

authorizing the transaction "unless the Board finds that such activities are inconsistent with the public convenience and necessity." Under subsection 10902(d), a Class II railroad receiving such a certificate must provide a fair and equitable arrangement for the protection of employees who may be adversely affected by the transaction. The arrangement shall consist exclusively of 1 year of severance pay equal to the employee's earnings during the 12 months preceding the application filing date. The parties may agree to terms other than as provided. The Board may approve the requested certificate as filed or may include conditions (other than labor protection conditions) the Board finds necessary in the public interest. 49 U.S.C. 10902(c). While petitioner seeks an exemption from subsection 10902, the Board's exemption authority may not be used to relieve a rail carrier of its obligation to protect the interests of employees. 49 U.S.C. 10502(g).

Petitioner expects that the transaction, while eliminating nine UP positions, will create eight new positions on WCL. WCL indicates that it will offer these new positions to displaced UP employees on a priority basis, subject to application and employee qualification. WCL will provide affected UP employees with written notice of the positions, including wage and benefit levels, job responsibilities, and other relevant data, at least 1 month before consummation of the transaction. WCL proposes to inform displaced UP employees of any option they may have to decline a WCL job and elect a severance payment.

Under petitioner's protective arrangement, for any severed UP employee not hired by WCL, WCL will provide a single payment equal to the employee's railroad earnings for the 12-month period ending October 18, 1996. For severed UP employees hired by WCL, severance payments will be paid for 1 year on a prorated, monthly basis, reduced each month by the employee's WCL earnings for the corresponding month. WCL estimates that its pay scales are 90% of those of Class I carriers.

In view of the requirement of subsection 10902(d) that a Class II railroad provide a fair and equitable arrangement for the protection of employees adversely affected by the carrier's acquisition, the Board invites comments on whether WCL's proposed employee protective arrangement meets the requirements of 49 U.S.C. 10902. As noted, such arrangements have in the past consisted of two elements: (1) Procedural (i.e., when must employees

be notified of their options and by whom); and (2) substantive (i.e., how many years of protection should be provided and what should that level of protection be). Plainly the new provision explicitly limits substantive aspects of any arrangement we may require. Thus, specifically we seek comments on whether and to what extent we should establish and/or oversee the procedural aspects of labor protective arrangements under this statute.

Comments may address such issues as the minimum standards or conditions for the arrangement, the carrier's responsibility to negotiate an arrangement or, failing agreement, to disclose those standards or conditions prior to consummation, and criteria for determining whether the arrangement is fair and equitable. The resulting labor protective arrangement imposed in this proceeding may be used as precedent for the labor protection we impose on future acquisitions by Class II railroads.

Comments (an original and 10 copies) must be in writing, and are due on December 27, 1996. Additional information may be obtained from petitioner's representative. We encourage any commenter to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any diskette submission (one diskette will be sufficient) should be in addition to the written submission.

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

Decided: November 15, 1996.

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

Vernon A. Williams,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in Section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (the Act, 46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under Section 607 of the Act shall be 6.93 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1996.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: November 21, 1996.

So Ordered By:

Maritime Administrator
Maritime Administration
Under Secretary for Oceans and Atmosphere/
Administrator, National Oceanic and
Atmospheric Administration
Assistant Secretary (Tax Policy) Department
of the Treasury

Albert J. Herberger,

Maritime Administrator.

D. James Baker,

*Under Secretary for Oceans and Atmosphere/
Administrator, National Oceanic and
Atmospheric Administration.*

Donald C. Lubick,

Acting Assistant Secretary (Tax Policy).

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