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UPS Next Day Air

January 24, 2005

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1674



Re: Finance Docket No. 34540

Dear Mr. Williams:

Please find enclosed the original and ten (10) copies of United Transportation Union's Supplemental Petition to Revoke in the above-captioned matter. In accordance with prior Board orders we have also included a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

cc: C. J. Miller, III, General Counsel

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Office of Proceedings

JAN 25 2004

Part of
Public Record

213074



Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34540

THE COLUMBUS & OHIO RIVER RAILROAD
COMPANY - ACQUISITION AND OPERATION
EXEMPTION - RAIL LINES OF CSX
TRANSPORTATION, INC. FROM COLUMBUS
TO NEWARK, OHIO AND FROM MT. VERNON
TO CAMBRIDGE, OHIO

SUPPLEMENTAL PETITION TO REVOKE

ENTERED
Office of Proceedings

JAN 25 2004

Part of
Public Record

Daniel R. Elliott, III
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United Transportation Union
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Attorney for United Transportation Union

Petitioner United Transportation Union (“UTU”) respectfully asks the Surface Transportation Board (“STB”) to revoke the application of the class exemption to the transaction or transactions embraced in the Notice of Exemption (“Notice”), filed September 24, 2004, by the Columbus & Ohio River Railroad Company (“CUOH”) in the entitled proceeding.

CUOH is a Class III carrier which has now taken over an important portion of the mainline operations of CSX Transportation, Inc. (“CSXT”) in central Ohio. Rather than attempt to negotiate under the Railway Labor Act for contracting out the CSXT operations to CUOH, CSXT has entered into a series of arrangements with CUOH to perform the work for CSXT.

By notice of exemption published on October 20, 2004 (69 FR 61702-03) and served on October 21, 2004, the Columbus & Ohio River Railroad Company (“CUOH”), a Class III rail carrier was granted authority under 49 C.F.R. § 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, totaling approximately 32.6 miles; 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, totaling approximately 81.4 miles. The lines are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, OH. CUOH stated that 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”) between milepost 16.7 and milepost 18.2 in Zanesville, OH.

UTU originally filed a Petition to Revoke this transaction on October 22, 2004 and simultaneously served discovery on CUOH pursuant to 49 C.F.R. § 1121.

On October 22, 2004, CUOH submitted a supplemental notice to increase the amount of rail lines it proposed to acquire from approximately 114 miles to approximately 120.35 miles, as follows: (1) by purchase, between Columbus, OH, milepost BP 137.0, and Newark, OH, milepost BP 100.6, and between milepost BBW 0.0 and milepost BBW 1.8 in Newark, totaling approximately 38.2 miles; and (2) by lease, between Cambridge milepost BPB 0.0 and Byesville, OH, milepost 5.14, and between Newark milepost BQ 0.0 and Mt. Vernon, OH, milepost BQ 25.9, totaling approximately 82.15 miles. Accordingly, the notice of exemption in this proceeding was republished to give notice of CUOH's supplemental filing to include the additional 6.35 miles of rail line.

Since CUOH has filed this supplemental notice, UTU felt compelled to file this supplemental petition to revoke out of an overabundance of caution.

More specifically, CSXT held 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 CUOH held operating rights over the C&N Subdivision. *See* Finance Docket No. 31961 (Sub-No. 1), Caprail I Acquisition Exemption – Consolidated Rail Corp., Finance Docket No. 31961 (Sub-No. 2), Ohio Department of Transportation. – Lease Exemption – Caprail I Lines in Ohio, Finance Docket No. 31961 (Sub-No. 3), Columbus & Ohio River Railroad Company – Lease and Operation Exemption – Ohio Department of Transportation Lines, Notice of Exemption served January 15, 1992 (noting that the 161.7 total route miles to be acquired by the Ohio Department of Transportation and operated by CUOH were comprised of "about 129.1 miles currently owned exclusively by Conrail, and Conrail's undivided one-half interest in 32.6 miles between Columbus and Newark, Ohio, owned and operated jointly with CSXT"). Both CSXT and CUOH currently operated over the Columbus to Newark line.

Through the subject transaction, CUOH purchased CSXT's 50% share in the Columbus to

Newark line, and CUOH became the sole operator of the line, stepping into CSXT's position with respect to the customers previously served by CSXT. In addition, CUOH leased approximately 81.4 miles of CSXT's line from Mt. Vernon (milepost BQ 25.90) to Cambridge, Ohio (Milepost BP 49.49) via Newark, Ohio. This line is composed of the "Lake Erie Subdivision" (Newark to Mt. Vernon) and "Central Ohio Subdivision" (Newark to Cambridge).

Both before and after the subject transaction, CUOH has had the ability to interchange traffic with the Ohio Central Railroad, which like CUOH, is a subsidiary of Summit View, Inc., a non-carrier.¹

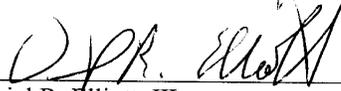
The exemption claimed by the Notice of Exemption should be revoked for the following reasons, among others:

1. The transactions, in whole or in part, noticed for exemption do not fall within the noncarrier line acquisition class exemption promulgated by 49 C.F.R. § 1150.41, *et seq.*
2. Regulation of the transactions, in whole or in part, is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.
3. The Notice contains false or misleading information about the transaction.

Petitioner has made a discovery request pursuant to 49 C.F.R. § 1121, and will supplement this Petition to Revoke in accordance with the STB's procedure.

¹Prior to the transaction, CUOH and OCR interchanged traffic at Newark. After the transaction, CUOH and OCR now interchange traffic at both Newark and Zanesville, Ohio.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D.R. Elliott, III", written over a horizontal line.

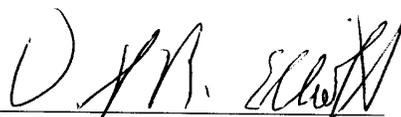
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Tel: (216) 228-9400
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Attorney for United Transportation Union

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing United Transportation Union's Petition to Revoke has been served this 24th day of January, 2005, via first-class, postage pre-paid mail upon the following:

Andrew B. Kolesar, III
Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036



Daniel R. Elliott, III