

32610  
CO

SERVICE DATE - LATE RELEASE MARCH 5, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34145

BULKMATIC RAILROAD CORPORATION  
– ACQUISITION AND OPERATION EXEMPTION –  
BULKMATIC TRANSPORT COMPANY

STB Finance Docket No. 34179

BULKMATIC RAILROAD CORPORATION  
– OPERATION EXEMPTION –  
BULKMATIC TRANSPORT COMPANY

Decided: March 5, 2002

By notices filed on December 21, 2001, in STB Finance Docket Nos. 34145 and 34146, Bulkmatic Railroad Corporation (BRC), a noncarrier, sought to acquire by sublease, and the Chicago Heights Switching Company (CHSC), also a noncarrier, sought to operate, approximately 3.9 miles of railroad right-of-way and trackage at Chicago Heights, IL.<sup>1</sup> By decision served on December 27, 2001, a petition for stay filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL) was denied, and the exemptions in those dockets became effective and were published in the Federal Register on January 15, 2002, at 67 FR 2010-2011.

By notice filed under 49 CFR 1150.31 on February 27, 2002, in STB Finance Docket No. 34179, BRC seeks to invoke the class exemption at 49 CFR 1150.31, et seq., to operate the track it is acquiring in STB Finance Docket No. 34145. BRC would operate the track in lieu of CHSC as had been proposed in STB Finance Docket No. 34146.

On March 4, 2002, UTU-IL filed a petition asking the Board (1) to stay and to reject and/or to revoke the exemption sought in STB Finance Docket No. 34179 and (2) to reject and/or to revoke the exemption obtained in STB Finance Docket No. 34145. UTU-IL renews the argument it made in its December 2001 stay petition that it is likely to prevail on the merits of its

---

<sup>1</sup> The trackage connects with the Union Pacific Railroad Company (UP) and the Elgin, Joliet & Eastern Railway Company. Currently, UP operates over the trackage to provide intermodal service in conjunction with the transloading activities of Bulkmatic Transport Company, the motor carrier that leases the track.

contentions that: (1) the transactions are outside Board jurisdiction because the track is excepted switching track under 49 U.S.C. 10906; and (2) regulation is necessary to carry out the provisions of the rail transportation policy of 49 U.S.C. 10101. UTU-IL also argues that railroad employees would suffer irreparable injury in the absence of a stay, that a stay would injure no other parties, and that the public interest warrants a stay. On March 5, 2002, BRC replied in opposition to the stay request.

#### DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Here, UTU-IL has not shown that all of these standards have been met. UTU-IL is essentially asking for a stay for the same reasons that were held to be inadequate for a stay in the decision served on December 27, 2001. UTU-IL has not shown that it is likely to prevail on the merits of its contention that the track is not eligible for the class exemption because it is excepted track under 49 U.S.C. 10906. Whether track is excepted under section 10906 is a complex, fact bound issue that must be resolved in light of precedents that require considerable analysis. Petitioners have not come forward with sufficient evidence and argument necessary to convince the Board that they are likely to prevail in their argument that this transaction does not require Board approval due to the nature of the track and its intended use.

Nor has UTU-IL shown that it is likely to prevail in its argument that railroad employees would suffer irreparable injury in the absence of a stay. UTU-IL states that the BRC’s operation over the track would displace work currently performed by crews employed by the Union Pacific Railroad Company. However, UTU-IL has not substantiated its claim of irreparable harm.

Because UTU-IL has failed to meet the criteria for stay, its request for stay will be denied. UTU-IL also has not supported its request for rejection of the notices. UTU-IL’s request to revoke the exemptions in these proceedings will be addressed in a subsequent decision.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary