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ORIGINAL

BY HAND

February 10, 2005

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

RE: FD No. 34549, Illinois RailNet, Inc. -
Acquisition and Operation Exemption - The
Burlington Northern And Santa Fe Railway Company

Dear Mr. Williams:

On behalf of Illinois RailNet, Inc., I am filing an original and ten copies of the Reply of Illinois RailNet, Inc., to the Petition to Revoke Exemption submitted by the United Transportation Union.

I am also enclosing a computer disk formatted in WordPerfect 8.0 containing these filings.

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Please date stamp and return one copy of this filing.

Sincerely yours,

[Handwritten Signature]
John D. Heffner

cc: Daniel R. Elliott, III, Esq.
Sarah Bailiff, Esq.
Mr. Robert F. McKenney

ENTERED
Office of Proceedings
FEB 11 2005
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

STB FINANCE DOCKET NO. 34549

ILLINOIS RAILNET, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

PETITION TO REVOKE EXEMPTION

REPLY OF ILLINOIS RAILNET, INC.

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Respectfully submitted,

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Counsel for Illinois
RailNet, Inc.

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INTRODUCTION

On January 21, 2005, Petitioner United Transportation Union (UTU) filed a "Petition to Revoke Exemption" in the above-captioned proceeding. Respondent Illinois RailNet, Inc. (Illinois) urges the Board to deny UTU's petition for failure to show any basis for granting the requested relief.

BACKGROUND
AND STATEMENT OF FACTS

On September 27, 2004, Illinois, an existing class III short line rail carrier, originally filed a verified notice of exemption under the procedures of 49 CFR 1150.41 seeking an exemption from the requirements of 49 U.S.C. 10902 to purchase from The Burlington

Northern and Santa Fe Railway Company (BNSF)¹ and operate two lines of railroad.² The subject rail lines total approximately 24.7 miles in length and serve Ogle, La Salle, and Bureau Counties, IL. Concurrently, Illinois also filed a verified notice of exemption under 49 CFR 1180.2(d)(7) covering, as relevant here, BNSF's grant to Illinois of "limited local trackage rights for the purpose of servicing customers on BNSF in and around Oregon, IL."³ On October 18, 2004, the Board served decisions exempting Illinois' proposed acquisition and operation and the grant of trackage rights. Thereafter, some three months later on January 26, 2005, UTU filed the instant Petition to Revoke Exemption.

In its scant four page petition, UTU first describes the transaction and the trackage that are the subject of these two verified notices of exemption. UTU then claims that the Board's

¹ Effective January 20, 2005, BNSF changed its name to "BNSF Railway Company" and references to BNSF shall mean and include The Burlington Northern and Santa Fe Railway Company prior to January 20, 2005 as well as BNSF Railway Company for any references on or after January 20, 2005.

² One line consists of a portion of BNSF's Oregon Subdivision between milepost 98.75 at Oregon, IL, and milepost 105.78 at Mt. Morris, IL (the Mt. Morris Line). The second line consists of a portion of BNSF's La Salle Subdivision between milepost 25.7 at La Salle, IL, and milepost 43.36 at Zearing, IL (the La Salle Line).

³ These trackage rights, which are incidental to the underlying purchase and sale transaction, may not technically have required a separate trackage rights filing. However, since these incidental rights included some limited rights to provide local service on BNSF trackage, Illinois took the conservative approach and filed a separate trackage rights exemption to acquire those rights. The trackage rights grant also covered limited overhead trackage rights for the purpose of interchanging traffic and moving light engines.

exemption requirements are inadequate for determining whether a particular transaction is consistent with the Rail Transportation Policy. Finally, UTU asserts that Illinois has been providing common carrier service to certain sand plants over BNSF's mainline track.

ARGUMENT

UTU's Petition appears to be the latest in a "scattershot" series of filings directed at various short line railroad acquisitions.⁴ Its Petition fails to identify any basis for revoking the exemptions which Illinois has properly utilized in securing authority for the instant transactions.

Under 49 U.S.C. 10502(d), the Board (as with the Interstate Commerce Commission before it) may revoke an exemption, in whole or in part, "when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title." Thus, the standard for revoking an exemption is whether regulation is needed to carry out the Rail Transportation Policy of 49 U.S.C. 10101. The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable,

⁴ See, e.g., petitions to revoke filed by the UTU in STB FD No. 34536, Indiana & Ohio Central Railroad, Inc.-Acquisition And Operation Exemption -CSX Transportation; STB FD No. 34540; The Columbus & Ohio River Rail Road Company-Acquisition and Operation Exemption--Rail Lines of CSX; and STB FD No. 34505, East Brookfield & Spencer Railroad, LLC-Lease And Operation Exemption-CSX Transportation, Inc.

specific concerns demonstrating that reconsideration of the exemption is warranted. See Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31, 35-7 (1991) (Minnesota) and cases cited therein; Class Exemption—Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 801, 812 (1985).

Moreover, in determining that a transaction is one requiring regulation and therefore revocation of an exemption, the Board applies the two part test of section 10502: first, regulation is appropriate if it is required to satisfy one or more of the policy goals of the Rail Transportation Policy. Second, regulation is appropriate if it is necessary to ensure that the transaction is either limited in scope or will not result in an abuse of captive shippers.

Cases in which the Board and the I.C.C. have revoked exemptions are rare and fall into three broad categories. First, the Board and the I.C.C. have revoked exemptions where the petitioner had successfully established a need for regulation. See, Transloaders, Inc.—Lease and Operation Exemption—F&L Realty, Finance Docket No. 32407 (served April 22, 1994) (hereafter cited as Transloaders); James Riffin d/b/a The Northern Central Railroad—Acquisition and Operation Exemption—in York County, PA, and Baltimore County, MD, STB Finance Docket No. 34484 (STB served April 20, 2004). Such petitions must be based on reasonable, specific concerns that demonstrate that reconsideration of the

exemption is warranted. See, Wisconsin Central Ltd.-Exemp. Acq. & Oper.-Certain Lines of Soo L.R. Co., Finance Docket No. 31102 (served July 28, 1988). Second, the Board and I.C.C. have revoked exemptions where the notice contained information found to be false or misleading. Transloaders, supra. Finally, the Board and I.C.C. have stated that they retain the right to review a transaction to protect the integrity of its administrative processes and to prevent sham transactions. See, Minnesota, supra; and The Land Conservancy of Seattle and King County-Acquisition and Operation Exemption, et al, STB Finance Docket No. 33389 (STB served Sept. 26, 1997).

UTU's petition barely asserts, let alone, proves any of these allegations. All that the reader can discern from UTU's missive is that "it is impossible to ascertain if [the subject transactions] are arm's length transactions which carry out the Rail Transportation Policy set forth at 49 U.S.C. 10101, particularly concerning employee wages and safety and suitable working conditions." While Petitioner suggests that employee concerns, shipper needs, the transportation system, and maintenance of fair and reasonable rates are matters the STB considers in determining whether a transaction meets the "public convenience and necessity," there is no showing that Illinois' operation here does not satisfy either the Rail Transportation Policy or the public convenience and necessity. Presumably, the UTU is concerned about some sort of

adverse effect on the interests of rail labor. However, there is no discussion - let alone idle speculation - of job loss or impacts to - working conditions, employee safety, or other employee harm.

Similarly, UTU does not justify regulation on the size of the transaction or any potential for abuse to captive shippers. No shipper has appeared in this proceeding to complain about Illinois' service or rates, and the UTU submits nothing on this issue as well. While Petitioner baldly asserts that regulation is necessary to carry out the Rail Transportation Policy, it does not specify why that may be so or the level or type of regulation required.

Furthermore, UTU does not allege that Illinois' acquisition notice contains false or misleading information, that the notice sought authority under the wrong provision, or that regulation is necessary to protect the integrity of the Board's administrative processes and to prevent sham transactions. Indeed, the UTU does not claim the transaction is a sham - nor could it. Even the most adept conspiracy theorists would be hard-pressed to morph this garden variety shortline transaction into anything other than a routine transaction.

On page 3 of its Petition, the UTU asserts that Illinois has been performing service over, in its words, "what appears to be mainline trackage" from MP 98.49 near Oregon, IL, to MP 101.2, serving the sand plants west of the junction near this marker.

Petitioner's allegation, while true, does not support its case. UTU does not show how such operations may be contrary to the Rail Transportation Policy or otherwise make regulation of this exempt trackage rights transaction necessary. Moreover, the Board authorized these mainline operations with an exemption covering these limited local trackage rights. To the extent that Illinois' mainline operations have affected rail labor, those trackage rights are subject to the applicable labor protective conditions thereby satisfying the interest of Petitioner.

CONCLUSION

Accordingly, UTU has shown no basis for revoking Illinois' exemption. It has shown no "reasonable, specific concerns" justifying regulation under the Rail Transportation Policy. And it has not asserted that Illinois' notice contains false or misleading information, that Illinois' operation presents a threat to the integrity of the Board's administrative processes, or that the transaction is a sham. While it does raise a non-specific concern about Illinois' mainline operations, the labor protective conditions imposed on this trackage rights transaction should satisfy Petitioner's interests. Accordingly, the UTU's Petition to Revoke Exemption should be denied.

Respectfully submitted,



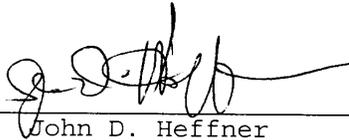
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Counsel for Illinois
RailNet, Inc.

Dated: February 10, 2005

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I have this 10th day of February, 2005, served a copy of the Reply to UTU's Petition to Revoke Exemption upon all parties of record by First Class United States Mail.



John D. Heffner