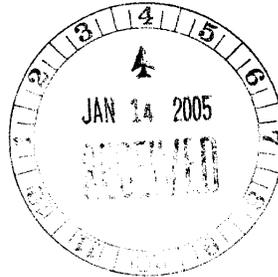


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January 14, 2005

**Via HAND DELIVERY**

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

ENTERED  
Office of Proceedings

JAN 14 2005

Part of  
Public Record

**RE: Finance Docket No. 34505, East Brookfield & Spencer  
Railroad, LLC – Lease and Operation Exemption –  
CSX Transportation, Inc.**

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original plus ten copies of East Brookfield & Spencer Railroad, LLC's Supplemental Reply to the United Transportation Union's Petition to Revoke and Supplemental Petition to Revoke. I am also enclosing three copies of this filing on compact disc.

I would appreciate it if you would date-stamp the additional copy of the filing provided and return it to the messenger for our files. I appreciate your attention to this matter.

Sincerely,

Betty Jo Christian  
Attorney for East Brookfield &  
Spencer Railroad, LLC

Encls.

213021

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
**FINANCE DOCKET NO. 34505**

\_\_\_\_\_  
**EAST BROOKFIELD & SPENCER RAILROAD, LLC  
--LEASE AND OPERATION EXEMPTION--  
CSX TRANSPORTATION, INC.**

ENTERED  
Office of Proceedings

**JAN 14 2005**

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Public Record

**SUPPLEMENTAL REPLY TO UTU SUPPLEMENTAL PETITION TO  
REVOKE**

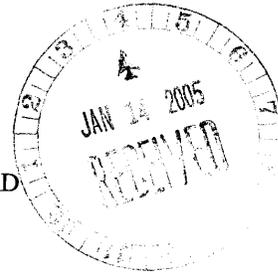
Filed on Behalf of East Brookfield & Spencer Railroad, LLC

By:

Betty Jo Christian  
Scott M. Mirelson  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Date: January 14, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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FINANCE DOCKET NO. 34505

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EAST BROOKFIELD & SPENCER RAILROAD, LLC  
--LEASE AND OPERATION EXEMPTION--  
CSX TRANSPORTATION, INC.

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**SUPPLEMENTAL REPLY TO UTU SUPPLEMENTAL  
PETITION TO REVOKE**

East Brookfield & Spencer Railroad, LLC ("EB&SR") hereby files this Supplemental Reply to the United Transportation Union's ("UTU") Petition to Revoke and its later-filed Supplemental Petition to Revoke. UTU has not shown that revoking EB&SR's Notice of Exemption is justified and its Petition must be denied.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On May 12, 2004, EB&SR filed a verified Notice of Exemption pursuant to 49 C.F.R. § 1150.31 to lease and operate approximately 4 miles of track from CSX Transportation, Inc. ("CSXT") adjacent to the CSXT mainline in East Brookfield and Spencer, Worcester County, Massachusetts. The leased trackage includes approximately 270 feet of lead track running from that adjacent track to the property line of the New England Automotive Gateway Facility ("Facility").

On June 8, 2004, the Board's Office of Proceedings served the Notice of Exemption and published it in the Federal Register.<sup>1</sup> Over four months later, on October 21, 2004, UTU filed a Petition to Revoke EB&SR's Notice of Exemption ("Petition") with the Board. It also simultaneously served a document request upon EB&SR. In its Petition, UTU argued that the Exemption should be revoked because "[t]he transaction, in whole or in part, noticed for exemption does not fall within the noncarrier line acquisition class exemption, promulgated by 49 C.F.R. § 1150.32, *et seq.*..., [r]egulation of the transactions, in whole or in part, is necessary to carry out the rail transportation policy of 49 U.S.C. § 10901" and "[t]he Notice contains false or misleading information about the transaction." Petition at 2-3. UTU raised no particularized cause of concern in support of its assertions.

On November 10, 2004, EB&SR replied to UTU's Petition ("EB&SR Reply"). In its reply, EB&SR argued that "UTU has not satisfied the burden of proof necessary for the revocation of the Notice of Exemption and its Petition must be denied." EB&SR Reply at 4. EB&SR further argued that UTU did not show "reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary." *Id.* at 5. EB&SR noted that if UTU should thereafter file a Supplement to its Petition, EB&SR would file a supplement to its November 10, 2004 Reply.

Following the Board's entry of a Protective Order in this proceeding,<sup>2</sup> EB&SR produced 582 pages of documents in response to UTU's discovery request, along with Responses and

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<sup>1</sup> See *East Brookfield & Spencer R.R., LLC-Lease and Operation Exemption-CSX Transp., Inc.*, F. D. No. 34505, 69 Fed. Reg. 32094 (June 8, 2004) (hereafter "*East Brookfield & Spencer*").

<sup>2</sup> See *East Brookfield & Spencer* (decision served Nov. 18, 2004) ("November 18 Decision").

Objections, on November 22, 2004. On December 6, 2004, upon UTU's motion (to which EB&SR consented), the Board extended the deadlines for the submission of supplemental petitions to revoke and supplemental replies to those petitions to December 20, 2004 and January 14, 2005 respectively.<sup>3</sup>

UTU served the Confidential version of its Supplemental Petition to Revoke ("Supplemental Petition") on EB&SR on December 17, 2004.<sup>4</sup> In that submission, UTU raised two arguments -- that "the notice of exemption contains false and misleading information," and that "regulation of this transaction is necessary to carry out the rail transportation policy." Supp. Pet. at 2. However, after one page of procedural history and almost four pages of "Supplemental Facts", UTU provided less than two pages of Argument and cited one case in support of its position. In particular, UTU never specified what was allegedly "false and misleading" about EB&SR's Notice and did not even mention why regulation was supposedly necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. Instead, UTU merely alleged -- without any factual support -- that "[t]his case involves several unusual features which can only lead one to conclude the transaction is a device created merely to move a number of jobs out from under a collective-bargaining agreement onto a nonunion carrier" and that "the transaction was not motivated by a desire of the parties to realize legitimate business goals." *Id.* at 7. Finally, UTU alleged that "CSXT has maintained significant control over the operation of this track through

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<sup>3</sup> See *East Brookfield & Spencer* (decision served Dec. 6, 2004).

<sup>4</sup> The Protective Order entered by the Board specifically requires that "[a]ll parties must file simultaneously a public version of any confidential submission filed with the Board." November 18 Decision at 4. To EB&SR's knowledge, UTU did not file a public version of its Supplemental Petition to Revoke with the Board, nor did it serve such a document on EB&SR.

the leases involved.” *Id.* No verified statements were submitted in support of the Supplemental Petition.

**II. UTU HAS NOT MET ITS BURDEN FOR THE REJECTION OF EB&SR’S NOTICE BASED UPON FALSE OR MISLEADING STATEMENTS**

UTU has wholly failed to support its claim (Supp. Pet. at 2.) that the Notice of Exemption should be declared void ab initio due to false and misleading information. “To warrant rejection of a notice of exemption, a petitioner must demonstrate that the notice contains false or misleading information.” *Minnesota Northern R.R., Inc.-Exemption-Acquisition and Operation of Rail Line and Incidental Trackage Rights from Burlington Northern R.R. Co.*, STB F.D. No. 33315, 1997 STB LEXIS 194, at \*\*7-8 (served Aug. 14, 1997) (“*Minnesota Northern*”). Unless it is proved that the party obtaining the exemption made “material misstatements without which its transaction would not have qualified for the exemption” (*Dubois County RR. Corp. - Trackage Rights Exemption - Norfolk Southern Ry. Co.*, F. D. No. 32323, 1995 ICC LEXIS 92, at \*6 (served Apr. 28, 1995) (“*Dubois*”)), the Notice will not be rejected. Here, UTU has failed to even *allege* in either its Petition or Supplemental Petition -- much less prove -- that any particular statement in EB&SR’s Notice of Exemption is false or misleading. Therefore, it has clearly failed to carry its burden of proof with respect to its claim that the Notice should be declared void ab initio.

In support of its argument, UTU cites merely *one* case, *Sagamore National Corp.- Acquisition and Operation Exemption-Lines of Indiana Hi-Rail Corp.*, F. D. No. 32523, 1994 ICC LEXIS 203 (served Oct. 28, 1994) (“*Sagamore*”). But *Sagamore* turned on its unique facts and the decision wholly fails to support UTU’s argument. In *Sagamore*, the ICC declared a notice of exemption void ab initio because there was a “substantial identity in interest between

[the] [purported seller] and [purchaser],” the transaction had not been “an arms length sale to a third party purchaser,” and in fact the transaction had resulted in no transfer of ownership at all. *See* 1994 ICC LEXIS 203, at \*\*1,5. Accordingly, “[u]nder the circumstances, the notice was found misleading and the exemption void ab initio.” *Id.* at \*1.

In contrast, in the instant case there is no “identity in interest” between CSXT and EB&SR and the transaction plainly was “an arms length sale to a third party purchaser.” As explained in the attached verified statement of George W. Bell II, the President of EB&SR, there is no affiliation of any kind between CSXT and EB&SR. *See* Bell V.S. at 20. The two companies have no corporate affiliation and no officers or directors in common. *See id.* at 20-21. The controlling shareholders of EB&SR are Mr. Bell and Steven Pugliese, individuals who have no connection whatsoever to CSXT aside from this transaction. *See id.* at 18. Mr. Bell and Mr. Pugliese also control Northeast Vehicle Services, LLC (“NVS”) which pursuant to agreement provides vehicle distribution services at the Facility. *See id.* The lease transaction between EB&SR -- which is under common control with NVS -- and CSXT was plainly an arms length transaction. CSXT and EB&SR were represented by separate counsel, and the terms of the transaction were thus subject to negotiation and arms-length bargaining. *See id.* at 21.

Contrary to UTU’s argument (Supp. Pet. at 7), the transaction was based on legitimate business goals. As Mr. Bell explains (V.S. at 20), EB&SR was created in order to make the Facility more marketable to vehicle manufacturers. EB&SR offers efficient 24 hour a day service to major automobile manufacturers and reduces the dwell time (by up to 2 days) in

moving vehicles from the manufacturing plant to the retail dealer. *See* Bell V.S. at 20.<sup>5</sup> In addition, EB&SR earns additional revenue for its principals. *See id.* at 18.

UTU also argues that “EB&SR was clearly created for this transaction, one of many facts that make it like the transaction in [*Sagamore*].” Supp. Pet. at 7. It is of course correct that EB&SR was created to lease and operate the track involved in this transaction. However, the Board and ICC have denied petitions to revoke many times where a carrier was created as part of an exempt transaction. *See e.g., GWI Switching Services L.P.-Operation Exemption-Lines of Southern Pac. Transp. Co.*, F. D. No. 32481, 2001 STB LEXIS 656, at \*4 n.8 (“*GWI Switching*”) (“GWI agreed to form GWISS to provide common carrier service for any shipper to or from CMC Yard.”); *Minnesota Commercial Ry. Inc.-Trackage Rights Exemption-Burlington Northern R.R. Co.*, 8 I.C.C. 2d 31 (1991), *aff’d*, *Winter v. I.C.C.*, 992 F.2d 824 (8<sup>th</sup> Cir. 1993) (“*Minnesota Commercial*”) (denying petition to revoke trackage rights class exemption where acquiring non-carrier was a newly created company controlled by people who had no connection to the grantor). Indeed, in *Lake State Ry. Co.-Lease and Operation Exemption-Detroit and Mackinac Ry. Co.*, F. D. No. 32012, 1992 ICC LEXIS 201, at \*4 (served Sept. 23, 1992) (“*Lake State*”), the Commission refused to revoke an exemption even when the leasing carrier was created and controlled by former employees of the lessor and one of the leasing carrier’s owners continued to perform services for an affiliate of the lessor. Thus the fact that EB&SR was a new entity at the time of this transaction is plainly no basis for revocation. The problem in *Sagamore*

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<sup>5</sup> Attached as Exhibit A to Mr. Bell’s verified statement is a January 7, 2005 letter from Toyota showing the substantial benefits accruing to Toyota and its dealers from the opening of the Facility.

was not that the transferee was a new company, but the fact that it was not really a separate company at all -- which is plainly not the case here.

UTU further argues that the CSXT/EB&SR transaction is a sham transaction because “CSXT has maintained significant control over the operation of this track through the leases involved...CSXT has simply set up this maze of transactions through various entities to maintain control of the automotive vehicle distribution terminal, which will do the work previously done by UTU members on CSXT at other locations in Massachusetts. However, now, it has EB&SR doing the work under its control with non-union labor.” Supp. Pet. at 7-8.

Although copies of the lease and other transaction documents are attached to UTU’s Supplemental Petition, UTU points to no specific provision of any document in support of its assertions. The reason is apparent -- when the various documents are analyzed, it is clear that no such “control” by CSXT exists.

The Track Lease Agreement (“Lease”), attached as Exhibit M (EB&SR 00494-00508) to UTU’s Supplemental Petition, clearly places EB&SR, not CSXT, in control of the track over which EB&SR operates. Pursuant to the Lease, EB&SR “shall have exclusive control of the management and operation of the Track.” (Exh. M, Sec. 1.3 at EB&SR 00495) and is “solely responsible for compliance with” all safety and environmental laws applicable to operations on the track. Exh. M, Sec. 5.1 at EB&SR 00496-00497. CSXT retains limited rights to operate over the track, but only to access the automotive facility serviced by the track and to drop off or pick up cars headed to or from that facility (Exh. M, Sec. 3.1 at EB&SR 00496). CSXT is allowed to switch cars standing on the track which “interfere with the foregoing uses”, but only if EB&SR “is not then currently conducting operations on the Track.” *Id.* Even CSXT’s right to use the track in the event of operating emergencies is limited to circumstances in which “such

use does not interfere with” EB&SR’s use of the track. *Id.* CSXT’s rights to construct or maintain overhead or underground pipes, wire lines or other utilities over the track (which it continues to own) are limited to situations in which such uses “do not materially interfere with [EB&SR’s] permitted use of the Premises... .” *Id.* Sec. 3.1(e), at EB&SR00496. These provisions negate any suggestion that the operation of the leased line is controlled by CSXT, rather than EB&SR.

As support for its contention that CSXT controls operations over the EB&SR track, UTU points to the fact that CSXT has the right to inspect the track at any time, that EB&SR cannot alter the track without CSXT’s consent, that EB&SR must report any spills or leakage of hazardous materials on the track and that EB&SR must adopt CSXT’s safety rules and regulations on the track. *See* Supp. Pet. at 5-6. Such provisions are unremarkable. EB&SR is the *lessee*, not the owner of the track. For instance, in standard residential lease agreements, a tenant cannot make modifications to an apartment without the consent of the landlord. The provisions cited by UTU are no different. As the owner and lessor of the tracks, CSXT plainly has a legitimate interest in the condition of the track and any damage done by spills of hazardous materials. Moreover, since both CSXT and EB&SR will conduct operations over the track, the use of a single set of safety rules and regulations is clearly appropriate.<sup>6</sup> None of these provisions is indicative of “control” by CSXT.<sup>7</sup>

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<sup>6</sup> The Lease actually requires only that EB&SR will adopt the CSXT safety rules and regulations “upon commencement of its operations” and “that it will coordinate with Lessor [CSXT] with respect to any future changes in such rules and regulations.” Sec. 1.2, EB&SR 00495.

<sup>7</sup> Compare *Central Illinois R.R. Co.-Lease and Operation Exemption-Lines of the Burlington Northern and Santa Fe Ry. Co. at Chicago, Cook County, IL*, STB F. D. No. 33960, 2002 STB LEXIS 529, at \*6 (served Sept. 12, 2002) (“The fact that the [shortline] leases its

Finally, UTU asserts that EB&SR was formed for the allegedly improper purpose of transferring jobs subject to a collective bargaining agreement at CSXT to a non-union carrier, EB&SR. *See* Supp. Pet. at 7. But there is nothing improper about the fact that EB&SR is a non-union carrier -- as indeed are many short-line railroads. The fact that CSXT chose, after arms-length bargaining, to lease its track to a carrier whose employees are not presently represented by a union is plainly no ground for revocation. *See, e.g., GWI Switching*, 2001 STB LEXIS 656 (denying petitions to reject and revoke a notice of exemption based on claims that “SP recruited GWI in an effort to oust SP’s union employees from the switching and yard work they historically performed, and remain positioned and available to perform, without incurring labor protection,” *Id.* at \*13, on the ground that there was “no evidence” that the transaction “was other than an additional operation, separate and distinct from any previously conducted by SP or SP’s employees.” *Id.* at \*16).<sup>8</sup>

So here, EB&SR was established pursuant to legitimate business purposes (Bell V.S. at 18, 20) and does work completely distinct from any automotive distribution operations that may have been previously performed by CSXT’s employees at other locations. EB&SR bears the full financial risk of its operations and is a fully functioning carrier. It is subject to Railroad

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locomotives from BNSF and has a contract governing its relationship with the line haul railroad with which it interlines-as do many short lines-does not undercut its status as the licensed common carrier with the statutory obligation to provide service on the involved track.”); *Minnesota Commercial*, 8 I.C.C. 2d at 41 (“[w]hile some degree of commercial coordination between Commercial and BN exists, there is nothing improper about it. These facts show nothing that would tend to suggest a control relationship between BN and Commercial.”).

<sup>8</sup> *See also Willamette & Pac. R.R., Inc.-Lease and Operation Exemption-Southern Pac. Transp. Co.*, F. D. No. 32245 (ICC served Sept. 7, 1995) (denying union requests for revocation of a lease and operation exemption based on allegations of an improper attempt to transfer work to a non-union carrier).

Retirement Tax, hires its own employees, carries its own insurance, sets its own rates and charges and leases its own locomotives. *See* Bell V.S. at 20. The transaction falls squarely within the class exemption and UTU has shown no basis for revocation.

### **III. UTU HAS NOT SATISFIED THE BURDEN OF PROOF REQUIRED TO REVOKE EB&SR'S NOTICE OF EXEMPTION ON RAIL TRANSPORTATION POLICY GROUNDS**

UTU also argues that the exemption should be revoked because regulation is necessary to carry out the national transportation policy. (*See* Supp. Pet. at 2.) But UTU has wholly failed to satisfy its burden of proof with respect to this allegation. The Board's regulations explicitly provide that "[t]he person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met." 49 C.F.R. § 1121.4(f).

The Board's decisions have been very clear that "[t]he party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary."<sup>9</sup> Moreover, "[w]hen, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and, under 49 CFR 1115.3(b), the petitioner must specify whether revocation is supported by material error, new evidence or

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<sup>9</sup> *MVC Transp., LLC-Acquisition Exemption-P&LE Properties, Inc.*, STB F. D. No. 34462, slip op. at 7 (served Oct. 20, 2004) ("*MVC*"); *see also Meridian Southern Ry., LLC-Acquisition and Operation-Line of Kansas City Southern Ry. Co.*, STB F. D. No. 33854, 2000 STB LEXIS 490, at \*\*5-6 (served Aug. 29, 2000) ("But our general policy is that a person seeking to revoke an exemption such as this must present not just generalized concerns, but rather some specific, particularized, and reasonable cause for concern in order for us to revoke an individual use of this class exemption."); *Minnesota Northern*, 1997 STB LEXIS 194, at \*13 ("a petition to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary."); *Railroad Ventures, Inc. - Acquisition and Operation Exemption - Youngstown & Southern R.R. Co.*, STB F. D. No. 33385, 1997 STB LEXIS 151, at \*7 (served July 15, 1997) (same).

substantially changed circumstances.” *New York Central Lines, LLC-Abandonment Exemption- In Montgomery and Schenectady Counties, NY*, STB Docket No. AB-565 (Sub-No. 14X), 2004 STB LEXIS 48, at \*6 (served Jan. 22, 2004).

Despite the voluminous documents produced by EB&SR in response to UTU’s discovery request, UTU has still failed even to articulate any “reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary.”<sup>10</sup> Indeed, UTU still has not even identified which rail transportation policy goal it believes requires regulation of the transaction, nor has it specified any “material error, new evidence, or substantially changed circumstances” in order to justify the Board’s reopening the exemption proceeding.

Where a party seeking revocation “has failed to provide any relevant evidence or argument demonstrating that regulation of the transaction is necessary to further RTP goals” and “makes no argument even remotely connected to the RTP,” its “petition for revocation under 49 U.S.C. 10505(d) [now 10502(d)] will be denied.” *Dubois*, 1995 ICC LEXIS 92, at \*\*4-5.<sup>11</sup> This is the case here. “Here, other than invoking the section, UTU has done nothing to bear its burden. It has not even specifically referred to any elements of the rail transportation policy.” *Lake State*, *supra* at \*7. In this posture, revocation plainly has not been justified.

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<sup>10</sup> *MVC*, slip op. at 7.

<sup>11</sup> In the brief argument section of its Supplemental Petition, UTU cites pre-ICCTA provisions in support of its case. *See* Supp. Pet. at 6 (citing 49 U.S.C. § 10505(d) [now 49 U.S.C. § 10502(d)], 49 U.S.C. § 10101a [now 49 U.S.C. § 10101] and 49 U.S.C. § 10505(g)(2) [now 49 U.S.C. § 10502(g)]).

**IV. UTU HAS NOT MET ITS BURDEN OF PROOF WITH RESPECT TO ITS CLAIM THAT THE NON-CARRIER CLASS ACQUISITION EXEMPTION IS INAPPLICABLE**

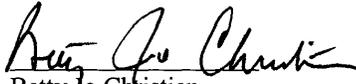
In its original Petition to Revoke, filed October 21, 2004, UTU also alleged that the EB&SR - CSXT transaction does not fall within the non-carrier class exemption. *See* Petition at 2. No facts were stated in support of this allegation and it has not been repeated in UTU's Supplemental Petition. Thus it appears that this allegation has been abandoned.

In any event, the allegation is plainly without merit, since EB&SR was a non-carrier at the time the Notice of Exemption was filed. *See* Bell V.S. at 21. Prior to this transaction, EB&SR held no other operating authority and owned no other carrier interests. *See id.* Thus its use of the non-carrier class exemption was plainly appropriate.

**V. CONCLUSION**

UTU has wholly failed to meet its burden of proof with respect to its request that EB&SR's Notice of Exemption be revoked. It has not shown that EB&SR's Notice contains false or misleading information. It has not shown that regulation of the transaction is necessary in order to further the Rail Transportation Policy nor has it demonstrated that application of the non-carrier class exemption is inappropriate. Accordingly, UTU's Petition to Revoke must be denied.

Respectfully submitted,



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Scott M. Mirelson  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
(202)-429-3000

Attorneys for  
East Brookfield & Spencer Railroad, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing Supplemental Reply to UTU Supplemental Petition to Revoke on January 14, 2005, via first-class mail, postage prepaid, upon the following:

Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107-4250

Ronald M. Johnson  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

Louis E. Gitomer  
Ball Janik LLP  
1455 F Street, NW  
Suite 225  
Washington, DC 20005

  
Wesley Odom

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34505**

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**EAST BROOKFIELD & SPENCER RAILROAD, LLC  
--LEASE AND OPERATION EXEMPTION--  
CSX TRANSPORTATION, INC.**

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**VERIFIED STATEMENT OF GEORGE W. BELL II**

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My name is George W. Bell, II and I reside at 27 Shoreline Drive, Foxboro, Massachusetts 02035. I am the President of East Brookfield & Spencer Railroad, LLC ("EB&SR"). I received a Bachelor of Science in Business Administration from Babson College in Wellesley Hills, Massachusetts in 1971. I also have taken post graduate course work at Harvard University. Prior to college, I graduated from Norton High School in Norton, Massachusetts in 1967.

In addition to my involvement with EB&SR, I am the President of Northeast Vehicle Services, LLC ("NVS"), which operates the vehicle distribution facility served by EB&SR. I am also the Executive Vice President and Treasurer of Foreign Auto Servicing, Inc., which is comprised of a vehicle processing and accessorization operation in the Port of Boston (Charlestown, MA), and Vehicle Outfitters, which performs automobile accessory installations and distribution services under contract with Toyota and General Motors, for their dealers in New England, New York and New Jersey. Finally, I am similarly, a principal in Northeast

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Automotive Products Corporation and Original Equipment Distribution Services LLC. These two companies distribute automotive accessory products, primarily to new car dealers throughout the northeastern United States. I am also a partner in three real estate holding companies: Seven Mile River Associates, Castle Island Realty Trust, and Charlbridge Realty LLP.

EB&SR is a Massachusetts Limited Liability Company. It has not in the past nor does it currently have any affiliation with CSX Transportation, Inc. ("CSXT"). Mr. Steven Pugliese and I own 51% of EB&SR, 25.5% each. The remaining 49% of the railroad is owned by Rail Systems, a Kentucky Limited Liability Company. EB&SR was formed to generate revenues that would provide acceptable returns on our investment as well as to enhance the service standards that would entice auto manufacturers to be domiciled at our East Brookfield site, by performing railroad transportation between the interchange point with CSXT and the New England Automotive Gateway Facility ("Facility"), a new automotive distribution terminal in East Brookfield and Spencer, Massachusetts operated by NVS. EB&SR's business plan also contemplates providing these value-added rail services at other locations.

Mr. Pugliese and I also own 51% of NVS, the operator of the Facility, (25.5% by Mr. Pugliese and 25.5% by me) and 49% ownership is held by Boston Rail Services. In its operations of the Facility, NVS provides value-added rail related services to auto manufacturers: unloading vehicles from rail cars, baying of vehicles, processing vehicles, storing vehicles, maintaining proper inventory management of vehicles, loading vehicles onto railcars, and providing access for receipt, retrieval and loading of vehicles by haulaway motor carriers.

The genesis for EB&SR took place in 1990. At that time, due to the commencement of domestic auto production by foreign automakers and the potential negative effects on port processors such as Foreign Auto Servicing, Mr. Pugliese and I began to explore operating a

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domestic vehicle distribution business specifically to replace this expected loss of port processing revenue from foreign car manufacturers. Our strategy was to leverage the reputation we had earned with foreign car manufacturers to provide quality value-added customer service to the automotive industry. The goal was to develop a full-service option that would provide a one-step logistics package as a solution to vehicle manufacturers' needs. Accordingly, I approached Conrail, one of CSXT's predecessor entities, about the feasibility of such a project. Through Seven Mile River Nominee Trust, Mr. Pugliese and I acquired the beneficial interest in a 200-acre parcel of land in East Brookfield and Spencer, Massachusetts for the purpose of setting up a vehicle distribution Facility. Over the years, Conrail had an option to purchase the site while an affiliate of CSXT later had an option to purchase or lease the site. With both Conrail and a CSXT affiliate, the proposal dictated that Mr. Pugliese and I were to operate the rail transfer distribution center. As part of our Option Agreement, Mr. Pugliese and I always envisioned that we would provide rail service from the interchange point to the Facility, since it would provide both an additional service to customers and additional revenue for Mr. Pugliese and me. I marketed the idea for such a Facility to all significant automobile manufacturers, focusing on providing the most efficient and timely road train service on the Chicago to Boston Main Line.

This process culminated in an agreement on April 23, 2004 with Holston Land Company, an affiliate of CSXT, which purchased the land and leased the property to CSX Real Property, another affiliate of CSXT. CSX Real Property developed the new auto ramp at that location and then subleased it to NVS pursuant to a vehicle services terminal agreement. EB&SR provides rail transportation services between the interchange point and the Facility pursuant to an Interchange Agreement between the parties. NVS has contractually granted both CSXT and EB&SR the right to operate over the sidetrack inside the Facility.

As noted above, EB&SR was created to make the Facility more marketable to automobile manufacturers. This would be accomplished by significantly reducing the vehicle dwell time (by up to two days) from plant to dealer, thus providing efficient value added customer services. This greater efficiency would generate additional revenues from railcar switching, inspection, and repair operations as our business partner had prior switching experience and many years experience in vehicle handling and railcar repairs. Having a short line such as EB&SR to switch in and offload the cars from the mainline interchange point in an efficient manner was a significant economic enticement to the automobile manufacturers and dealers in the Northeast. An additional enticement to attract customers was the fact EB&SR could offer 24-hour-a-day, seven-day-a-week switching, offloading, and terminal operation services. Attached to this Verified Statement as Exhibit A is a January 7, 2005 letter from Toyota to its Boston Region Dealer Principals (which was not solicited by EB&SR) describing the significant benefits to Toyota and its dealers from the opening of the Facility.

My goal was to provide exceptional customer service and this could best be accomplished by controlling all elements of the vehicle distribution facility. The establishment of EB&SR was one segment that we needed to control to permit us to achieve our goal. Success in this new line of business required us to focus our attention on the nuances of the business and to provide the excellent customer service the automobile manufacturers were looking for and expected.

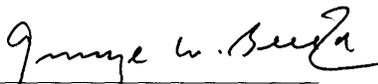
EB&SR has no affiliation whatsoever with CSXT or any CSXT affiliate. EB&SR bears the full financial risk of its operations. Neither CSXT nor any other related entity is subsidizing EB&SR's operations. EB&SR is subject to Railroad Retirement Tax, hires its own employees, carries its own insurance, sets its own rates and charges and leases its own locomotives. None of

the owners of EB&SR has any past or present employment or other relationship with CSXT or any CSXT affiliate. During the transaction that led to the lease of the track that is the subject of this proceeding, separate legal counsel represented EB&SR and CSXT. The transaction was completely arms-length.

Prior to its lease of the track that is the subject of this transaction, neither EB&SR nor any of its owners had any other carrier interest and held no operating authority.

**VERIFICATION**

I, George W. Bell II, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



George W. Bell II  
President  
East Brookfield & Spencer Railroad, LLC

January 12, 2005

Executed on January 12, 2005



Date: January 7, 2005  
To: All Boston Region Dealer Principals  
Subject: **EAST BROOKFIELD RAILHEAD**

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The Boston Region is pleased to announce the opening of an all new state of the art railhead in East Brookfield, MA. As of January 3, 2005, all incoming Boston Region domestic production is now shipped to the new railhead in East Brookfield. As a result of this migration in services, the Framingham railhead will no longer be utilized for incoming domestic production.

Since the new railhead is located west of the previous Framingham site, it is estimated that railcars destined for East Brookfield should arrive 2 days prior to the previous railhead location in Framingham. The new site includes a brand new specially developed rail off- load facility that will be open 24/7 as opposed to the restricted trucking hours at the Framingham railhead. East Brookfield also offers a dramatic increase in property size allowing this new site to grow with us for years to come.

The East Brookfield site will be a CSX facility operated by our partners at Vehicle Outfitters (formerly named Foreign Auto Service – FAS) thus ensuring professional and prompt service to our dealer body. The net result of this migration in service will be faster deliveries to the dealer body and a significant increase in future volume flexibility. Please note that the new designation for the Brookfield railhead is BR.

If you should require further information, please contact your District Manager or Pete Lebish, Vehicle Supply Manager at (508) 261-2537 with any further questions.

Sincerely,

A handwritten signature in black ink that appears to read 'Tim'.

Tim Morrison  
General Manager

TM/nmc