

SURFACE TRANSPORTATION BOARD ALLOWS I&M RAIL LINK TO ACQUIRE SOO LINE'S KANSAS CITY-CHICAGO MAINLINE & SOO'S "CORN LINES" LOCATED IN 5 MIDWESTERN STATES

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Thursday, April 3, 1997 i:z i:z i:z i:z i:z i:z i:z i:z i:z i:z i:z i:z
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The Surface Transportation Board (Board) announced that it has issued a decision that allows I&M Rail Link (I&M) to acquire from Soo Line Railroad Company, doing business as Canadian Pacific Railway (CPR), and to operate, approximately 1,109 miles of rail line and 262 miles of trackage rights in Iowa, Illinois, Minnesota, Missouri, Wisconsin, and Kansas These rail lines consist of CPR's "KC Mainlines" between Kansas City, MO, and Pingree Grove, IL, including trackage rights between Pingree Grove and Chicago, IL; and the "Corn Lines" between Sabula and Sheldon, IA, including branch lines and trackage rights in southern MN. . Specifically, the Board's decision (1) denied petitions to revoke I&M's exemption from Board regulation to acquire and to operate these rail lines; (2) denied petitions to revoke the related exemption of Dennis Washington and other named individuals (Washington) to control both I&M and Montana Rail Link, Inc. (MRL) In Dennis Washington, et al.--Continuance in Control Exemption--I&M Rail Link, LLC, STB Finance Docket No. 33327.; (3) allowed both exemptions to become effective on **April 4, 1997**, and directed that notice be published in the Federal Register; and (4) dismissed another related exemption because MRL would not acquire control of I&M under the proposed transaction In Montana Rail Link, Inc.--Acquisition of Control Exemption--I&M Rail Link, LLC, STB Finance Docket No. 33328. . The I&M acquisition exemption was originally to have become effective on February 4, 1997, but the Board postponed the effective date to March 6, 1997, to seek additional evidence and argument. The Board further postponed the effective date to April 4, 1997, to enable the Board to consider fully the extensive evidence and argument presented in these proceedings. While initially eliciting strong opposition from certain portions of rail labor and certain local communities, the proposed transaction subsequently generated substantial support from agricultural and other shipping interests, state and other local interests, and other portions of rail labor.

The primary parties in opposition to the transaction--the United Transportation Union, the Transportation Communications International Union, and the City of Ottumwa, Iowa (collectively, "petitioners")--in essence argued that I&M existed only on paper and that the real party in interest in the I&M acquisition transaction was MRL, the other entity controlled by Washington and an existing rail carrier, thus meaning that the transaction should be considered under 49 U.S.C. 11323 rather than 49 U.S.C. 10901 as filed. The Board pointed out, however, that the ICC Termination Act of 1995 explicitly provides that acquisitions of rail lines by noncarriers are governed by section 10901 as proposed by I&M. Based on the evidence in the public record for these proceedings and on established precedent, the Board found that I&M constituted a noncarrier for purposes of section 10901 and that the transaction qualified for handling under that statutory provision. The Board found that the petitioners failed to demonstrate that the exemptions should be revoked or otherwise denied.

The Board found that I&M will be a bona fide new rail carrier entrant upon consummation of the transaction, established for substantial business reasons, and that it will be sufficiently independent of its affiliated carrier, MRL, for the transaction properly to be considered under section 10901. Specifically, the Board said that the record in this case shows that I&M was created to acquire and operate the lines at issue for the purpose of segregating the liabilities and risks of a "start-up" operation from an established business, and to enable a different ownership group to acquire the lines. As to I&M's independence, the Board found no connection between the financing arrangements in place for MRL and those that will be in place for I&M; that neither firm has guaranteed any obligations of the other to its lender; that, consistent with the different ownership groups controlling the two firms, each company's accounts will be completely segregated from the other's; that there will be no cross-subsidization; and that neither firm will have the ability to write checks for, or disburse the funds of, the other. The Board stated that any dealings between I&M and MRL will be contractual in nature and based on arm's-length negotiations as I&M provides service in its own name and with its own equipment.

The Board also rejected other arguments by the petitioners that the transaction is a sham. In particular, they argued that various commercial arrangements agreed to by I&M and CPR in connection with the line sale will allow CPR to control or become the alter ego of I&M. The Board did not agree with these arguments. However, the Board did reserve judgment on the implications of the right of CPR to acquire up to a one-third interest in I&M in connection with the transaction, because CPR has committed to seeking a declaratory order from the Board on whether CPR would obtain control of I&M should CPR choose to exercise its right, and because CPR has committed to placing this ownership interest into a voting trust pending the resolution of the declaratory order proceeding.

The Board issued its decision on April 2, 1997, in the case entitled I&M Rail Link, LLC--Acquisition and Operation Exemption--Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 (embracing related cases Dennis Washington, et al.--Continuance in Control Exemption--I&M Rail Link, LLC, STB Finance Docket No. 33327, and Montana Rail Link, Inc.--Acquisition of Control Exemption--I&M Rail Link, LLC, STB Finance Docket No. 33328). Vice Chairman Owen commented with a separate expression.

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