

35106

SERVICE DATE - OCTOBER 21, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34540]

The Columbus & Ohio River Rail Road Company—Acquisition and Operation
Exemption—Rail Lines of CSX Transportation, Inc.

The Columbus & Ohio River Rail Road Company (CUOH), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 114 miles of rail line: (1) by purchase, between Columbus, OH, milepost BP 138.0, and Newark, OH, milepost BQ 0.0, totalling approximately 32.6 miles;¹ and (2) by lease, between Mt. Vernon, OH, milepost BQ 25.9, and Cambridge, OH, milepost BP 49.49, via Newark, milepost BQ 0.0, totalling approximately 81.4 miles.² The lines are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, OH. CUOH states that

¹ CSXT presently holds a 50% ownership interest in the rail line from Columbus to Newark (the C&N Subdivision). The balance of the ownership interest in this line is held by the State of Ohio, and both CUOH and CSXT currently hold operating rights over the C&N Subdivision. See Caprail I—Acquisition Exemption—Consolidated Rail Corporation, Finance Docket No. 31961 (Sub-No. 1), Ohio Department of Transportation—Lease Exemption—Caprail I Lines in Ohio, Finance Docket No. 31961 (Sub-No.2), and Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines, Finance Docket No. 31961 (Sub-No. 3) (ICC served Jan. 15, 1992). CUOH states that, through this transaction, it will purchase CSXT's 50% share in the Columbus to Newark line.

² The line to be leased consists of the Lake Erie Subdivision (Newark to Mt. Vernon) and the Central Ohio Subdivision (Newark to Cambridge).

following this transaction, CSXT will no longer operate trains on any of the above-described rail lines, and that CUOH will be the sole operator of the rail lines. The transaction also includes approximately 1.5 miles of incidental trackage rights assigned by CSXT to CUOH over a line of the Ohio Southern Railroad, Inc. (OSR)³ between milepost 16.7 and milepost 18.2 in Zanesville, OH.⁴

Because CUOH's projected annual revenues will exceed \$5 million, CUOH certified to the Board on August 30, 2004, that it had complied with the requirements of 49 CFR 1150.42(e) providing for notice to employees and their labor unions on the affected lines. CUOH also certified that its projected revenues as a result of this transaction would not result in the creation of a Class II or Class I rail carrier.

The transaction is scheduled to be consummated on October 29, 2004, which is 60 days after CUOH's certification to the Board that it has complied with the Board's rule at 49 CFR 1150.42(e).

³ OSR and CUOH are subsidiaries of Summit View, Inc., a noncarrier holding company.

⁴ Prior to this transaction, CUOH and the Ohio Central Railroad (OHCR) interchanged traffic at Morgan Run (Coshocton), OH. Following this transaction, CUOH and OHCR will exchange traffic at both Coshocton and Zanesville.

If the verified notice contains false or misleading information, the exemption is void ab initio. 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.⁵

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34540, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 17th Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

⁵ On September 13, 2004, the Brotherhood of Locomotive Engineers & Trainmen (BLET) filed a protest asking the Board to reject CUOH’s notice and a notice filed in Indiana & Ohio Central Railroad, Inc.–Acquisition and Operation Exemption–CSX Transportation, Inc., STB Finance Docket No. 34536 (STB served Oct. 1, 2004), for another shortline carrier to operate through lease approximately 107 miles of CSXT’s rail line between NA Tower, OH, and Oakley, OH, and Oakley and Columbus, Ohio. On September 15, 2004, the United Transportation Union (UTU) filed a pleading titled as a petition to revoke, seeking relief identical to that sought by BLET. In their filings, BLET and UTU sought the same relief regarding CUOH’s notice filed here.

On September 24, 2004, an amended petition to revoke was filed by UTU. By facsimile filed on September 30, 2004, UTU certified to the Board that it served a copy of its pleadings upon CUOH. And, on October 1, 2004, Indiana & Ohio Central Railroad, Inc. filed a reply. The Board will address these filings in a subsequent decision.

Decided: October 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary