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January 6, 2012

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Public Record

VIA E-FILING
Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: *PIC Railroad LLC – Lease and Operation Exemption – Union Pacific Railroad Company*, STB Docket No. FD 34896;

Iron Bull Railroad Company, LLC – Operation Exemption – PIC Railroad LLC, STB Docket No. 34897; and

Utah Southern Railroad Company, LLC – Change in Operators Exemption – Iron Bull Railroad Company, LLC, STB Docket No. FD35558

Dear Ms. Brown:

PIC Railroad, Inc. d/b/a Comstock Mountain Lion Railroad ("CMRR")[1] hereby replies to the December 28, 2011 letter filing of Utah Southern Railroad Company, LLC ("USRC"). In its letter, USRC accuses CMRR of undertaking actions preventing USRC from performing its common carrier obligations resulting in a "flagrant violation of 49 U.S.C. §10903 and 49 C.F.R. §1152.1." These allegations are patently false and made without supporting evidence. After leveling these unsupported and false allegations, USRC urges the Board to call for the "Attorney General" (presumably the U.S. Attorney General, although this is unclear) to file a court

[1] The original exemption notice under which CMRR obtained regulatory authority to lease and operate Union Pacific's ("UP") 14.6-mile Comstock Subdivision between milepost 0.1 at or near Iron Springs and milepost 14.7 at or near Iron Mountain in Iron County, Utah, incorrectly identified CMRR as "PIC Railroad LLC." CMRR's legal name is now and was at the time of the 2006 exemption notice filing PIC Railroad, Inc. See supplemental filing in STB Docket No. FD 34897 on behalf of PIC Railroad, Inc., dated and filed April 21, 2009.

proceeding against CMRR (what type of court proceeding is again unclear). For the reasons discussed below, the Board should deny USRC's request. In fact, granting USRC's request would be counterproductive and contrary to the interests of the lone shipper on the subject rail line – CML Metals Corporation ("CML").[2]

CMRR believes that USRC does not possess a valid property right to operate over the line, and that USRC's notice of exemption was obtained using false and misleading information. USRC does not deny that CMRR obtained regulatory and contractual authority from UP (the owner of the Comstock Subdivision) to operate over the line. Rather, this dispute boils down to the fact that both USRC and CMRR possess at least the color of regulatory authority from this agency to conduct common carrier rail operations on the Comstock Subdivision. USRC contends, however, that CMRR's common carrier authority cannot be exercised until such time as Iron Bull Railroad Company, LLC ("Iron Bull") ceases operations. USRC asserts that Iron Bull cannot be deemed to have "ceased operations" because USRC baldly claims it is the same entity as Iron Bull. Thus, because USRC says it is willing and able to provide service, USRC alleges CMRR cannot also exercise its regulatory authority to provide common carrier service.

Setting aside the legal question of whether CMRR's regulatory common carrier authority can only be triggered conditionally, the facts simply do not support USRC's claims. Iron Bull did not change its name to USRC. Iron Bull did not ***become*** USRC. Rather, Iron Bull and USRC are two totally separate and distinct corporate entities, albeit owned by the same individual. In its December 28 filing, USRC's counsel incorrectly states that USRC was ***formerly known as*** Iron Bull, suggesting that Iron Bull merely changed its name to USRC. However, USRC's former counsel previously explained at length to the Board that USRC and Iron Bull were ***not*** one and the same, but rather that USRC is an entirely different company from Iron Bull. See USRC's October 21, 2011 notice of exemption filing at 2 ("[b]y letter to the Board dated September 30, 2008, . . . USRC notified the Board that the name of [Iron Bull] ***would be changed*** to USRC effective October 1, 2008. However, as of the date of that letter, USRC had been incorporated, and acquired [Iron Bull]'s operating authority, and operated the [Comstock Subdivision] as ***a corporation separate and distinct from [Iron Bull]. Because [Iron Bull] and USRC are closely-held companies both of which are owned solely by Mr. Michael Root, Mr. Root incorrectly believed that only a notice of name-change was required for USRC to step into the shoes of [Iron Bull] . . . Recently, counsel for USRC became aware for the first time that USRC has a corporate existence separate from [Iron Bull], and that [Iron Bull]'s corporate existence has been dissolved***") (emphasis added).

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[2] CML is the only shipper on the Comstock Subdivision. CMRR is an affiliated company of CML. CML depends upon consistent and reliable rail service, including service over the Comstock Subdivision, to sustain CML's iron mining business. As a shipper, it can request service from any common carrier authorized to provide service on the line. It has requested CMRR to provide it with common carrier service and has not requested any service from USRC since at least December 15, 2011.

If Iron Bull and USRC were the same entity, the Board would not have required USRC to file a change of operators notice of exemption in STB Docket No. FD 35558. Such a filing would have been superfluous. Further, an investigation of the State of Utah's Division of Corporations and Commercial Code records show that Iron Bull and USRC are separate and distinct corporate entities that existed simultaneously for a period of time, and that Iron Bull stated that it had voluntarily dissolved effective December 31, 2009. See Exhibit A. (Iron Bull represented to the State at that time that it was "no longer in business.") It is clear that Iron Bull did not "evolve" into USRC. Rather, Iron Bull ceased to have any status before the Board when it purported to have transferred its operating rights to USRC by way of the subject change of operators notice of exemption. As such, even if as a legal matter CMRR's common carrier authority could have been conditioned to take effect only when and if Iron Bull ceased operations, Iron Bull ceased to exist in 2009, and therefore, by definition, could not have operated thereafter. Accordingly, even under USRC's arguments, CMRR has every right to conduct common carrier operations on the line in full accordance with both its regulatory authority and its lease with UP.

With both carriers at least theoretically having regulatory authority to provide common carrier service on the line, the sole shipper on the line, CML, has the right to determine from whom it wants common carrier service. Prior to December of this year, CML had obtained its service from USRC pursuant to a contract (not pursuant to USRC's common carrier obligations). Because of USRC's woefully inadequate service and other improper actions, CML terminated the CML-USRC contract and requested CMRR to provide it with common carrier service. This has obviously not pleased USRC and, as a result, it has made every effort, legitimate or otherwise, to prevent CMRR from providing that service, including filing litigation in court and filing USRC's December 28 letter at the STB.

More troubling is that USRC parked its locomotives on the line in an effort to physically prevent CMRR from serving CML. Fortunately, the local sheriff intervened, and was able to persuade USRC to remove those physical obstructions. USRC also filed suit in a Utah state court and obtained an ex parte restraining order forcing CML to use USRC as its exclusive carrier, thus interfering with CMRR's use of the line and disrupting CML's shipments from the CML mine in Utah and through the UP system to ports in California. That lawsuit was promptly removed to the U.S. District Court for the District of Utah where the restraining order was quickly dissolved. See Exhibit B (Order Vacating TRO).[3] USRC did not mention these facts to the Board. USRC also fails to mention that CML and USRC are involved in litigation, initiated by USRC, now pending before the United States District Court for the District of Utah, Central Division (Case 2:11-cv-01176-CW).[4] In view of the dispute between the parties, and in light of

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[3] Thus, if anyone is interfering with one's common carrier rights, it is USRC who is interfering with CMRR's rights – not the other way around as USRC would have this Board believe.

[4] The litigation bears, in part, upon at least the following issues: (1) USRC's failure to meet its contractual service obligations to CML under the now terminated contract; and (2) whether or

the fact that CML has found USRC's service to be inadequate and unacceptable, CML has asked CMRR to provide it with common carrier service.

Because CML, the sole shipper on the line, has asked CMRR, a duly licensed rail common carrier, to provide its service, USRC is not being asked to conduct common carrier operations on the line, and there is no need for Board action on USRC's letter filing. CMRR commits that it will not take any self-help actions to interfere with USRC's common carrier right to serve CML if CML requests such service so long as USRC has a valid and unextinguished exemption to operate on the line. Likewise, USRC must not interfere with CMRR's ongoing provision of rail service to CML. Accordingly, there is no need for Board action at this time, nor is there any need to request any Attorney General to become involved. CMMR will shortly file a petition to reject or revoke USRC's operating exemption, and, at that time, the Board will have a full opportunity to review the complete record in the context of that proceeding based upon some of the facts presented above (and others to be presented later), and the Board can take any appropriate action at that time.

Sincerely,

William A. Mullins/
aml

William A. Mullins

Enclosures

cc: Parties of Record
Louise Anne Rinn (Union Pacific Railroad Company)

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not USRC has – or indeed ever had – the contractual property right to operate over the Comstock Subdivision.

This form must be type written or computer generated.

State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code
Articles of Dissolution of Limited Liability Company

Exhibit A

IRON BULL RAILROAD COMPANY, LLC
Limited Liability Company Name

Pursuant to the provisions of the Utah Limited Liability Company Act, the undersigned Limited Liability Company adopts the following Articles of Dissolution:

File Number: 6953871-0160

First: The address of the designated office:
492 WEST GRANT STREET, LEBANON OR 97355 or 51 E 400 N #1, CEDAR CITY UT 84720
Street Address

City State Zip

Second: The effective date of the dissolution DECEMBER 31, 2009

Third: Reason for dissolution:
NO LONGER IN BUSINESS

Fourth: If dissolution occurred by written agreement of the members, a statement to that effect. Please attach statement.

Under penalties of perjury, I declare that these Articles of Dissolution have been examined by me and are, to the best of my knowledge and belief, true, correct and complete.

Dated FEBRUARY 2, 20 10

By Michael R Root, manager
Limited Liability Company Member or Manager with Management authority.

MICHAEL R ROOT MANAGER 511 619-0110
Printed/Typed Name and Title

Additional filing requirements:
One (1) original or true copy of the Articles of Dissolution. If the filer requests a copy of the Articles of Dissolution an additional exact copy of the filed document along with a return addressed envelope with adequate first-class postage must also be submitted.

Under GRAMA (63-2-201), all registration information maintained by the Division is classified as public record. For confidentiality purposes, you may use the business entity physical address rather than the residential or private address of any individual affiliated with the entity.

Mailing/Faxing Information: www.corporations.utah.gov/contact.html Division's Website: www.corporations.utah.gov

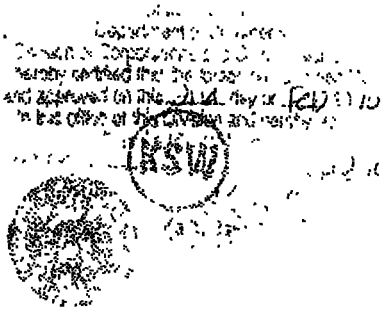

Exhibit B

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UTAH SOUTHERN RAILROAD COMPANY, Plaintiff, v. CML METALS CORPORATION, Defendant.	**ORDER** Case No. 2:11-CV-1176 Judge Clark Waddoups

Before the court is Defendant's motion to suspend the state court's order granting Plaintiff a temporary restraining order. (Dkt. No. 3.) In order to merit a TRO, Plaintiff must establish: "(1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009). For the reasons stated on the record and those articulated below, the court first finds that it has jurisdiction. The court also finds that Plaintiff has failed to carry its burden and show the TRO issued by the state judge was appropriate:

(1) Plaintiff has failed to show a likelihood of success on the merits based on the record before the court. The complaint before the court is not verified, and the other attachments simply do not suffice to carry Plaintiff's burden.

(2) As stated in the complaint, Plaintiff seeks monetary damages. Such damages are calculable and not irreparable. Furthermore, Plaintiff may still seek a declaratory judgment through litigation. (Compl. 9-10)(Dkt. No. 1-1, 12-13).

(3) Due to the consequential harm Defendant will suffer based on its contracts with other domestic and international entities, which include disproportionately high liquidated damages in the case of a breach in comparison to Plaintiff's potential losses, the balance of equities weighs strongly against a TRO.

(4) Due to the large number of third-party contracts and interests involved, including those of numerous domestic and international entities, the public has an interest in maintaining a railway and trade system clear of obstacles and delays. Because a TRO would adversely affect these other interests, the court finds that it would be against the public interest.

Accordingly, the state judge's TRO is hereby VACATED.

DATED this 19th day of December, 2011.

BY THE COURT:

Clark Waddoups
United States District Judge