or (5). Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1). IAIS's acquisition of L&S and its rail line is for the purpose of continued rail operations, further Board approval is required to abandon or discontinue service, and there are no plans to alter or dispose of properties subject to Board jurisdiction that are 50 years old or older.

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 the above-described transaction from the prior approval requirements of 49 U.S.C. 11323, et seq., subject to the labor protective conditions at 49 U.S.C. 11326(b).
2. Notice of the exemption will be published in the Federal Register on December 22, 2006.
3. This decision will be effective on December 30, 2006.
4. Petitions to stay must be filed by December 26, 2006. Petitions to reopen must be filed by January 11, 2007.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary