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April 13, 2006

216237

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 34729**
Saginaw Bay Southern Railway Company -- Acquisition and
Operation Exemption -- Rail Line of CSX Transportation, Inc.

Dear Secretary Williams:

By letter dated March 30, 2006, Saginaw Bay Southern Railway Company ("SBS") purports to respond to the Petition for Show Cause Order filed in this proceeding by Huron & Eastern Railway Company, Inc. ("HESR"). SBS admits that it did not seek or obtain STB approval for its acquisition via assignment from CSX Transportation, Inc. ("CSXT") of trackage rights over HESR's tracks between Mershon and Paines, Michigan. SBS's sole justification for this failure is its "understanding" that "given the original date of the relevant agreement, this assignment does not require STB approval." SBS Letter at 1.

That, of course, is absurd. A transfer of trackage rights in 2005, whether by assignment or other means, plainly falls within the STB's jurisdiction and requires agency approval. E.g., 49 U.S.C. § 11323(a)(6) (acquisition of trackage rights "may be carried out only with the approval and authorization of the Board."); Prairie Central Ry. Co. -- Acquisition & Operation, 367 I.C.C. 884 (1983). The age of any underlying contract is irrelevant. Thompson v. Texas Mexican Ry. Co., 328 U.S. 134, 144 (1946) ("[T]he fact that the trackage contract was entered into in 1904 prior to the passage of the Act is immaterial; the provisions of the Act, including § 1(18), are applicable to contracts made before as well as after its enactment."). SBS could no more successfully argue that, because the rail lines it acquired from CSXT in this transaction were constructed before 1920, its acquisition of them now required no Board authorization.

SBS goes on to state its willingness to make whatever filings this Board determines are required. Since SBS plainly intends to offer no further justification for its failure to obtain approval for its trackage rights, an intermediate show cause order is unnecessary. SBS's unauthorized operations over HESR trackage are ongoing. SBS should be immediately

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required to seek appropriate regulatory authority for those trackage rights. HESR expects that SBS will assume CSXT's maintenance and liability obligations related to the Paines Segment -- on which SBS (like CSXT before it) is the sole operator. If it does not do so, HESR expects to ask this Board for conditions imposing such obligations. Those matters are premature at this time, because SBS has not yet sought authority to operate over the line in question. If and when it does, there will be an appropriate mechanism to resolve any continuing dispute over the nature and exercise of those rights.

Since SBS has not shown any reason why Board authority is not required for its acquisition of CSXT's rights and obligations with respect to HESR's trackage, the Board should issue an order providing that:

1. SBS is required to seek appropriate authority for its acquisition of the Mershon to Paines trackage rights within 10 days from service of the order, and HESR will have 10 days to submit its response.
2. If SBS fails timely to file an appropriate request for authority at the Board, it shall vacate and refrain from entering upon or using in any way the Mershon-Paines trackage, and shall be subject to a penalty of up to \$5,000 for each day that unauthorized operations continue. 49 U.S.C. § 11901(a).

Wherefore, to protect the Board's jurisdiction and to carry out the national transportation policy, HESR respectfully requests that the Board enter an order containing the foregoing terms.

Respectfully submitted,



Ronald A. Lane
Attorney for Huron & Eastern
Railway Company, Inc.

RAL:tjl

cc: Andrew B. Kolesar III, Esq.