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SERVICE DATE - LATE RELEASE JANUARY 14, 1999

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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33706

DECISION

ILLINOIS RAILNET, INC.

-- ACQUISITION AND OPERATION EXEMPTION--

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: January 14, 1999

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

#### BACKGROUND

By notice filed on January 8, 1999, Illinois Railnet, Inc. (IR), invokes the class exemption at 49 CFR 1150.31 et seq. to allow its acquisition and operation of an approximately 23.5-mile line of railroad in Illinois owned by The Burlington Northern and Santa Fe Railway Company (BNSF).<sup>(1)</sup> I&M Rail Link (IMRL) currently operates over part of the line under trackage rights with BNSF, and, after the transaction, IMRL will retain its trackage rights as a tenant of IR. The parties propose to consummate the transaction on or after January 15, 1998.

By petition filed on January 13, 1999, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (Szabo), requests that we stay operation of the exemption pending the filing and disposition of a petition to reject or to revoke it.

On January 14, 1999, IR filed a reply to Szabo's petition for stay.

#### DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay in a proceeding such as this are: (1) whether petitioner is likely to prevail on the merits 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).

Under this standard, Szabo's request for stay must be denied because petitioner has little likelihood of prevailing on the merits of a petition for rejection or revocation of the exemption. Szabo's only argument on the merits of the notice is to assert that it does not comply with our requirement under 49 CFR 1150.42(e) that notice be filed at least 60 days before the effective date of the notice for a transaction that will result in the creation of a carrier whose projected annual revenue will exceed \$5 million. Szabo maintains that, in certifying that the \$5 million revenue threshold for the 60-day notice requirement was met, IR failed to include revenue accruing to IMRL.

The purpose of the 60-day notice requirement is to provide notice to employees affected by certain line sales. The employees of IMRL are not affected by the transaction. IR is acquiring the line from BNSF subject to IMRL's rights. The revenues of an operator on the line whose operations are unaffected by the transfer does not implicate the scope of the transfer insofar as it affects employees. Also, one of the purposes of the regulations in establishing the \$5 million threshold requirement is to exempt smaller transactions and smaller carriers from the 60-day notice requirement. Adding the revenues of tenant carriers operating on the line would effectively lower the threshold for reasons unrelated to the purpose of the regulations and would thus erode the purpose served by the \$5 million threshold.

Szabo has failed to show that any BNSF employees will be irreparably harmed by failure to stay the transaction. Nor does Szabo allege that such employees will not be able to obtain other nearby positions with BNSF. IR, a small Class III carrier, has asserted that it would be harmed if the transaction were stayed. Thus, Szabo has failed to show that a stay is warranted under the applicable criteria.

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

It is ordered:

1. UTU'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

1. The line runs between (a) milepost 11.69 at Davis Junction, IL, and (b) milepost 23.79 at Rockford , IL .