

exemption at 49 CFR 1180.2(d)(3). The purpose of the transaction is to streamline corporate functions and improve the efficiency of the surviving entity.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32951, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Washington, DC 20036.

Decided: July 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

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BILLING CODE 4915-00-P

[STB Finance Docket No. 32892]

CSX Corporation and CSX Transportation, Inc.—Control—The Indiana Rail Road Company

AGENCY: Surface Transportation Board.

ACTION: Notice of acceptance of application.

SUMMARY: The Board accepts for consideration the application filed July 3, 1996, by CSX Corporation (CSX), CSX Transportation, Inc. (CSXT), and The Indiana Rail Road Company (INRD) (collectively, applicants), for CSX and CSXT to acquire control of INRD. In accordance with 49 CFR 1180.4(b)(2)(iv), the Board finds that

this is a minor transaction as described in 49 CFR 1180.2(c).

DATES: This decision is effective on August 2, 1996. Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than September 3, 1996. The Board will issue a service list shortly thereafter. Copies of the comments must be served on all parties of record within 10 days after the Board issues the service list and must be confirmed by certificate of service filed with the Board indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due September 23, 1996.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 32892 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of all pleadings to applicants' representatives: (1) G. Paul Moates, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006; and (2) John H. Broadley, Jenner & Block, 601 Thirteenth Street, N.W., Twelfth Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Applicants seek approval under 49 U.S.C. 11323-25 for CSX and CSXT to acquire control of INRD by acquiring a controlling interest in Midland United Corporation (Midland), the noncarrier holding company that owns INRD.

Applicants state that this is a minor transaction as defined in 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343-45. The ICCTA revised those statutory provisions and reenacted them as 49 U.S.C. 11323-25. Because the proposed transaction does not involve the merger or control of two Class I railroads, it is subject to the standards of 49 U.S.C. 11324(d). Also, as discussed below, because we have determined that the transaction is not of regional or national significance, the procedures set out at 49 U.S.C. 11325(d) apply. Under section 204(a) of the ICCTA, all ICC rules in effect on the date of enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * * or operation of law." While the standards and procedures of former sections 11343-45 and current sections 11323-25 are substantially similar,

insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

CSXT is a Class I rail carrier wholly owned by CSX, a noncarrier, and operates approximately 19,000 miles of track in 20 states, the District of Columbia, and the province of Ontario, Canada. INRD is a Class III rail carrier that operates approximately 155 miles of track between Newton, IL, and Indianapolis, IN. CSXT's lines, relevant to this transaction, run essentially north and south, while INRD's line runs essentially east and west. INRD and CSXT have direct connections at Sullivan and Bloomington, IN, and an indirect connection at Indianapolis, IN, through which they interchange freight traffic.

The principal commodity handled by INRD is Indiana coal. In 1995, INRD transported approximately 34,000 carloads of Indiana coal, which is more than 60% of its total annual carloads of approximately 56,000. According to applicants, Indiana coal is currently available from a number of mine sources served by Soo Line Railroad Company (Soo), INRD, and Indiana Southern Railroad Company (ISRR). Applicants argue that the availability of coal from mine sources located in neighboring states as well as from western coal mines creates competition in coal transportation services for shippers and receivers served by INRD. Applicants submit that the wide variety of coal source and transportation options precludes any significant competitive harm as a result of the proposed transaction.

In support of its contention that the proposed transaction is unlikely to affect, much less diminish, competition for INRD's shippers and receivers, applicants provide the following traffic data. Approximately two-thirds of INRD's coal traffic consists of movements to electric power generating utility plants served directly by INRD. Nearly one-half of that traffic moved in all-local service from two active INRD-served mines at Switz City, IN. The remainder of INRD's terminating coal traffic consisted of interline movements originating at mines served by Soo and/or ISRR. With only one exception, generating fewer than 1,000 carloads of INRD traffic in 1995, those mines are not served by CSXT. All of INRD's interline-received coal traffic served utility plants that currently are served either exclusively by INRD or by two rail carriers other than CSXT. Only one

¹ The ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to an acquisition of control of a rail carrier that is subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25.

coal receiver located on INRD's line currently can be served directly by CSXT. The remainder of INRD's 1995 coal traffic (approximately 12,000 carloads) moved in joint-line service with Soo, ISRR, and/or Conrail to utilities and industrial users in Indiana, Wisconsin, and Iowa, and none of those receivers is served by CSXT. Therefore, applicants conclude that the common control of INRD and CSXT will not diminish competition for INRD-originating coal traffic. INRD also provides overhead haulage services for CSXT between Bloomington and Sullivan, which accounted for approximately 10% of INRD's traffic in 1995.

The largest share of INRD's non-coal traffic, approximately 8,200 carloads in 1995, originated or terminated at local industries on INRD's main line at Robinson, IL. INRD is the only rail carrier serving Robinson. Less than 10% of INRD's 1995 traffic consisted of farm products (primarily grain) that originated at one of three country elevators located on INRD's main line between Newton and Sullivan. Applicants submit that the proposed transaction will strengthen grain competition by enhancing rail service between INRD origins and CSXT long-haul destinations, thereby improving access to potential markets for Indiana and Illinois grain producers.

CSXT owns 40% of Midland's issued and outstanding voting common stock, as well as options to acquire the remaining 60% of Midland's stock and certain nonvoting convertible preferred stock. CSXT proposes to acquire control of INRD through control of Midland, either by converting its preferred stock or by exercising its options to purchase the remainder of the outstanding common stock.²

Applicants maintain that the proposed transaction will preserve the quality of INRD's transportation services, improve those services through better coordination of operations and marketing with CSXT, and allow the pursuit of opportunities for operating efficiencies and expanded marketing through common ownership and operation. They state that the acquisition of control provides a financially attractive investment opportunity for CSXT, and that INRD's rail operations are a natural complement to those of CSXT, strengthening their existing operating relationship and facilitating joint marketing of their rail

services and tighter coordination of their operations. It will also allow INRD to enhance its services to its customers and provide greater access to CSXT's supply of freight cars.

Applicants propose to maintain INRD as a separate subsidiary for the foreseeable future, operating essentially in the same manner as it does today, with no significant changes in operations or service. Under CSXT's current operating plan, only modest operating efficiencies, marketing considerations, and service improvements are contemplated, while preserving INRD's existing schedules and services. If, however, CSXT later acquires the balance of Midland's common stock under the terms of its Option Agreement, applicants indicate that it is possible that CSXT will seek to coordinate more closely the carriers' operations. Applicants state that there are no present plans to close any existing interline route or to alter or cancel any existing divisions with connecting carriers.

Applicants submit that the proposed transaction will have no adverse impact on employees, and that all CSXT and INRD employees will retain their existing positions and responsibilities. Applicants acknowledge that approval of the transaction will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Under 49 CFR part 1180, we must determine whether a proposed transaction is major, significant, or minor. The proposed transaction, which involves the control by a Class I rail carrier of a Class III rail carrier, has no regional or national significance and will clearly not have any anticompetitive effects. We conclude that the competitive and operational effects of CSXT's control of INRD would be minimal and that none is adverse. Moreover, it appears that there is considerable potential for improved coordination of operations and marketing between CSXT and INRD that will positively affect the services provided by both carriers, especially INRD. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c), consistent with the categories of transactions now defined at 49 U.S.C. 11325(a). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Board in Washington, DC. In addition, they may be obtained upon request from

applicants' above named representatives.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(c)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position (i.e., whether it supports or opposes the proposed transaction);

(d) A statement whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) A list of all information sought to be discovered from the applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing this transaction are set forth at 49 U.S.C. 11325(d).

Discovery may begin immediately. We encourage parties to resolve all discovery matters expeditiously and amicably.

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

It is ordered:

1. This application is accepted for consideration under 49 U.S.C. 11323–25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on August 2, 1996.

Decided: July 25, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 96–19615 Filed 8–1–96; 8:45 am]

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²By decision served May 3, 1996, in this proceeding, the Board granted a waiver to permit applicants to file this application without disclosing the consideration to be paid in connection with the transaction.