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THOMAS F. MCFARLAND

June 13, 2002

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001



Re: Finance Docket No. 34177, Iowa, Chicago & Eastern Railroad Corporation --
Acquisition and Operation Exemption -- Lines of I&M Rail Link, LLC

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Stay And Investigation Of Proposed Exemption, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland

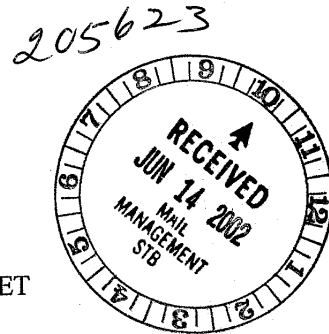
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Office of the Secretary
JUN 14 2002
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION --
ACQUISITION AND OPERATION
EXEMPTION -- LINES OF I&M RAIL
LINK, LLC

)
) FINANCE DOCKET
) NO. 34177
)
)



PETITION FOR STAY
AND INVESTIGATION
OF PROPOSED EXEMPTION

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P.O. Box 309
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Petitioner

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Attorney for Petitioner

DUE DATE: June 14, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA, CHICAGO & EASTERN	)	
RAILROAD CORPORATION --	)	FINANCE DOCKET
ACQUISITION AND OPERATION	)	NO. 34177
EXEMPTION -- LINES OF I&M RAIL	)	
LINK, LLC	)	

**PETITION FOR STAY
AND INVESTIGATION
OF PROPOSED EXEMPTION**

Pursuant to 49 C.F.R. § 1117.1, IOWA TRACTION RAILROAD COMPANY (IATR) hereby petitions for a stay of the effective date of a Notice of Exemption filed by Iowa, Chicago & Eastern Railroad Corporation (ICE) on June 7, 2002, and for an investigation into whether exemption would be appropriate for the transaction contemplated in that Notice. IATR submits the following in support of its Petition.

STATEMENT OF RELIEF SOUGHT

IATR seeks a stay of the scheduled June 28, 2002 effective date of the proposed exemption of sufficient duration to provide all interested parties an adequate opportunity to be heard on whether an exemption should be granted for the proposed transaction. In no event should the duration of the stay be less than the two-month stay that was entered in *I&M Rail Link, LLC -- Acq. & Oper. Exem. -- Canadian Pacific Ry.*, Finance Docket No. 33326, decisions served Feb. 3 and Feb. 28, 1997 (not printed) (*IMRL* case), in which I&M Rail Link, LLC (*IMRL*) acquired the same rail lines it now proposes to sell to ICE. During the stay period, an investigation should be conducted in which, at a minimum, ICE and its affiliates, Dakota,

Minnesota & Eastern Railroad Corporation (DME) and Cedar American Rail Holdings, Inc. (CARH), should be required to file current audited financial statements and a detailed operating plan for ICE, and interested parties should be provided ample opportunity to review those documents and to file comments with the Board.

IDENTITY AND INTEREST OF IATR

IATR is a Class III rail carrier subject to the jurisdiction of the Board. Since 1987, IATR has operated 10.4 miles of rail line between Mason City, IA and Clear Lake, IA, which it acquired pursuant to an offer of financial assistance in *Iowa Terminal R. Co. -- Aban. -- in Cerro Gordo and Floyd Counties, IA*, Docket No. AB-269, decision served Jan. 12, 1987 (not printed). IATR has been a shortline success story. IATR increased its carloadings from 424 in its first year of operation to 1,911 in 2000, an increase of 450 percent.

In addition to the high quality rail service that IATR provides, a major reason for IATR's success is the good working relationship that it enjoys with IMRL, with whom it interchanges traffic at Mason City, IA. IATR's major customer in Mason City, AG Processing, Inc. (AGP), is directly served by Union Pacific Railroad Company (UP) in addition to IATR. As a result of working closely with IMRL, IATR has been able to compete successfully for a significant portion of AGP's traffic via an IATR-IMRL routing. That AGP traffic constitutes approximately 85 percent of IATR's total rail traffic.

The continued financial health and service capability of IMRL is critical to the continued existence of IATR. Virtually all of the AGP traffic now moving via IATR-IMRL is susceptible to rerouting via UP. AGP would be likely to reroute that traffic in that manner if IMRL were no longer to function as an effective interchange partner of IATR at Mason City. That would doom

IATR, which could not survive loss of 85 percent of its traffic base. Nine shippers in the Mason City area that are served exclusively by IATR would lose rail service in that event. That would also harm the public interest in competitive rail service at Mason City inasmuch as AGP would lose its current IATR-IMRL routing option.

ARGUMENT IN SUPPORT OF STAY AND INVESTIGATION

1. Applicable Procedural Standards

The rail exemption procedures in 49 C.F.R. Part 1121 apply to class exemptions, as well as petitions for exemption. (*See* 49 C.F.R. § 1121.1, Scope, "These procedures also apply to notices of exemption.").

The procedural standards for institution of an investigation into a proposed exemption are contained in 49 C.F.R. § 1121.4(c)(1), viz:

If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

- (i) Direct that additional information be filed; or
- (ii) Publish a notice in the Federal Register requesting public comments.

The procedural standards for a stay of a class exemption have been developed in case law. In *Consolidated R. Corp. -- Exemp. -- Aband. of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH*, Docket No. AB-167 (Sub-No. 1088X), decision served Sept. 9, 1988 (not printed), the Chairman of the ICC stayed a class exemption for abandonment of an out-of-service rail line where the proposed exemption was extremely controversial, provoking

significant opposition from Federal, State and local officials, businesses and communities, all of which argued that there is a substantial public need for the rail line at issue.

In *New England Cent. R.R. Inc. -- Acq. & Oper. Exem. -- Lines between East Alburgh, VT and New London, CT*, Finance Docket No. 32432, decision served Oct. 27, 1994 (not printed), the ICC stayed a class exemption for a noncarrier acquisition and operation on the following grounds (at 8):

In our view, the effective date of this transaction must be briefly stayed. We have received substantial opposition from the State of Vermont, representatives from the State, local authorities, and its citizenry, through the filing of comments and the record developed at hearings in St. Albans, VT, and Washington, D.C., concerning the acquisition of the lines of CV, the predominant rail carrier in that state. The parties have raised important issues. In our view, we should resolve these issues before the transaction is consummated. Accordingly, we will stay the effective date of the notice of exemption until December 10, 1994, and adopt a procedural schedule for the resolution of this matter as set forth below (footnote omitted).

In the *IMRL* case, the Board stayed the class exemption for noncarrier acquisition and operation on the following grounds (decision served Feb. 3, 1997 at 2-3):

This proceeding involves a transaction that would result in the creation of a new Class II railroad that will be providing service over approximately 1400 miles of rail lines and that will be affiliated with another Class II railroad (although not operated in combination with that railroad). To enable the Board to make an informed decision on the issues and concerns raised here, the effective date of the exemption will be stayed for 30 days, until March 6, 1997, and the parties will be directed to provide us with additional evidence and argument. Although the sort of transactions contemplated by these combined filings have regularly been approved where Class III railroads are involved, the present transaction involves an acquisition by a noncarrier, affiliated with a Class II railroad, that would itself become a Class II railroad by virtue of this acquisition. Under the circumstances present in this case, the transaction requires greater scrutiny.

See, also, Riverview Trenton R. Co. -- Acq. & Oper. Exem. -- Crown Enterprises, Inc., Finance Docket No. 33980, decision served Feb. 15, 2002 (not printed) at 7-8 ("there are substantial factual and legal issues that have been presented here which require additional scrutiny and the development of a more complete record").

In summary of the foregoing decisions, a stay of a class exemption is appropriate where (1) the transaction involves a new Class II railroad affiliated with an existing Class II railroad and substantial rail mileage; or (2) the transaction has engendered substantial opposition, particularly from State and/or local authorities; or (3) the transaction raises substantial factual and legal issues that require careful scrutiny.

2. Stay And Investigation Of The Proposed Exemption Are Warranted In Accordance With The Applicable Standards

Further investigation of the proposed exemption is warranted inasmuch as the notice of exemption does not adequately identify the impact of the proposed transaction, and there is reason to believe from other evidence that significant adverse impacts may result.

The overriding concern here is the viability of the IMRL rail lines under ICE-DME ownership and operation, and the adverse impact that would result from a loss of that viability, including an adverse effect on rail competition. The notice of exemption itself provides cause for concern in that respect in acknowledging that several Class I rail carriers for whom IMRL handles significant volumes of overhead haulage traffic have indicated that such traffic may be reduced or diverted to other routes (notice at 5-6). ICE contends that any such diversions would be unrelated to ICE's proposed acquisition of the lines (*id.* at 6), but the timing of the threatened diversions suggest otherwise. The notice does not quantify the affected traffic, nor describe the

effect of its loss on the overall viability of the rail lines. Further investigation is required into that vital subject matter.

The notice acknowledges that financing for the transaction is not finalized (notice at 3). For those like IATR who rely on IMRL for their well-being, the absence of in-place financing less than three weeks before closing is discomfoting to say the least. Moreover, the notice is vague about the nature and extent of the financing that may be provided. The Board and the parties are left to speculate regarding the nature and terms of the "senior secured debt financing" referred to at page 3 of the notice, and the nature and extent of ICE "working capital needs" mentioned on the same page. In sum, the notice does not provide an ounce of hard evidence that ICE-DME will have the financial and operational wherewithal that will be essential for viability of the IMRL rail lines. Careful scrutiny of this subject matter in an investigation is a must.

There is other evidence that casts additional doubt on whether the IMRL rail lines can be operated viably by ICE-DME. IATR is informed and believes that Canadian Pacific Rail System (CPRS) has terminated the agreements by which IMRL accesses the Minneapolis-St. Paul and Chicago gateways, to be effective at or shortly after the proposed date for ICE's acquisition of those lines. Loss of traffic moving over the major Twin Cities and Chicago gateways would appear to have a severe adverse effect on the viability of the IMRL rail lines. An investigation is required to consider the circumstances surrounding the alleged termination of those agreements, and the effect of such termination on the viability of the IMRL rail lines under ICE-DME ownership and operation.

The proposed exemption should be stayed for the duration of such investigation. All of the hallmarks for a stay of a class exemption are present in the case at hand. As in the *IMRL*

case, a new Class II rail carrier would be created (ICE), which is affiliated with another Class II rail carrier (DME), and, of course, the same 1,400-plus miles of rail line are involved. Here, however, the rail lines of the two Class II rail carriers would be connected, whereas in the *IMRL* case their lines did not connect. The contiguous nature of the two Class II rail carriers in the present case is even more reason for a stay than existed in the *IMRL* case.

IATR is informed and believes that there will be substantial opposition to the fast-track class exemption procedure for the proposed transaction, if not to the merits of the transaction itself. More particularly, IATR expects the State of Iowa to oppose exemption procedure for consideration of the transaction, through the Iowa Department of Transportation. That opposition is especially meaningful inasmuch as the lion's share of the rail lines at issue are located within Iowa. In addition, key shippers are expected to oppose accelerated procedure, such as AG Processing, Inc. and Tyson Foods.

Serious factual and legal issues have been raised regarding the proposed transaction. Among such issues are whether diversion of overhead haulage traffic is related to the proposed transaction; whether access to the Twin Cities and Chicago gateways will be terminated as to the rail lines at issue; and whether the rail lines can be operated viably without that haulage and interchange traffic. Those vital issues should be addressed before the proposed exemption becomes effective.

3. The Investigation Should Be Of Sufficient Scope And Duration To Ensure Procedural Due Process To All Parties

In determining the scope and duration of the investigation into the proposed exemption, the Board should balance the desire of ICE-DME for expedited consideration and the desire of

other interested parties for an adequate opportunity to review relevant documents and other evidence and to comment thereon -- the goal being to ensure procedural due process to all parties.

As concerns the scope of the investigation, at a minimum ICE should be required to provide evidence of the surrounding circumstances and the effect of the prospective diversion of overhead haulage traffic and termination of agreements that provide access to the Twin Cities and Chicago gateways for interchange traffic. ICE should also be required to provide audited financial statements for DME and CARH, a detailed operating and track maintenance plan for ICE and details regarding financing for the acquisition and operation of the rail lines. Only in that manner will there be sufficient evidence to permit a reasoned determination of whether the exemption process is appropriate for consideration of the proposed acquisition and operation.

If ICE-DME were to be forthcoming with that evidence and documentation on a timely basis, the duration of the investigation need not be longer than the two-month period after the scheduled effective date of the proposed exemption that was provided for in the *IMRL* case. Of course, the duration of the stay should correspond to the duration of the investigation. A longer period for investigation would be required if ICE-DME were not to come forward with the pertinent evidence and documentation.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should stay the scheduled effective date of the proposed exemption, and should institute an investigation into the propriety of exemption procedure for the proposed transaction -- such investigation being of the scope and duration described in this pleading.

Respectfully submitted,

IOWA TRACTION RAILROAD COMPANY
P.O. Box 309
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(641) 424-4600

Petitioner

Thomas F. McFarland

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Attorney for Petitioner

DUE DATE: June 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2002, I served the foregoing document, Petition For Stay
And Investigation Of Proposed Exemption, by first-class, U.S. mail, postage prepaid (except as
noted) on:

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