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MAY 28 2010

SURFACE
TRANSPORTATION BOARD

May 28, 2010



Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

RE: Finance Docket No. 35379, *RailAmerica, Inc., Palm Beach Holding, Inc.,
RailAmerica Transportation Corp., Central Railroad Company of Indianapolis,
Chicago Ft. Wayne and Eastern Railroad Division, Fortress Investment Group,
LLC, and RR Acquisition Holding, LLC—Control Exemption—Delphos Terminal
Company, Inc.*

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Exemption for the control of the Delphos Terminal Company, Inc. a check for the filing fee of \$9,500, and a computer diskette containing the Petition in Word and pdf format. The color Exhibit is attached to the end of the Petition in Exhibit B.

Please time and date stamp the additional copy of this letter and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for RailAmerica, Inc., et al.

Enclosures

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SURFACE
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35379

RAILAMERICA, INC., PALM BEACH HOLDING, INC., RAILAMERICA
TRANSPORTATION CORP., CENTRAL RAILROAD COMPANY OF INDIANAPOLIS,
CHICAGO FT. WAYNE AND EASTERN RAILROAD DIVISION,
FORTRESS INVESTMENT GROUP, LLC, AND RR ACQUISITION HOLDING, LLC
—CONTROL EXEMPTION—DELPHOS TERMINAL COMPANY, INC.

PETITION FOR EXEMPTION

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TRANSPORTATION BOARD**

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Attorneys for RailAmerica, Inc., et al.

Dated: May 28, 2010



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**SURFACE
TRANSPORTATION BOARD**

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 35379

RILAMERICA, INC., PALM BEACH HOLDING, INC., RILAMERICA
TRANSPORTATION CORP., CENTRAL RAILROAD COMPANY OF INDIANAPOLIS,
CHICAGO FT. WAYNE AND EASTERN RAILROAD DIVISION,
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—CONTROL EXEMPTION—DELPHOS TERMINAL COMPANY, INC.

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RailAmerica, Inc. (“RailAmerica”); Palm Beach Holding, Inc. (“Palm Beach”);
RailAmerica Transportation Corp. (“RTC”); Central Railroad Company of Indianapolis
 (“CERA”), Chicago Ft. Wayne and Eastern Railroad division (“CFE”); Fortress Investment
Group, LLC (“Fortress”), on behalf of certain private equity funds managed by it and its
affiliates; and RR Acquisition Holding, LLC (“RR Acquisition”) petition the Surface
Transportation Board (the “Board”), under 49 U.S.C. § 10502 and 49 CFR Part 1121, for an
exemption from 49 U.S.C. §§ 11323-11325 for CERA to acquire direct control of Delphos
Terminal Company, Inc. (“DTC”) through a stock purchase, and for the remaining entities to
acquire indirect control of DTC.

Fortress’s non-carrier affiliate, RR Acquisition, currently owns 55% of the publicly
traded shares and controls the non-carrier RailAmerica which directly controls the non-carrier
Palm Beach, which directly controls the non-carrier RTC, which directly controls CERA, whose
CFE division currently operates over DTC. RailAmerica, Palm Beach, RTC, CERA, CFE,
Fortress, and RR Acquisition are jointly referred to as “RailAmerica, et al.”

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BACKGROUND

RailAmerica, et al., excluding CERA and CFE, control the following railroads operating in the states in parentheses: Alabama & Gulf Coast Railway L.L.C. (Alabama, Florida, and Mississippi), Arizona & California Railroad Company (Arizona and California), Bauxite & Northern Railway Company (Arkansas), California Northern Railroad Company (California), Cascade and Columbia River Railroad Company (Washington), Central Oregon & Pacific Railroad, Inc. (“CORP”) (California and Oregon), The Central Railroad Company of Indiana (“CIND”) (Indiana and Ohio), Central Railroad Company of Indianapolis (“CERA”) (Illinois, Indiana, and Ohio), Connecticut Southern Railroad, Inc. (Connecticut and Massachusetts), Dallas, Garland & Northeastern Railroad, Inc. (Texas), Eastern Alabama Railway, LLC (Alabama), Huron & Eastern Railway Company, Inc. (Michigan), Indiana & Ohio Railway Company (“IORY”) (Indiana, Michigan, and Ohio), Indiana Southern Railroad, LLC (Indiana), Kiamichi Railroad Company, L.L.C. (Arkansas, Oklahoma, and Kansas), Kyle Railroad Company (Colorado and Kansas), The Massena Terminal Railroad Company (New York), Mid-Michigan Railroad, Inc. (Michigan), Missouri & Northern Arkansas Railroad Company, Inc. (Arkansas, Kansas, and Missouri), New England Central Railroad, Inc. (Connecticut, Massachusetts, New Hampshire, and Vermont), North Carolina & Virginia Railroad Company, LLC (North Carolina and Virginia), Otter Tail Valley Railroad Company, Inc. (Minnesota and South Dakota), Point Comfort & Northern Railway Company (Texas), Puget Sound & Pacific Railroad (Washington), Rockdale, Sandow & Southern Railroad Company (Texas), San Diego & Imperial Valley Railroad Company, Inc. (California), San Joaquin Valley Railroad Co.(California), South Carolina Central Railroad Company, LLC (South Carolina), Toledo, Peoria & Western Railway Corporation (Illinois and Indiana), and Ventura County Railroad

Corp. (California) (collectively the "RailAmerica Railroads"). Further, Fortress on behalf of other certain equity funds, managed by it and its affiliates, directly controls the non-carrier FECR Rail LLC, which directly controls FEC Rail Corp., which directly controls Florida East Coast Railway, L.L.C. ("FEC") operating in the State of Florida.¹

CORP and FEC are Class II railroads. All of the other railroads are Class III.

CERA has agreed to acquire the stock of DTC from its parent, Bunge North America (East), LLC ("Bunge").

DTC is a Class III rail carrier which owns approximately 3.8 miles of rail line between approximately milepost 73.7 (Valuation Marker 3892 +00.9) at or near Delphos, OH, and approximately milepost 77.5 (Valuation Marker 4090 +00) at or near Landeck, OH, together with interchange trackage at or near Delphos ("DTC Line"). *Delphos Terminal Company, Inc.—Acquisition and Operation Exemption—Indiana Hi-Rail Corporation*, STB Finance Docket No. 33496 (STB served Oct. 31, 1997). DTC is wholly owned by Bunge. DTC connects near Delphos with a rail line leased and operated by CERA. *Central Railroad Company of Indianapolis—Lease and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34508 (STB served July 30, 2004) ("*CERA Lease*"). CERA serves as DTC's sole link to the national rail system. DTC does not connect with any of the other RailAmerica Railroads. CIND's operations are located in southern Ohio and IORY operates to the east of Delphos and connects with CERA/CFE in Lima, OH.

¹ The Board exempted the transfer of indirect control of FEC from Fortress to RailAmerica, with Fortress retaining indirect control of RailAmerica, in *Fortress Investment Group LLC, et al.—Exemption for Transaction within a Corporate Family*, STB Finance Docket No. 35123 (STB served March 19, 2008). To date, the control of FEC by RailAmerica has not been exercised.

CERA operates over approximately 39 miles of rail line in north central Indiana under lease and operating rights arrangements. CERA, through CFE operates over approximately 315 miles of rail line between Tolleston, IN, and Crestline, OH. CERA leases and operates, through CFE, approximately 273 miles of railroad from CSXT Transportation, Inc, (“CSXT”), including the DTC Line.²

RailTex acquired control of CERA and The Central Railroad Company of Indiana through the purchase of all of the stock of their noncarrier parent holding company, Central Properties, Inc. (“CPI”). *RailTex, Inc.--Control Exemption--Central Properties, Inc., The Central Railroad Company of Indianapolis, and The Central Railroad Company of Indiana*, STB Finance Docket No. 33585 (STB served June 26, 1998). RailAmerica acquired control of RailTex pursuant to *RailAmerica, Inc.--Control Exemption--RailTex, Inc.*, STB Finance Docket No. 33813 (STB served January 10, 2000). Fortress acquired control of RailAmerica pursuant to *Fortress Investment Group, LLC, et al.—Control Exemption—RailAmerica, Inc., et al.*, STB Finance Docket No. 34972 (STB served December 22, 2006).

Pursuant to the Stock Purchase Agreement to be executed by CERA and Bunge, CERA proposes to acquire control of DTC through the purchase from Bunge of all the issued and outstanding shares of stock of DTC (the “Proposed Transaction”). CERA will also realign and connect the east end of DTC’s track to CERA’s east siding, as well as, build a new connection between DTC’s track CERA’s track.³ Following consummation of the transaction, rail

² DTC contracted with Conrail to operate the Line. CSXT acquired Conrail and the operations over the DTC line. CERA acquired authority to lease and operate the DTC Line in *CERA Lease*.

³ As part of the agreement, Bunge will be granted a permanent easement over the new connection.

operations on DTC will continue to be performed by CFE and service will continue as it does today.

Bunge and DD Ingredient Distributors, Inc. (“DD”) are the only active shippers on the DTC Line. Bunge and DD both support the Proposed Transaction. A letter of support from DD is attached as Exhibit A. Bunge and DD will not lose rail service or any existing competitive options as a result of the Proposed Transaction. All traffic is currently moved by CFE over DTC’s Line and will continue to be moved by CFE after CERA assumes control of DTC. Having operated the DTC Line, CFE is familiar with the operations and the use of the line by the current shippers, Bunge and DD.

The DTC Line connects with the line operated by CFE under lease from CSXT near Delphos, OH. A map showing the DTC Line and CERA is attached as Exhibit B (containing a color map).

JURISDICTION

The “[a]cquisition of control of a rail carrier by any number of rail carriers” and the “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers” may be carried out only with the approval and authorization of the Board. 49 U.S.C. §11323(a)(3) and (5). CERA as a Class III railroad seeking to control DTC, which is also a Class III railroad requires Board authorization under Section 11323(a)(3). Fortress, RR Acquisitions, RailAmerica, Palm Beach, and RTC are not rail carriers, but control one or more rail carriers, as described above. They are seeking to obtain control of one Class III rail carrier. Therefore, their indirect control of DTC requires authorization under Section 11323(a)(5).

In lieu of filing an application, RailAmerica, et al., have filed this petition for exemption.

LABOR

DTC has no employees. RailAmerica, et al. does not expect any of the employees of CERA to be adversely affected by the Proposed Transaction. The only employees working on the DTC Line are CERA employees. Because there is one Class II carrier that is controlled by RailAmerica, et al. and one Class II carrier controlled by Fortress, any employees affected by this transaction will be entitled to labor protection in accordance with *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979) (“*New York Dock*”).

ENVIRONMENTAL AND HISTORIC

A petition for exemption must comply with the Board’s environmental reporting requirements, if applicable. 49 CFR § 1121.3(b). Under 49 CFR § 1105.6(c)(2)(ii) the Proposed Transaction is exempt from environmental reporting requirements. There will be no operational changes that exceed the thresholds of 49 CFR § 1105.7(e)(4) or (5).

The Proposed Transaction is also exempt from historic preservation reporting requirements. RailAmerica, et al. does not intend to substantially change the level of maintenance of the railroad property of the DTC Line as part of the Proposed Transaction. *See* 49 CFR § 1105.8(b)(3). There are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years or older.

This action will not significantly affect either the quality of the human environment or energy conservation.

ARGUMENT

THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

The control of the DTC by RailAmerica, et al. is subject to prior review and authorization by the Board pursuant to 49 U.S.C. § 11323(a)(3 and 5). RailAmerica, et al. seek an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 11323(a)(3 and 5)10903 in order to acquire control of DTC.

Pursuant to 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “*Boxcar Exemption*”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

Detailed scrutiny of the Proposed Transaction under 49 U.S.C. § 11323(a)(3 and 5) is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. An exemption from such review would further several of the objectives of the rail transportation policy. Moreover, the Proposed Transaction is of limited scope and will not result in an abuse of market power.

1. The Application of 49 U.S.C. § 11323(a)(3 and 5) Is Not Necessary To Carry Out The Rail Transportation Policy.

Absent an exemption, the primary substantive issue the Board would need to address is the effect of the Proposed Transaction on competition.⁴ Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. § 10101(4) and (5), which encourage the preservation of effective competition.

That objective is fully satisfied by the Proposed Transaction. The Proposed Transaction will bring the strengths and resources of an established short line carrier to the management of DTC and will preserve the local rail service currently provided on the DTC Line. *See* 49 U.S.C. § 10101 (4) and (5). Additionally, the realignment of the tracks and the new connection will

⁴ Because the Proposed Transaction does not involve the merger or control of at least two Class I rail carriers, under 49 U.S.C. § 11324(d), the Board must approve the transaction “unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the

provide for better coordination between the DTC Line and CERA making service more competitive and efficient. Today, CFE operates the DTC Line. Upon consummation of control, CFE will continue to operate the DTC Line. As a practical matter, the Proposed Transaction will only result in a change in ownership, not service, operations, or competition.

Granting the requested exemption would also minimize Federal regulatory control over the rail transportation system and promote the deregulatory objectives of the Staggers Act and the ICCTA. This exemption proceeding will provide the Board with all the information necessary to evaluate the Proposed Transaction, but minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.—Control Exemption—Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.—Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5, 1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Other aspects of the rail transportation policy are not adversely affected.

2. The Proposed Transaction Will Not Result In An Abuse of Market Power

The Proposed Transaction will not result in an abuse of market power as set forth in 49 U.S.C. § 10502(a)(2)(b). Bunge owns the DTC Line and through an arms-length agreement has agreed to sell its stock to CERA. Bunge supports this transaction. Through the sale agreement, Bunge, being the owner, seller, and a shipper on the DTC Line, has been able to protect itself from any potential market abuse. DD, the other shipper on the Line, has submitted a letter supporting the Proposed Transaction. A mere change in ownership will not alter the competitive

United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.”

atmosphere in which the carriers operate. DTC traffic is currently handled by CERA and will continue to be handled by CERA after the Proposed Transaction. The common control of both carriers will not lessen competition or transportation options for Bunge or DD, or any other shipper that may locate on the line. Rather, shippers will potentially benefit from greater efficiencies while receiving the same service. Consequently, the Proposed Transaction will not result in any market abuses.

3. The Proposed Transaction Is Of Limited Scope

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Proposed Transaction is of limited scope. *See Pinsky Railroad Company—Control Exemption—Warren & Saline River Railroad Company*, STB Finance Docket No. 35293 (STB Served November 3, 2009).

Nevertheless, the Proposed Transaction is of limited scope. DTC will continue to be operated as it is today simply under different ownership. The Proposed Transaction involves a change in control of a small, 3.8-mile long rail carrier, in one state, that currently serves two shippers. Those shippers support the Proposed Transaction.

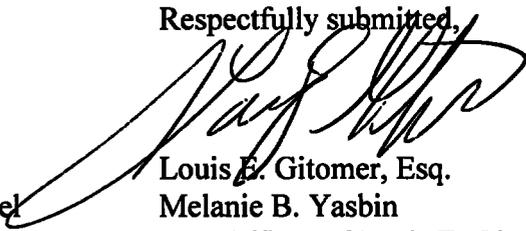
CONCLUSION

RailAmerica, et al. have demonstrated in this Petition that the Proposed Transaction will not result in any competitive harm. The proposed transaction fosters the transportation policy, will not result in the abuse of market power, and is of limited scope.

PRAYER FOR RELIEF

For the reasons provided herein, RailAmerica, et al. pray that the Board grant this Petition for Exemption.

Respectfully submitted,



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(904) 538-6329

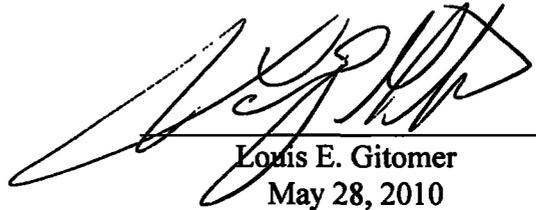
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Attorneys for RailAmerica, Inc., et al.

Dated: May 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Petition for Exemption in Finance Docket No. 35379, *RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., Central Railroad Company of Indianapolis, Chicago Ft. Wayne and Eastern Railroad Division, Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Control Exemption—Delphos Terminal Company, Inc.*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the State of Indiana.



Louis E. Gitomer
May 28, 2010

EXHIBIT A – SUPPORT LETTER

D Ingredient
Distributors, Inc.

5025 N. KILL RD. DELPHOS, OH 45833

PH. (419)692-2667 OR (419)692-3205

FAX (419)695-9447

March 31, 2010

Dave Murphy
General Manager
Chicago Ft Wayne & Eastern Railroad
3010 East Pontiac Street
Ft. Wayne, IN 46803

Dave,

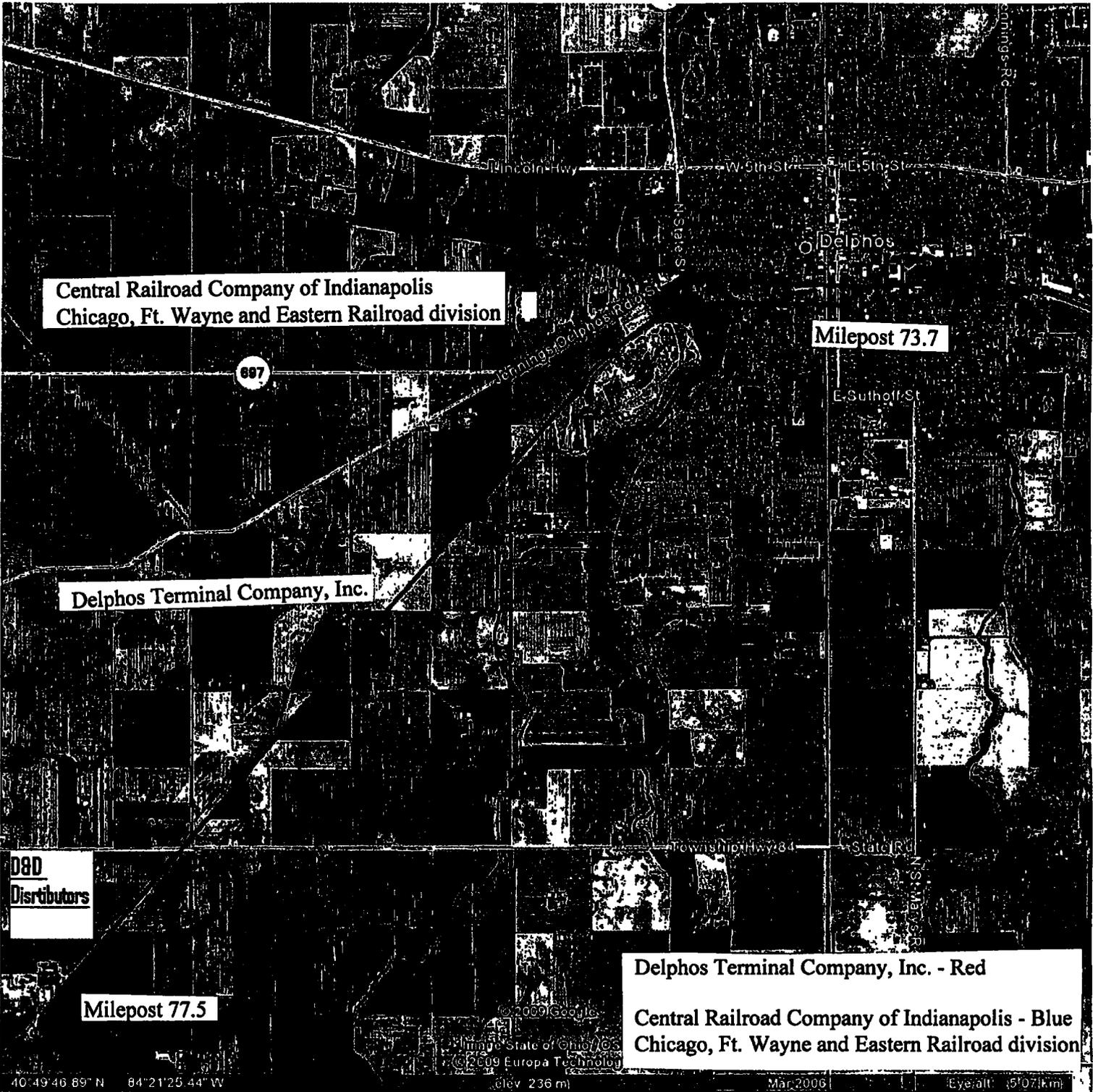
We wish to express our support and appreciation in the CF&E purchase of the Delphos Terminal Railroad from Bunge. The service the CF&E provides us is what sustains our business. We look forward to a long and lasting relationship between our two companies.

Regards,



Ted Williams
Director of Operations
D&D ingredient Distributors, Inc.

EXHIBIT B - MAP



Central Railroad Company of Indianapolis
Chicago, Ft. Wayne and Eastern Railroad division

Milepost 73.7

Delphos Terminal Company, Inc.

D&D
Distributors

Milepost 77.5

Delphos Terminal Company, Inc. - Red

Central Railroad Company of Indianapolis - Blue
Chicago, Ft. Wayne and Eastern Railroad division