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SERVICE DATE - LATE RELEASE JULY 1, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34518

CENTRAL ILLINOIS RAILROAD COMPANY—OPERATION EXEMPTION—RAIL LINE OF THE CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS IN PEORIA AND PEORIA HEIGHTS, PEORIA COUNTY, IL

Decided: July 1, 2004

The request to stay the effectiveness of the exemption in this proceeding is being denied. The request for rejection and revocation will be considered in a subsequent decision.

BACKGROUND

By notice filed on June 28, 2004, Central Illinois Railroad Company (CIRY) invokes the Board's class exemption at 49 CFR 1150.41 for its operation of the Kellar Branch, a 8.29-mile rail line between milepost 1.71 and milepost 10.00 in Peoria and Peoria Heights, Peoria County, IL. The Kellar Branch (the Line) is located in, and owned by, the city of Peoria and the village of Peoria Heights (the Cities). The notice is scheduled to become effective on July 5, 2004. On June 30, 2004, Pioneer Industrial Railway Company (PIRY) filed a petition to reject or revoke ab initio CIRY's notice of exemption or, alternatively, to stay its effectiveness. On July 1, 2004, CIRY replied in opposition.

In its notice, CIRY states that the notice is being filed at the request of the Cities and is to permit CIRY to replace PIRY, the current operator of the Kellar Branch, upon the expiration of PIRY's operating agreement with the Cities on July 10, 2004. Noting that PIRY has refused to give up its authority to operate the Kellar Branch, CIRY states that the consummation of the notice of exemption will result in two authorized operators. Citing City of Rochelle, IL—Notice of Exemption—Commencement of Rail Common Carrier Operations, STB Finance Docket No. 33587 (STB served June 2, 1998), CIRY states that there is ample precedent for such dual authority. CIRY also claims that dual authority will be comparable to the ordinary trackage rights situation. According to CIRY, two carriers will be able to operate the Kellar Branch safely by coordinating traffic movements. CIRY claims that it is an experienced rail operator and would undertake the required coordination.

PIRY states that the city of Peoria, after acquiring the Kellar Branch, entered into an agreement giving the Peoria & Pekin Union Railway Company (P&PU) a permanent easement to

operate the Line, see Peoria & Pekin Union Railway Company—Exemption from 49 U.S.C. 10901, STB Finance Docket No. 30545 (ICC served Sept. 18, 1984), and that PIRY acquired P&PU’s permanent easement in 1998, see Pioneer Industrial Railway Company—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

PIRY points out that the notice admits that PIRY is the authorized common carrier on the Line and that no proceeding is pending to terminate that authority. Additionally, PIRY points out that the notice does not claim that PIRY is not fulfilling its common carrier obligation, and in fact admits that PIRY is actively operating the line by arguing for joint operations. In PIRY’s view, the joint operation that would result if the notice is permitted to become effective is not comparable to trackage rights and will result in numerous problems not just for PIRY but for other entities including carriers, shippers, and car owners. PIRY contends that the public interest in safety would not be served by putting two competing carriers on an 8.29-mile, single-track line composed of light rail, a line that is unsignaled, that traverses a primarily urban area with several major grade crossings, and that includes a lengthy, curving steep grade up a bluff of the Illinois River.

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

PIRY has failed to show a strong likelihood that it will prevail on the merits. Its argument that the Cities lack the ability to enter into an agreement with another carrier is unsupported by its petition. Its argument that the transaction that is the subject of the notice is not cognizable under 49 CFR 1150.41 lacks merit as well. Nor has the notice been shown to be false and misleading; PIRY simply disagrees with the significance of the precedents that CIRY cites.

PIRY claims it will be harmed by losing business to CIRY. But that commercial harm, if it arises and if PIRY can successfully demonstrate injury in state court, can be compensated by money damages. Such harm cannot be considered irreparable. PIRY also makes an irreparable

harm argument based on concerns that safety would be compromised if two carriers were to operate on the line simultaneously. But, as the notice points out, the Board sanctions dual operations on rail lines routinely, and relies on coordinated dispatching to assure safe operations. The regulations of the Federal Railroad Administration governing rail safety apply to such operations, have assured safe operations in the past, and may be relied upon to do so in the future, on this line and elsewhere. To assure coordination of dispatching, we will require that CIRY certify to the Board that coordination protocols for dual operations are in place before its operations can commence on the line.

The petition for stay is denied.

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

It is ordered:

1. The petition for stay is denied. CIRY may commence operations once its exemption becomes effective and it certifies to the Board that coordination protocols for dual operations are in place.
2. This decision is effective on its service date.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary