FINANCE DOCKET NO 28256[1]

MENDOCINO COAST RAILWAY, INC.—LEASE AND OPERATE—CALIFORNIA WESTERN RAILROAD

Decided February 6, 1979

The provisions for the minimum protection of employees henceforth to be imposed in ordinary trackage rights transactions are those set forth at 354 I.C.C 605, with a slight modification. The provisions for the minimum protection of employees henceforth to be imposed in ordinary lease transactions are those set forth at 354 I.C.C. 732. In each proceeding, the modification incorporates section 12(a)(ii) of article I to the appendix to the decision reported at 354 I.C.C. 76 (1977). Except as modified, the decisions at 354 I.C.C 605 and 354 I.C.C. 732 shall remain in full force and effect.

James C. Bishop, Jr., John O'B. Clarke, Jr., James I. Collier, Jr., Barry McGrath, Richard A. Keeney, Glen R. Kuykendall, and *Harold A. Ross* for parties filing comments.

DECISION

BY THE COMMISSION:

By separate decisions served February 23, 1979, on our own motion, we reopened these proceedings which were subject to prior administratively final decisions. The prior decision of the Commission, Division 3, in Finance Docket No. 28256, served September 15, 1978, is reported as *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978). The prior decision of the Commission, Division 1, in Finance Docket No. 28387, served June 28, 1978, is reported as *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978).[2]

[1] This decision embraces Finance Docket No. 28387, Norfolk and Western Railway Company—*Trackage Rights—Burlington Northern Inc.*

[2] In decision in F. D. No. 28387 dated September 12, 1978, we denied a petition filed by the Railway Labor Executives' Association (RLEA) which sought a determination that an issue of general transportation importance is involved. The matter was subsequently appealed and is now pending before the United States Court of Appeals, the District of Columbia Circuit (*Railway Labor Executives' Association v. U.S.A. and ICC*, No. 78-2157). Our decision to reopen in F. D. No. 28387 and the decision herein in light of the new development is made subject to the court's approval.

Division 1 had previously determined that the appropriate labor protective provisions to be imposed in F. D. No. 28387 and other ordinary trackage rights cases were those established in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 584 (1978) (herein referred to as *Oregon II*), with a modification of the definition of "transaction" in article 1, section 1(a) of the appendix to *Oregon II*. The term "transaction," in the case of trackage rights, was redefined to mean acquisition by a railroad of trackage rights over, joint ownership in, or joint use of, any railroad line or lines owned or operated by any other railroad, and terminals incident thereto.

Division 3 had previously determined that the appropriate labor protective provisions to be imposed in F. D. No. 28256 and other lease cases involving certain railroads were those established in the June 28, 1978, decision in F. D. No. 28387, with a modification of the definition of "transaction" in article 1, section 1(a), of the appendix to the decision in F. D. No. 28387. The term "transaction," in the case of leases, was redefined to include and mean lease or operation by one rail carrier of the properties, or part of the properties, of another rail carrier.

Our reopenings of these proceedings were prompted by the reconsideration and modifications of the employee protective conditions appropriate for imposition in various types of rail transactions. See our decisions served February 23, 1979, in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment—Goshen (Oregon III)*, 360 I.C.C. 91 (1979), and in F. D. No. 28250, *New York Dock Ry.—Control—Brooklyn Eastern Dist. (New York Dock II)*, 360 I.C.C. 60 (1979). *Oregon III* established the minimum provisions for the protection of employees to apply in all the usual rail abandonment proceedings. *New York Dock II*, established the minimum provisions for the protection of employees to apply in all the usual rail proceedings under 49 U.S.C. 11343 *et seq.*, (except trackage rights and lease cases). The reopenings were especially designated to permit the parties to comment on the "changing law" in the area of employee protection as it relates to the lease and trackage rights situation.

Prior to entertaining these comments, a preliminary matter requires disposition. On April 3, 1979, RLEA petitioned to consolidate disposition of F. D. Nos. 28387 and 28256. The same issues are involved in each docket to wit: the interpretation of 49 U.S.C. 11347 (former section 5(2)(f) of the Interstate Commerce Act) in the light of the developments in *New York Dock II* and

Oregon III. Also the comments of the served parties have been filed as if consolidation had been effected. Accordingly, RLEA's petition shall be granted.

The Association of American Railroads (AAR) also petitioned on April 30, 1979, for leave to intervene and to file tendered comments. Its participation at this stage of the proceedings will not unduly broaden the issues. Accordingly, the petition shall be granted and its comments shall be accepted for filing and consideration.

Matters Under Present Consideration

The June 28, 1978 decision in F. D. No. 28387 affirmed prior decisions of Review Board Number 5 in the trackage rights proceeding which had imposed the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen (Oregon I)*, 354 I.C.C. 76 (1977), but as modified by *Oregon II*.

The *Oregon I* and *Oregon II* decisions incorporated the provisions of the arrangements for the protection of employees negotiated between the National Railroad Passenger Corporation and various railway employee representatives and approved by the Secretary of Labor on April 17, 1971 (commonly known as the appendix C-1 conditions). Article 1, section 4, of appendix C-1 requires the giving of 20 days' notice of a transaction but does not preclude consummation of a transaction prior to the entry into a negotiated agreement for the protection of employees. Such provisions are less protective of the interests of employees and inconsistent with sections 4 and 5 of the Washington Job Protection Agreement of 1936 (WJPA) customarily imposed in merger or control type cases. See *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271 (1952). The latter provides for 90 days' notice of a coordination and requires that any reassignment of employees be based on a prior agreement between the carriers and the organization of affected employees.

In the June 28, 1978 decision in F. D. No. 28387, the division noted that in the past the Commission imposed different employee protective provisions in different types of cases under 49 U.S.C. 11347. The conditions which were ordinarily imposed in trackage rights cases are those contained in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177 (1944) (which excluded sections 4 and 5 of the WJPA). The conditions which were ordinarily imposed

in merger or control type cases are those contained in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271 (1952) (which included sections 4 and 5 of the WJPA).

The division declined to impose sections 4 and 5 of the WJPA to the involved trackage rights case. It noted that Congress in enacting the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act), which amended former section 5(2)(f) of the Interstate Commerce Act (the predecessor to current section 11347), and which added section 1a (the predecessor to current section 10903), was aware of the fact that different employee protective conditions had been used in different types of Commission-approved transactions. Division 1 also noted that nothing in the 4R Act expresses any disapproval of the application of different conditions in different cases. In imposing a modified version of the provisions for the protection of employees found in *Oregon II*, the division, in effect, imposed the appendix C-1 provisions established pursuant to 45 U.S.C. 565, which in turn substantially include all the provisions contained in the *Oklahoma* case.

As previously noted, the prior decision in F. D. No. 28256 adopted the provisions found to be applicable in F. D. No. 28387. Thus the employee protective provisions imposed in *Oregon II* (in turn being a slight modification of the appendix C-1 provisions established pursuant to 45 U.S.C. 565) became the source for the provisions for the protection of employees extended in these trackage rights and lease cases.

As previously noted, F. D Nos. 28256 and 28387 were reopened for the limited purposes of permitting comment on the changing law in the light of the *Oregon III* and *New York Dock II* decisions. The conditions for the protection of employees imposed in *New York Dock II* are substantially similar to the conditions imposed in the *Oregon III* case. Accordingly, in considering the "changing law," we shall limit our discussion to these modifications of *Oregon II* effected by *Oregon III*.

"The Changing Law"

The Commission in *Oregon III* effected the following changes to article I of the appendix to *Oregon II*:

1. Broadly redefined the meaning of the word "transaction" to embrace "any action taken pursuant to authorizations of this Commission on which these provisions have been imposed" in lieu

of its prior definition as "an abandonment or discontinuance pursuant to section 1a of the Interstate Commerce Act";

2. Rephrased the provisos to section 3 to permit concurrent entitlement to nonsimilar employee protective benefits extended pursuant to (a) *Oregon III* and (b) a preexisting arrangement, and, upon expiration of the period for which the employee is entitled to protection under the arrangement elected by him, to his consecutive entitlement to all employee benefits under the arrangement not previously elected, if then unexpired;[3]

3. Rewrote section 4 to direct 90 days', in lieu of 20 days', advance notice of transaction which may affect employees and to compel an agreement between a carrier and employees in advance of any changes in operations, services, facilities or equipment;

4. Modified section 9 (inadvertently referred to as section 8 in *Oregon III*) by deleting the express exclusion from reimbursable moving expenses, those expenses which are incurred in connection with a change in residence made subsequent to the initial change or which grow out of the normal exercise of seniority rights;

5. Changed section 12(a)(ii) to 12(a)(iii) and inserted section 12(a)(ii) as originally contained in *Oregon I* expressly to protect an employee who not only owns his or her home, but who is under a contract to purchase his or her home where he or she is required to change the point of his or her employment as a result of the transaction; and

6. Modified section 12(b), which under *Oregon II* expressly had excluded from application under section 12, those changes in places of residence made subsequent to the initial changes caused by the transaction and growing out of the normal exercise of seniority rights, simply to exclude from application under section 12, those changes in place of residence which are not the result of transaction.

Comments

Consolidated comments were filed in both proceedings by RLEA, the Brotherhood of Locomotive Engineers (BLE), and the AAR. Comments in F. D. No. 28256 were filed jointly by Mendocino

[3] The provisions to section 3 contained in *Oregon II* prohibit the duplication or pyramiding of benefits. This prior language is substantially the same as that contained in the arrangement established pursuant to section 405 of Rail Passenger Service Act (RPSA) and as noted by RLEA was subject to the interpretation by the arbitrator in "Arbitration of Penn Central Transportation Company and BRAC," (1973), as requiring an election of all the benefits (and obligations) of one arrangement, with resultant permanent forfeiture of all the benefits under the arrangement not elected.

Coast Railway, Inc. (MCR) and California Western Railroad (CWR). Comments in F. D. No. 28387 were filed separately by the Norfolk and Western Railway Company (N&W) and by the Burlington Northern Inc. (BN).

MCR and CWR jointly, and N&W and BN separately, replied to BLE's and RLEA's comments, and RLEA replied to the comments of MCR, CWR, N&W, BN, and the AAR.

BLE and RLEA believe the Commission should modify the provisions for the protection of employees in the same manner as *Oregon III* modified *Oregon II*. Their position is predicated on the same premise previously advanced in these proceedings as well as in the *Oregon Short Line* and *New York Dock II* cases. They contend that the provisions previously established in the involved proceedings as well as in *Oregon II* fail to provide the minimum protections required under 49 U.S.C. 10903(b)(2) and 11347. Their position is that those sections require levels of protection at least as protective to the interests of employees as those contained in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271 (1952), which in turn applied applicable provisions of the WJPA. They argue that the Commission conceded as much by undertaking to effect the modifications to *Oregon II* in *Oregon III*. They further claim that the *New Orleans* case contains benefits which are neither contained in appendix C-1 nor *New York Dock II* and therefore *New York Dock II* itself requires further modifications.

The position of the carriers is largely represented in the comments of the AAR except as noted below.

The AAR believes that incorporation into article I, section 4, of the requirements of sections 4 and 5 of the WJPA (which require extended 90 days' advance notice and preconsummation finalized negotiations) undermines the congressional purpose in enacting the 4R Act. This is so, AAR argues, in light of the absence of such equivalent provisions in appendix C-1, as established pursuant to 45 U.S.C. 565. AAR believes that the Commission in *New York Dock II* and *Oregon III* has already disregarded the legislative history of the 4R Act.

Specifically, argues AAR, Congress simply intended to require a fair and equitable arrangement for the protection of employees containing benefits no less than those established pursuant to 49 U.S.C. 11347 and 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b)). However, labor protection under section 405(b) involves only substantive provisions. This section does not involve procedural protections like those involved in sections 4 and 5 of WJPA.

AAR points to the recent recodification of the Interstate Commerce Act by Public Law 95-473 (effective October 17, 1978) in particular to section 10903(b)(2) which provides that the "provisions shall be at least as beneficial to those interests as the provisions established under 11347 of this title [former section 5(2)(f)] and *section 565(b)* of Title 45 *[section 405(b) of RPSA]*." According to the AAR, the Preamble to the Revised Act indicated that the act is being revised without substantive change. Accordingly, it follows that all references to section 565 of title 45 as contained in the 4R Act of 1976, specifically in former section 1(a)(4) and 5(2)(f) of the Interstate Commerce Act, as well as in current section 11347, must mean section 565(b) of title 45.[4]

According to the AAR a requirement of a preconsummated implemented employee protective arrangement is also inconsistent with the past practices of the Commission. Such arrangement would unduly interfere with the issuance of temporary service orders allowing the carrier to exercise trackage rights pending Commission action upon a section 11344 application because of an emergency need for service.

AAR also states that the more specific definition of transaction as pertains to trackage rights and lease cases, need not and should not be changed. This is so because there is no need to implement other changes in the employee protective provisions. Specifically, AAR argues that the reason for broadening the definition of transaction in *New York Dock II* and *Oregon III* was to make it more compatible with the notice and preconsummation negotiation provisions incorporated into article I, section 4. However, these provisions have no application to trackage rights and lease transactions. Finally, AAR also objects to the unions' proposed modification to article I, section 3.

AAR argues that if Congress, by the 4R Act amendments, had intended generally to adopt appendix C-1 (which by its express terms prohibited both the "duplication and pyramiding" of separate employee benefits) as the Commission has previously concluded, then it also must have intended to adopt the interpretation given to

[4] "Except for the change in the statutory language as contained in section 10903 of the recodified act, this argument was advanced but not sustained in *Oregon II*. Otherwise we are not persuaded by this argument, despite the recodification. It is true that section 10903 now refers to the provisions as established under section 565(b) of title 45. But it also refers to the provisions established under section 11347. Section 11347 refers to the terms established under (general) section 565 of title 45, as well as those terms imposed under section 11347 prior to February 5, 1976. If Congress had intended that we focus on section 565(b) rather than section 565 generally, it could have been more precise.

the section by the arbitrator in "Arbitration of Penn Central Transportation Company and BRAC," (1972), by his award of January 6, 1972. AAR also raises a point of clarification noting that article III to appendix III in *New York Dock II* contains irrelevant references to employees of separately incorporated terminal companies. Although the Commission concluded in *Oregon II* that such provision was irrelevant and delted that provision, it failed similarly to exclude the provision in *New York Dock II* without explanation.

AAR does not question a proposed change in article 1, section 12(a)(ii), to cover losses arising from a contract to purchase a residence. It argues, however, that the changes effected in *Oregon III* and *New York Dock II* in sections 9 and 12(b) are not necessary if the Commission were not to redefine the definition of "transaction." AAR contends in particular that it is reasonable to limit the carrier's obligation to one change of employee's residence. Changes which grow out of the normal exercise of seniority rights, although allegedly unnecessary (inasmuch as they would not, in any event, be a result of a transaction), should not be eliminated as the language tends to discourage unjustified claims.

BN submits a copy of an agreement between representatives of the railroads and railroad brotherhoods transmitted to the Secretary of Labor under a letter of July 2, 1976. It is an arrangement prescribed by the Secretary of Labor which contains the language which BN urges should be substituted for article 1, section 3 (if indeed any changes are to be effected in that section), to be applicable to lease and trackage rights proceedings.

That language clearly establishes that an employee may not concurrently enjoy the benefits under two arrangements, but may upon expiration of the effective period of the arrangements first elected, enjoy the protection under any unelected arrangement for the remainder, if any, of the unexpired term of protective period under the arrangement not first elected.

N&W points out that arbitration of disputes by referees sometimes exceeds 12 months in disregard of the stated schedule of article 1, section 4. Implementation of the preconsummation negotiation requirements in trackage rights authority may thus delay consummation far beyond the 90-day period of advance notice requirements. It urges the adoption of the employee protective conditions set forth in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177, 197-201 (1944), with certain modifications to the appendix C-1 conditions.

MCR and CWR note that the Commission held in its prior decision in the lease proceeding that it would be redundant to impose both the *Oklahoma* protections and protections under section 405 of RPSA (sic, the appendix C-1 protections), because the appendix C-1 protections include and go beyond the *Oklahoma* protections. They believe, however, that they should be subjected only to the *Oklahoma* protections, as their proceeding involved only an extension of preexisting lease. Therefore, no employees were displaced as a result.

Discussion and Conclusions

The comments for the most part simply reiterate the prior positions advanced by the parties in these proceedings concerning legal issues resolved by the prior decisions in the involved trackage rights and lease cases. As such, they largely fail to focus on the issue of why and to what extent the changes in the law advanced by the *Oregon III* decision should be incorporated into the provisions for the protection of employees in trackage rights and lease cases.

Preliminarily we agree with the conclusions of division 1 in F. D. No. 28387, and former division 3 in F. D. No. 28256. The conditions for the protection of employees as imposed in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177 (1974), were ordinarily imposed in both trackage rights and lease cases under former section 5(2) of the Interstate Commerce Act, prior to enactment on February 5, 1976, of amendments to that section. See also *Chicago, St. P., M. & O. Ry. Co. Lease*, 295 I.C.C. 441 (1956). Hence imposition of the *Oklahoma* provisions for the protection of employees, as supplemented by the applicable provisions established pursuant to section 405 of RPSA (45 U.S.C. 565) (i.e., the appendix C-1 provisions, *ergo*, those imposed by *Oregon II*) would satisfy the statutory mandate under section 11347.

However, it would be somewhat redundant to impose both the *Oklahoma* provisions and the appendix C-1 provisions. Appendix C-1 in many respects is an exact copy of the standard working conditions contained in the *Oklahoma* case. See the prior decision in F. D. No. 28387 and in *Oregon II*, 354 I.C.C. 584 at 592. Hence the prior decision in F. D. No. 28387 appropriately incorporated the *Oregon II* provisions with slight modifications and the prior decision in F. D. No. 28256 appropriately referenced the decision in F. D. No. 28387.

This reasoning is not inconsistent with the rationale in the *Oregon III* and *New York Dock II* decisions. Both decisions acknowledged the exceptional-type cases under section 11343 *et seq.*, represented by trackage rights and lease cases. In our recent decision in the *Oregon Short Line* case, served February 23, 1979, we determined that the *Oregon III* provisions should not have retroactive application to abandonment proceedings finally determined prior to the *Oregon III* decision, on the basis, *inter alia*, that the appendix C-1 conditions adopted with some modifications in *Oregon II* would appear to satisfy the mandate under section 10903.

Nevertheless, in reaching the conclusion in *Oregon III* that the employee protective provisions to apply henceforth in abandonment proposals should be similar to the minimum employee protective provisions applying in merger or control-type transactions under section 11343 *et seq.*, we elected to consider the provisions *customarily* imposed in *most* transactions rather than the atypical transactions under 11343 *et seq.*, to which section 11347 is applicable.

However, in respect to specific types of transactions under section 11343 *et seq.*, we may look to the differences between such transactions to determine whether those minimum protective provisions imposed prior to February 5, 1976 (the date of enactment of the 4R Act), vary depending on the nature of the transaction.

We shall now consider the "changing law" resulting from the *Oregon III* decision in the light of the comments of the parties.

We disagree with the position advanced by the carriers that advanced preconsummation notice and finalized negotiations would frustrate the Commission's ability to enter emergency service orders. Section 11347 applies to matters arising in conjunction with applications under section 11344, and under section 10903. Our service orders, however, arise under *inter alia* sections 11121, 11123, 11124, and 11125. Section 11125(a)(4) simply requires that the directed carrier assume existing employment obligations of the other carrier.

As a general matter, trackage rights and lease transactions frequently have lesser employee disruptive impacts than those resulting from other types of transactions, *e.g.*, where the trackage rights or lease transaction contemplates the shared use of facilities with no new services involved. A transaction involving the renewal of a preexisting lease is likely to have no employee impacts whatsoever.

The greatest impacts are likely to result from such transactions where they are related to abandonments of service or to anticipated mergers requiring our approval. However, in such circumstances, these employees would be protected by the provisions established in *Oregon III* and *New York Dock II* which would be incorporated into any authorizations in the related proceedings.

In these circumstances we find little justification for extending a blanket imposition of provisions requiring substantially advanced preconsummation notice and finalized preconsummation negotiations with "interested" employees when possibly there are no substantial number of employees likely to be adversely affected by a trackage rights or lease transaction. Typically, most of these transactions are not opposed by carriers or members of the shipping public and their expeditious consummation would be in the public interest.

In such circumstances, such a blanket requirement could encourage the raising and necessary resolution of matters having no material relation to the particular trackage rights or lease proceeding involved, resulting in the abuse of the labor protection process. To delay possible improvements in preexisting service accruing from trackage rights or lease transactions, because of the delayed negotiation of unrelated matters, would not be in furtherance of the public interest. Of course, this does not preclude the consideration in particular cases of greater levels of protection to ensure the employees are not adversely impacted as a result of the transaction where the need therefor has been specifically established.

We conclude that the modifications in article I, section 4, effected by *Oregon III* should not be adopted in trackage rights or lease proceedings as the basis for the minimum protections for employees.

For the same reasons we find it advisable to retain the more specific definition of "transaction" as relates to leases and trackage rights in lieu of the general definition imposed in *Oregon III* being "any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

Nor do we believe it necessary or appropriate to rephrase the proviso to article I, section 3. That section now provides that nothing in that appendix shall be construed as depriving an employee of any rights or benefits or eliminating any obligations under an *existing* job security or other protective conditions or arrangement, but precludes the duplication or pyramiding of

benefits, and states that the benefits shall be construed as including the conditions, responsibilities, and obligations accompanying such benefits. This section is susceptible to the reasonable interpretation, noted by the BN as having been expressly agreed to between employee representatives and the carriers: that an employee may not concurrently enjoy the benefits arising under more than one arrangement at any given time, but an employee may, upon expiration of the benefit period of the arrangement elected by him, enjoy the benefits arising under the arrangement not initially elected by him, if the benefit period under this second arrangement has not yet expired.

We have no doubt that this favored interpretation will be adopted in the event of any future dispute regarding the interpretation of article 1, section 3. Such dispute would require arbitration and resolution pursuant to article 1, section 11, which provides for self-effecting means of resolving interpretational conflicts.

We also find no reason to modify article 1, section 9, and section 12(b). The current language in the *Mendocino* and *Norfolk and Western* cases is the language of appendix C-1 established pursuant to 45 U.S.C. 565. Any changes in residence subsequent to the initial changes caused by the transaction and/or which grow out of the normal exercise of seniority rights would not be the immediate result of the particular trackage rights or lease transactions.

We find that article 1, section 12(a), should be modified. The *Oregon I* case contained the text of the appendix C-1 arrangement established pursuant to 45 U.S.C. 565. However, section 12(a)(ii) was inadvertently deleted from the language of the text in *Oregon II* as well as in the involved proceedings, and the text of section 12(a)(iii) appeared under section 12(1)(ii) in *Oregon II*.

Accordingly, we find in F. D. No. 28387 that the section 12(a)(ii) to article 1 in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 at 614 (1978), should be redesignated as section 12(a)(iii), and that the following additional language should be inserted as new section 12(a)(ii):

> If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

We also find that the modifications to the decision in F. D. No. 28387 should also be adopted in F. D. No. 28256, and that the decision in the latter proceeding, served September 15, 1978, should be modified accordingly.

It is ordered:

(1) The petition by the Railway Labor Executives' Association, filed April 3, 1979, seeking consolidation of the dispositions in Finance Dockets Nos. 28256 and 28387, each reopened for reconsideration by our decisions of February 23, 1979, is granted.

(2) The petition with tendered comments by the American Association of Railroads, filed April 30, 1979, seeking leave to intervene is granted, and the comments are accepted for filing and consideration.

(3) Except as modified by this decision, the decision in Finance Docket No. 28357, served June 28, 1978, reported at 354 I.C.C. 605, shall remain in full force and effect.

(4) Except as modified by this decision, the decision in Finance Docket No. 28256, served September 15, 1978, reported at 354 I.C.C. 732, shall remain in full force and effect.

(5) This decision shall be effective on the date it is served.