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SERVICE DATE – APRIL 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1067 (Sub-No. 1X)

IOWA NORTHWESTERN RAILROAD – ABANDONMENT EXEMPTION – IN OSCEOLA
AND DICKINSON COUNTIES, IA

Decided: April 6, 2006

By petition filed on December 27, 2005, General Railway Corporation, d/b/a Iowa Northwestern Railroad (IANW), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 17.05-mile line of railroad extending from milepost 235.25 near Lake Park, IA, to the end of the line at milepost 252.3 near Allendorf, IA, in Osceola and Dickinson Counties, IA (the line).

Notice of the filing was served and published in the Federal Register on January 13, 2006 (71 FR 2301). On February 9, and 17, 2006, Iowa Central Railroad Co. (ICR) and Cooperative Elevator Association (CEA), respectively, filed in opposition to IANW's petition. ICR also filed a notice of intent to file an offer of financial assistance (OFA). As discussed below, we cannot grant IANW abandonment authority, but will grant a discontinuance of service over the line.¹

BACKGROUND

No traffic has moved over the line since December 22, 2003, due to an embargo placed by Union Pacific Railroad Company (UP) at its interchange with IANW at Superior, IA. IANW states that the UP embargo has been modified and extended three times since the initial embargo in December 2003 and remains in effect. Also, according to IANW, there has been no overhead traffic since the line became stub-ended in 1993. Prior to the embargo, there was only one shipper on the line, CEA, with a grain load-out facility in Ocheyedon, IA. CEA originated 150, 100, and 225 cars of grain in 2001, 2002, and 2003, respectively, and received 34, 39, and 68 cars, in each of those respective years.

¹ On January 17, 2006, the Iowa Natural Heritage Foundation filed a request for a public use condition and for issuance of a notice of interim trail use (NITU) for the entire line, on behalf of itself, the Osceola County Conservation Board, the Dickinson County Trails Board, and the Dickinson County Trails Alliance. On January 18, 2006, the Iowa Trails Council filed a request for a public use condition and for issuance of a NITU for the portion of the line extending from milepost 237.5 to milepost 252.3, on behalf of the Cities of Sibley and Allendorf, the Osceola County and Dickinson County conservation boards. Because we are only granting discontinuance authority, we cannot grant the requests for a public use condition or a NITU.

According to IANW, 150 cars spotted for CEA service were ordered returned by the lessor of the cars in 2002 and a second set of 150 cars were again ordered returned in 2003 because of low utilization of the equipment, effectively ending outbound shipments for the Ocheyedan location. IANW indicates that CEA has the ability to receive inbound fertilizer shipments at its site in Sibley, 12 miles away, which can be transloaded to the Ocheyedan site.

In July 2004, CEA filed a complaint in the United States District Court for the Northern District of Iowa, Western Division, alleging that IANW had removed the track and track materials and discontinued use over approximately 10 miles of rail line without Board approval. CEA sought: (1) an order of the court directing IANW to apply for abandonment authority from the Board and follow all other federal laws relating to discontinuance and abandonment of the line; and (2) an injunction preventing IANW from removing any additional rail, or rail components or materials from the line until authorized to do so by the Board. In a decision served on August 16, 2005, and modified on November 19, 2005, the district court adopted a magistrate's prior recommendation requiring that IANW seek authority from the Board to abandon and discontinue service over the line and enjoined IANW from removing track and track materials unless authorized to do so by the Board.

In its filing, ICR states that IANW never received authority from the Board to purchase the line, and thus has no right to abandon the line.

DISCUSSION AND CONCLUSIONS

In a notice of exemption served and published in the Federal Register on May 11, 2001, IANW acquired a right to operate over an approximately 37.21-mile line of railroad owned by the Dickinson Osceola Railroad Association (DORA), extending from milepost 79.34 at a point west of Superior, IA, to the end of the line at approximately milepost 116.55, a point west of Allendorf, IA, in Dickinson and Osceola Counties.² See General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation – Operation Exemption – Line of Dickinson Osceola Railroad Association, STB Finance Docket No. 34037 (STB served May 11, 2001) (May 2001 exemption). The 37.21-mile line was acquired by DORA earlier in 2001 from UP.³ There is

² These mileposts reflect the milepost numbers used by UP at the time it sold the line. UP purchased the line from the Rock Island Railroad. The IANW uses the Rock Island Railroad's original milepost numbers for the line rather than UP's original milepost numbers.

³ See Dickinson Osceola Railroad Association – Acquisition and Operation Exemption – Union Pacific Railroad Company, STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

nothing in the record before us to indicate that IANW obtained authorization from the Board to buy the line. It appears that IANW received authorization from the Board only to acquire the right to operate over the line. In the absence of evidence of a Board-authorized purchase of the line by IANW, we can grant IANW only authority to discontinue service over the line.

Based on the record before us and prior Board decisions pertaining to this line, it appears that DORA owns the line and has a common carrier obligation over it. To be relieved of its common carrier obligation, DORA must seek Board authority either to abandon the line or to sell it. To ensure that DORA is aware of this decision and its obligations regarding the line, IANW is directed to serve a copy of this decision on DORA within 5 days of the service date of the decision.

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. 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 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 by allowing IANW to avoid the cost of maintaining a line that is not being used [49 U.S.C. 10101 (5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No traffic has moved over the line in over 2 years and CEA, the only shipper on the line, has transportation alternatives. CEA has the ability to receive inbound shipments at its site in Sibley, 12 miles away, which can be transloaded to the Ocheyedon site. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope. To ensure that CEA is aware of this decision, IANW is directed to serve a copy of this decision on CEA within 5 days of the service date of the decision.

Under 49 U.S.C. 10502(g), we may not use our 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.

Because this is a discontinuance proceeding and not an abandonment, the Board does not consider OFAs to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C.

1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Nevertheless, it should be noted that no party, including IANW, may remove any ties, track, or other track property from the line until full abandonment authority is issued and all conditions associated with that authority are met.

On March 13, 2006, ICR filed a motion to compel IANW to provide the information on the entire 37.21-mile line required by 49 U.S.C. 10904(b) and 49 CFR 1152.27(a). Although ICR seeks to purchase the entire line, we have concluded that IANW can only discontinue service on the line and, therefore, ICR can only subsidize the portion of the line being discontinued. Accordingly, we will grant ICR's motion to compel only to the extent that information relates to subsidizing operations over the 17.05 miles being discontinued. In its March 13 filing, ICR also asks that we toll the deadlines associated with the OFA process. Tolling the deadlines, however, is not appropriate at this time because the information might be provided with sufficient promptness. ICR may file a request to toll the deadline for submitting its offer if it does not receive the requested information in accordance with 49 CFR 1152.27(c)(1)(i)(C).

This decision 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, the Board exempts from the requirements of 49 U.S.C. 10903 the discontinuance by IANW of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).
2. IANW may not take any steps to salvage the line.
3. IANW is directed to serve a copy of this decision on CEA and DORA within 5 days after the service date of this decision and to certify to the Board that it has done so.
4. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by April 24, 2006, 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 a \$1,200 filing fee. See 49 CFR 1002.2(f)(25).⁴

5. 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.”**

6. Petitions to stay must be filed by April 25, 2006, and petitions to reopen must be filed by May 5, 2006.

7. Providing no OFA to subsidize continued rail service has been received, this exemption will be effective on May 10, 2006.

8. ICR’s motion to compel is granted only as it applies to information related to subsidizing the 17.05 miles being discontinued.

9. ICR’s motion to toll the deadlines related to OFAs is denied.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

⁴ The filing fee is scheduled to increase to \$1,300, effective April 19, 2006. See Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services – 2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).