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SERVICE DATE - LATE RELEASE AUGUST 23, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34085

KEOKUK JUNCTION RAILWAY CO.
– ACQUISITION AND OPERATION EXEMPTION –
WEST END OF TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

PETITION FOR STAY

Decided: August 23, 2001

The petition to stay the effectiveness of the exemption in this proceeding is being denied.

BACKGROUND

By notice filed on August 15, 2001, the Keokuk Junction Railway Co. (KJRY) invoked the class exemption at 49 CFR 1150.41 to allow its acquisition of rail lines owned by the Toledo, Peoria and Western Railway Corporation (TP&W), between milepost 108.0 near East Peoria, IL, and milepost 206.0L, near Lomax, IL.¹

By petition filed on August 21, 2001, TP&W requests a stay of the effectiveness of the exemption pending consideration of the petition to reject or to revoke the exemption that it filed on August 20, 2001. TP&W alleges that the notice contains false and misleading information, in that TP&W has not agreed to sell the line to KJRY but has instead agreed to sell a portion of the line to the SF&L Railway, Inc. (SF&L).² On August 21, 2001, KJRY replied to the petition for stay.

¹ The acquisition also includes trackage rights over (1) the Union Pacific Railroad Company, between Hollis (milepost 119.28) and Iowa Junction (milepost 113.9) and (2) the Peoria and Pekin Union Railway Company, between Iowa Junction (milepost 113.9) and milepost 109.49.

² On August 20, 2001, SF&L also filed a petition to reject the exemption, arguing that it contained false and misleading information. On August 21, 2001, KJRY submitted replies to the petitions to reject filed by both SF&L and TP&W.

DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits (here, of a request for rejection or revocation); (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking stay carries the burden of persuasion on all of the elements required for stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

TP&W argues, both in its stay request and in its petition for rejection and revocation, that the notice filed by KJRY contains numerous defects that warrant rejection. TP&W also argues that the notice should be revoked pursuant to the standards of 49 U.S.C. 10502(d). TP&W claims that the notice constitutes an attempt to seize the 98 miles of TP&W line (and related trackage rights) in Illinois. TP&W argues that KJRY is asserting contractual rights (i.e., claiming to exercise an option) it does not in fact possess. TP&W claims that the notice, unless stayed, will harm it by triggering litigation and creating uncertainty among TP&W's customers.

In reply, KJRY argues that TP&W has not shown a likelihood that it will prevail on the merits of its petitions to reject or revoke. KJRY disputes the assertion that the notice is false and misleading and argues that there is no basis for revoking the notice. KJRY also claims that TP&W has failed to show that it will suffer immediate and irreparable harm.

TP&W's stay request must be denied because that carrier would not be irreparably harmed in the absence of a stay. The Board's authority to exempt acquisitions is merely permissive. Permitting the exemption to become effective will not alter any rights to the line that the parties currently have. Rather, it merely allows parties to exercise rights under the governing federal statute³ to acquire and operate trackage if they are otherwise lawfully able to acquire them. The Board's exemption of an acquisition neither adjudicates property rights nor confers involuntary trackage rights over the line that is the subject of the exemption. Thus, if the exemption were to become effective, it would not provide authority for a court to allow KJRY to take control of the property from others if the others lawfully own and have authority to operate over it. TP&W's concerns that, as a result of this exemption, it ". . . could be forced to transfer [the line] to KJRY in the absence of a stay" or that it might have to "undo" the transfer of the line to SF&L are unfounded.

In light of the above, this decision need not address the other stay criteria. Issues concerning the validity of the exemption will be considered when we dispose of the petitions to

³ The Interstate Commerce Act, as amended by the ICC Termination Act of 1995.

reject or to revoke filed by TP&W and SF&L.⁴

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

It is ordered:

1. TP&W's 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

⁴ TP&W also asserts that the line KJRY is seeking to purchase generates in excess of \$5 million in annual revenues, thus triggering the requirements of 49 CFR 1150.42(e) that employees on the line and their unions be given 60 days' notice of the transaction. KJRY maintains that its total annual revenues from this line and KJRY's existing lines are not projected to reach \$5 million and that the notice requirement therefore does not apply. TP&W's bare assertion regarding the subject line's projected revenue is not sufficient to warrant the imposition of a stay here. Should it be shown in this proceeding that the revenues will exceed \$5 million, then the exemption cannot be effective until 60 days after KJRY certifies to the Board that it has given the requisite notice to employees.