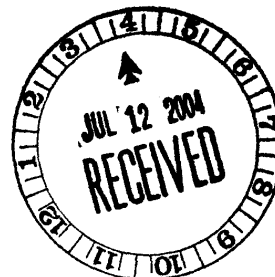


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ORIGINAL



211548
July 12, 2004

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

FILED

JUL 12 2004

**SURFACE
TRANSPORTATION BOARD**

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34464. Wisconsin & Southern Railroad Co.-Acquisition Exemption-Iowa, Chicago & Eastern Railroad Corporation, are the original and ten copies of the Petition for Reconsideration of Wisconsin & Southern Railroad Co.

Expeditious handling is respectfully requested.

A \$200 check in payment of the filing fee is attached.

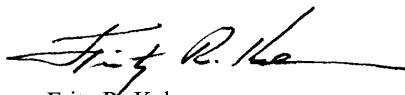
Additional copies of this letter and of the Petition are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

ENTERED
Office of Proceedings

Sincerely yours,

JUL 12 2004

Part of
Public Record


Fritz R. Kahn

enc.

cc: Mr. D. M. Hahs
William C. Sippel, Esq.

FEE RECEIVED

JUL 12 2004

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34464

WISCONSIN & SOUTHERN RAILROAD CO.
-- ACQUISITION EXEMPTION --
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

PETITION FOR RECONSIDERATION
OF
WISCONSIN & SOUTHERN RAILROAD CO.



211548

EXPEDITIOUS HANDLING RESPECTFULLY REQUESTED

FEE RECEIVED

JUL 12 2004

**SURFACE
TRANSPORTATION BOARD**

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Attorneys for

**WISCONSIN & SOUTHERN
RAILROAD CO.**

FILED

JUL 12 2004

**SURFACE
TRANSPORTATION BOARD**

Dated: July 12, 2004

**ENTERED
Office of Proceedings**

JUL 12 2004

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34464



WISCONSIN & SOUTHERN RAILROAD CO.
-- ACQUISITION EXEMPTION --
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

PETITION FOR RECONSIDERATION
OF
WISCONSIN & SOUTHERN RAILROAD CO.

Petitioner, Wisconsin & Southern Railroad Co.
(``WSOR''), pursuant to 49 C.F.R. 1115.3, petitions for
reconsideration of the Decision, served June 30, 2004,
insofar as it denied WSOR's request for the partial waiver
of the 60-day notice requirement of 49 C.F.R. 1121.4(h), and
as grounds therefore WSOR respectfully submits that the
Board's denial of the partial waiver request involved
material error or, alternatively, that the new evidence
which by this petition WSOR seeks leave to have introduced
into the record will materially affect the Board's
determination of the issue.

I. BACKGROUND

WSOR is a Class II regional railroad operating in Wisconsin and the adjacent portion of northern Illinois. WSOR proposes to purchase 7.33 miles of rail lines of the Iowa, Chicago & Eastern Railroad Corporation ("IC&E") in Janesville, Rock County, WI, (hereafter "the Lines") which WSOR long has leased and operated. IC&E will continue to reserve trackage rights over the Lines and, hence, will have access to existing IC&E industries and interchanges.

WSOR had filed its Petition for Exemption in this proceeding on January 30, 2004, seeking an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10902 in order to purchase the Lines. Delays in negotiating the appropriate transaction documents forced WSOR to ask that the proceedings be held in abeyance so those matters could be resolved. On or about June 8, 2004, WSOR and IC&E signed an Asset Purchase Agreement, calling for the consummation of the transaction to be effected no later than July 31, 2004. The following day, June 9, 2004, WSOR filed its Petition for Waiver for the partial waiver of the provisions of 49 CFR 1121.4(h), posted notices of the sale of the Lines and made the requisite certification. Subsequently, the Board served a decision on June 30, 2004, granting the Petition for Exemption but denying the request for partial waiver of the requirements of 49 CFR 1121.4(h). In denying that request, the Board stated "[w]e find no justification for such a

waiver because WSOR has not demonstrated the required degree of diligence in providing notice to all affected employees.'" The Board then went on to say that WSOR's statement that the positions of the IC&E Railroad employees who maintain the Line will not be abolished and they will continue to work elsewhere on the IC&E ``falls short of an assertion that those employees will not be adversely affected.'" ``It is not clear," the Board stated, ``that the notice that WSOR posted at Janesville on June 7 would even reach the affected employees.'

II. Basis for Relief Requested

Tendered for filing in this proceeding is the attached Verified Statement of Steven O. Scharnweber, Vice President and Chief Engineer of IC&E.

The Petitioner did not and could not previously have offered Mr. Scharnweber's testimony, as Mr. Scharnweber is not an officer or employee of WSOR, and WSOR neither controls nor has the power to control Mr. Scharnweber. It was only after IC&E saw the Board's decision of June 30, 2004, and the concern the Board expressed about potentially adversely affected IC&E employees that IC&E determined to offer the testimony of Mr. Scharnweber. The Board's receipt into evidence of Mr. Scharnweber's Verified Statement will prejudice no one and will not unnecessarily prolong the ultimate disposition of this proceeding. WSOR,

accordingly, respectfully requests that Mr. Scharnweber's Verified Statement be received and be made a part of the record in this proceeding and that the Board grant WSOR's partial waiver request.

Mr. Scharnweber's Verified Statement makes clear that no employee, whether of WSOR or IC&E, will be adversely affected by the proposed transaction. As already noted, WSOR long has been the lessee of the Lines, which it proposes to purchase. Hence, there will be no change in the operations of WSOR, and none of its employees will be affected by the proposed transaction. IC&E in its lease had retained trackage rights to render operations on the Lines to serve its industries and interchanges, and, following the consummation of the proposed transaction, IC&E will continue to retain those trackage rights. Accordingly, there will be no change in the operations of IC&E, and none of its employees will be adversely affected.

At best, there are only two IC&E employees who in some slight way may be deemed to be involved, a signal maintainer and a track inspector both of whom have worked on the .8-mile connecting track between WSOR and IC&E. The signal maintainer works about one day per month on the subject trackage. The track inspector devotes only several hours per month to the subject trackage. As Mr.

Scharnweber said, the work of these two employees on the .8-mile connecting track represents less than one half of one percent of their total workload. The proposed transaction will result in neither employee's job being abolished. For all intents and purposes, the two employees will be unaffected by the proposed transaction, and they will continue to work for IC&E essentially as they have in the past. The two IC&E employees, as well as all other IC&E employees, Mr. Scharnweber stated, were given advance notice of the proposed transaction at the regular meeting of IC&E employees, and each received written confirmation following the June 18, 2004, meeting.

Neither the signal maintainer nor the track inspector, who are the only two IC&E employees who even remotely may be said to be affected by the proposed transaction, is represented by a labor organization, and giving the 60-day notice to the heads of the several brotherhoods in compliance with 49 C.F.R. 1121.4(h) would be meaningless and gratuitous gesture.

WSOR needs to consummate this acquisition on or before July 31, 2004, because its seller, the IC&E, has made a closing by or before that date a condition of the transaction. Otherwise, the agreement will terminate and IC&E has not offered to extend the closing date. Area

shippers will suffer if this transaction lapses. WSOR believes it, as a locally-based carrier, is better equipped to attract and handle business for local customers than a South-Dakota based regional railroad seeking to develop coal traffic from the Powder River Basin.

WSOR in no way disputes that the Board is required to provide appropriate labor protection for adversely affected employees, and it takes seriously its obligation to provide notice to those employees who may be adversely affected as the result of a proposed transaction. But WSOR had no reason to think that its partial waiver request was inappropriate in the circumstances of this proceeding, and the attached Verified Statement of Steven O. Scharnweber underscores that WSOR's partial waiver request was modest and reasonable.

III. CONCLUSION

WHEREFORE, WSOR respectfully asks that its request for waiver of the 60-day advance notice provision and notice to the national offices of labor unions in accordance with the provision at 49 CFR 1121.4(h) be granted expeditiously, in order that WSOR may consummate the subject transaction on or before July 31, 2004.

Respectfully submitted,

WISCONSIN & SOUTHERN RAILROAD CO

By its attorneys,

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(202) 263-4152

Dated: July 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have, this 12th day of
July 2004, served a copy of the foregoing document upon the
national offices of the labor union listed below by means
of First Class United States Mail.

Mr. D.M. Hahs,
International President
Brhd of Locomotive Engineers
1370 Ontario Street
Mezz Floor Standard Bldg.
Cleveland, OH 44113


Fritz R. Kahn

**VERIFIED STATEMENT
OF
STEVEN O. SCHARNWEBER**

My name is Steven O. Scharnweber. I am Vice President and Chief Engineer for the Iowa, Chicago & Eastern Railroad Corporation ("IC&E"). I am responsible for all maintenance and capital planning on the IC&E and its affiliate the Dakota, Minnesota & Eastern Railroad Corporation. I have more than 34 years of experience in the railroad industry in the engineering and maintenance areas.

In an Asset Purchase Agreement dated June 8, 2004 between IC&E and Wisconsin & Southern Railroad Co. ("WSOR"), IC&E has agreed to sell to WSOR approximately 7.3 miles of rail lines in Janesville, Wisconsin. Other than for a short .8-mile segment between Milepost 45.23 and Milepost 46.08 that IC&E itself operates and maintains today (referred to herein as the "Connecting Track"), all of the lines to be sold to WSOR are currently leased to WSOR and have been operated and maintained by WSOR and its predecessors since 1994. IC&E currently operates via trackage rights over the lines leased to WSOR in order to reach certain shippers and railroad interchanges and, under the proposed transaction, IC&E will retain those rights and will retain trackage rights over the Connecting Track as well. Accordingly, IC&E's operations over these lines will not change and no IC&E operating employees will be affected by the sale.

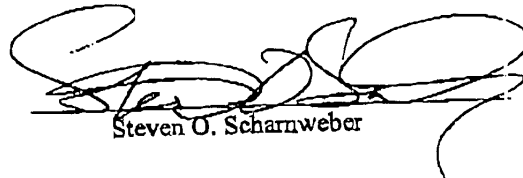
The only IC&E employees that will be affected are one IC&E signal maintainer whose work includes inspecting and maintaining the grade crossing signals on the .8-mile Connecting Track and one IC&E track inspector/maintainer whose work includes inspecting and maintaining the track on the .8-mile Connecting Track on an as-needed basis. Such work constitutes only a very small portion of these employees' job responsibilities. The work territory

of each of these employees encompasses more than 100 route miles of track. I estimate that the work performed by these two IC&E employees on this .8-mile segment represents less than one-half of one percent of their total workload. Reflecting this fact, neither job will be abolished after the sale of these lines to WSOR.

Before the APA was signed, Kevin Schieffer, IC&E's President and CEO, as part of regular meetings held with IC&E employees, informed IC&E employees in this territory of the proposed sale of the Janesville lines to WSOR. After the APA was signed, the transaction was discussed in the written minutes of the June 18, 2004 IC&E Employee Committee meeting, a copy of which was mailed to all IC&E employees along with their paychecks. To my knowledge, neither of the two affected IC&E employees (neither of which is represented by any labor organization) has made any inquiry of IC&E management regarding employment opportunities on WSOR or otherwise given any indication to IC&E management that they have any interest in hiring on with WSOR.

VERIFICATION

Steven O. Schamweber, under penalty of perjury, declares and verifies that he is Vice President and Chief Engineer for Iowa, Chicago & Eastern Railroad Corporation, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.



Steven O. Schamweber

Dated: July 12, 2004