

224896

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No 35110

FLORIDA DEPARTMENT OF TRANSPORTATION  
-ACQUISITION EXEMPTION--  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC

**NOTICE OF INTENT TO PARTICIPATE AND APPEARANCE OF COUNSEL**

The Brotherhood of Railroad Signalmen hereby gives notice of its intent to participate in this Finance Docket and enters the appearance of its counsel. Richard S Edelman, O'Donnell, Schwartz & Anderson, P C

This proceeding concerns the plan of the Florida Department of Transportation ("FDOT") to acquire a rail line from CSX Transportation ("CSXT") in a transaction by which 1) FDOT would purchase a CSXT line that runs from De Land to Poimciana, Florida and FDOT and later a multi-county agency would provide commuter rail transportation on that line, but 2) the line would still be part of the interstate rail system, and would still be used by CSXT for freight transport, and by Amtrak for passenger service FDOT has filed a notice for exemption from STB approval of the line sale under Section 10901. But FDOT contemporaneously filed a motion to dismiss its own notice of exemption, claiming that the Board actually has no jurisdiction over this line sale, relying on *Maine Department of Transportation-Acquisition Exemption- Maine Central RR Co* , 8 ICC 2d 835 (1991), and its progeny

FDOT has submitted its filing even though the Florida legislature has not yet enacted legislation that FDOT and CSXT have described as essential to consummation to the transaction, so it appears that the petition is premature See 49 C.F.R §1150 33(c)-requiring statement that

agreement has been reached or details about when an agreement will be reached (FDOT's "Statement Concerning Agreement" in its notice of exemption describes the agreement that has been negotiated, but fails to note that it is dependent on action by the Florida Legislature; see motion to dismiss at 3 n 4)

BRS hereby advises the Board that it intends to participate in these proceedings and to oppose the motion for dismissal of FDOT's notice. There is no time limit for responses to a verified notice of exemption so it is unclear what a time limit might be to respond to a motion filed by a party to dismiss its own notice. And notices of exemptions are not effective until at least 30 days after filing of the notice. In any event, BRS will file its opposition as soon as possible, and certainly soon enough for the Board to render a decision within the time frame requested by FDOT.

Respectfully submitted,



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Dated April 16, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served one copy of the foregoing Notice of Intent To Participate and Appearance of Counsel, by overnight delivery, to the offices of the following

William C. Sippel  
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Florida Department of Transportation  
District 5  
719 South Woodland Boulevard  
DeLand, FL 32720

Date. April 16, 2009

*/s/ [Signature]*  
Richard S Edelman