

STB FINANCE DOCKET NO. 34145¹

BULKMATIC RAILROAD CORPORATION
– ACQUISITION AND OPERATION EXEMPTION –
BULKMATIC TRANSPORT COMPANY

Decided November 18, 2002

The Surface Transportation Board finds that it has jurisdiction under 49 U.S.C. 10901 over the commencement of rail service over track that was previously used as private switching track serving a rail car-truck transloading facility. In support of its assertion of jurisdiction, the Board finds that the track at issue will not be operated as excepted switching track under 49 U.S.C. 10906 and that the operation at issue will not be a sham common carrier operation. Considering the criteria of 49 U.S.C. 10502(d), the Board refuses to revoke the exemption that licensed the operation at issue.

BY THE BOARD:

We are denying the petition of Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), for revocation of the exemptions in these proceedings.

BACKGROUND

Prior to December 2001, Bulkmatic Transport Company (BTC), a motor common carrier that uses rail service to move some of its traffic, operated a rail car-truck transloading facility at Chicago Heights, IL, known as the Bulkmatic Distribution Center.² BTC leased this plant from Porkchop Limited Partnership, an Illinois limited partnership. The facility consists of slightly more than 98 acres of real estate in Cook County, IL. Approximately 3.9 miles of rail track and related transloading and warehouse facilities are located on the acreage. The

¹ This decision embraces STB Finance Docket No. 34179, *Bulkmatic Railroad Corporation – Operation Exemption – Bulkmatic Transport Company*. These proceedings have not been consolidated. Because the petition filed by UTU-IL raised issues pertaining to both proceedings, we are considering both in this decision for administrative convenience.

² This operation appears to involve the unloading/reloading of goods between rail cars and truck trailers or containers, although some goods are stored in warehouses prior to transfer. The commodities may be bulk or non-bulk, and may be handled in hopper, tank, or box cars.

rail trackage (herein, the Chicago Heights Track) connects at its southeast end with the Union Pacific Railroad Company (UP) and at its northeast end with the Elgin, Joliet, and Eastern Railway Company (EJ&E). Prior to this proceeding, the Distribution Center received switching rail service from UP train crews operating over the Chicago Heights Track.

By notices jointly filed on December 21, 2001, in STB Finance Docket Nos. 34145 and 34146, respectively, Bulkmatic Railroad Corporation (BRC), a noncarrier, invoked our class exemption at 49 CFR 1150.31 to allow it to become a rail carrier by subleasing the Chicago Heights Track from BTC, and the Chicago Heights Switching Company (CHSC), also a noncarrier, invoked our class exemption to allow it to operate over that trackage as a common carrier by railroad. The joint notices stated that the Chicago Heights Track was subject to our jurisdiction under 49 U.S.C. 10901—and was not excepted track under 49 U.S.C. 10906³—because it would be used as a line of railroad by BRC and CHSC (herein collectively, respondents). In support of this argument, the respondents cited *Effingham RR Co. – Pet. For Declaratory Order*, 2 S.T.B. 606 (1997), *reconsideration denied*, *Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL*, STB Docket No. 41986, *et al.* (STB served September 18, 1998) (*Effingham*), *aff'd sub nom. United Transp. Union v. Surface Transp. Board*, 183 F.3d 606 (7th Cir. 1999) (*UTU*). In *Effingham*, we held that excepted track was necessarily incidental to a common carrier's other track, and a common carrier's only trackage could not therefore be deemed to be excepted within the meaning of 49 U.S.C. 10906.

By petition filed on December 26, 2001, UTU-IL asked us to stay the effective dates of these exemptions. In its petition, UTU-IL argued that: (1) the notices failed to comply with Board regulations requiring the filing of a map of the transaction and an agreement between the parties; (2) the transaction is outside our licensing authority because the track is excepted switching track under 49 U.S.C. 10906, notwithstanding *Effingham, supra*; and (3) regulation is necessary to carry out provisions of the rail transportation policy of 49 U.S.C. 10101.

³ Section 10906 provides:

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

By decision served on December 27, 2001, UTU-IL's petition for stay of the notices was denied. The exemptions became effective on December 28, 2001, 7 days after they were filed, and were published in the *Federal Register* at 67 Fed. Reg. 2010-11 (2002). When the exemptions became effective, BRC was authorized to acquire the Chicago Heights Track by sublease and CHSC was authorized to operate over the line pursuant to an operating agreement with BRC.

Shortly thereafter, BRC decided that it wanted to operate over the Chicago Heights Track instead of having CHSC conduct those operations. Accordingly, by notice filed under 49 CFR 1150.31 on February 27, 2002, in STB Finance Docket No. 34179, BRC sought to invoke the class exemption at 49 CFR 1150.31, *et seq.*, to conduct the operations itself.⁴ The notice specified that BRC might contract with CHSC for the latter to provide service over the line as an agent for BRC. (Verified Notice filed February 27, 2002, at 3 n.1).

By petition filed on March 4, 2002, UTU-IL asked the Board to stay and/or to reject or to revoke the exemption in STB Finance Docket No. 34179, and to reject or revoke the exemption in STB Finance Docket No. 34145.⁵ In support of its stay request, UTU-IL presented arguments similar to those it made in its December 26, 2001 stay petition filed in STB Finance Docket Nos. 34145 and 34146. By decision served on March 5, 2002, UTU-IL's petition to stay the exemption noticed in STB Finance Docket No. 34179 was denied. The decision also found that UTU-IL had not supported its request for rejection of the notices and stated that the request to revoke the exemptions would be addressed in a subsequent decision. The exemption in that docket became effective on March 6, 2002, and was published in the *Federal Register* at 67 Fed. Reg. 11,547-48 (2002).

BRC apparently began providing rail service over the Chicago Heights Track on April 2, 2002.⁶ BTC does not operate over any trackage at the

⁴ BRC specified in its notice that neither the acquisition authorized in STB Finance Docket No. 34145 nor the operations authorized in STB Finance Docket No. 34146 had been consummated, but that it still planned to go forward with the acquisition. In its March 15, 2002 reply, discussed below, BRC notes that the notice in STB Finance Docket No. 34179 was probably unnecessary because, in light of the residual common carrier obligation that accompanies the acquisition of an active rail line, the exemption in STB Finance Docket No. 34145 should permit both BRC's operation as well as its acquisition of the track. In any event, BRC has not requested dismissal of the notice in STB Finance Docket No. 34179, and we will therefore address the arguments raised by UTU-IL in its petition.

⁵ BRC filed a reply to the petitions to reject and revoke on March 15, 2002.

⁶ UTU-IL asserts this in its supplemental statement filed on May 1, 2002, and BRC has not disputed it.

Bulkmatic Distribution Center, and BTC is now being served by BRC at that location pursuant to an agreement reached on January 1, 2002.⁷ Also on January 1, 2002, BRC subleased from BTC the entire Bulkmatic Distribution Center, including all improvements thereon (except certain warehouse space previously rented to another entity).

On May 1, 2002, UTU-IL filed a supplemental statement elaborating on its arguments and attempting to bolster them with evidence obtained during discovery.⁸ UTU-IL reiterated its argument that BRC's operation is not that of a rail common carrier, citing new evidence assertedly showing that BRC does not hold itself out to serve shippers but is merely a *de facto* agent of BTC, conducting switching operations that BTC could have previously performed without Board authority under 49 U.S.C. 10906. UTU-IL elaborated on its argument that the exemptions must be revoked for failure to carry out the transportation policy of 49 U.S.C. 10101.

On May 16, 2002, BRC filed a reply disputing UTU-IL's supplemental statement filed on May 1, 2002. BRC responds that its operation fits squarely within the precedent of *Effingham*. In response to UTU-IL's arguments on revocation, BRC maintains that UTU-IL has not shown that regulation is necessary to promote any of the rail transportation policies of section 10101.

DISCUSSION AND CONCLUSION

In support of its request for rejection and/or revocation of the exemptions,⁹ UTU-IL argues that this is a sham transaction and that the Chicago Heights Track is not subject to our licensing authority. UTU-IL also argues that the revocation criteria of 49 U.S.C. 10502(d) are met. UTU-IL's arguments are not persuasive.

⁷ BRC's service agreement with BTC is attached as Exhibit 5 to UTU-IL's supplemental statement filed on May 1, 2002.

⁸ Under 49 CFR 1121.2, a party seeking revocation may pursue discovery and supplement its petition to revoke 45 days after its petition was filed. By decision served April 3, 2002, the time period for filing the supplemental petition was extended to May 1, 2002.

⁹ UTU-IL does not present separate arguments for rejection of the notices in its pleadings. Rather, it refers to its arguments generally as requests for both rejection and revocation. Notices of exemption that contain false or misleading information are void *ab initio* under 49 CFR 1150.32, and are subject to being rejected. UTU-IL does not seriously pursue a separate argument that the notices here were void *ab initio*. Our March 5, 2002 decision noted that UTU-IL had not supported its request for rejection, and we will not discuss the matter further now. Regardless of the labels attached to them, we will address all of UTU-IL's pertinent arguments in this decision.

I. Authority over the Transactions

UTU-IL maintains that the transaction that is the subject of the exemptions, BRC's acquisition and commencement of operations over the Chicago Heights Track, is beyond our licensing authority. First, UTU-IL argues that this entire transaction is a sham because BRC will not be operating as a common carrier but will be "dedicated to BTC." Second, UTU-IL argues that the trackage is exempted switching track under 49 U.S.C. 10906, notwithstanding our precedent in *Effingham*.

Sham Transaction. UTU-IL's argument, in essence, is that BRC will not be operating as a common carrier because BRC cannot, or will not, hold itself out to operate as a common carrier. UTU-IL views BRC as merely an extension of BTC and maintains that the two entities are not independent of each other as they would be in a normal shipper/carrier relationship.

The evidence falls far short of establishing that BRC is not holding itself out to operate as a common carrier. Although BRC had a contractual relationship with BTC when it began operating on April 2, 2002, that contract does not preclude BRC from providing rail service to other shippers or motor carriers at the Distribution Center. To the contrary, the agreement specifically states that BRC and BTC are independent contractors and in no way requires BRC to give any preference to shipments involving BTC.¹⁰ BRC has subleased the entire premises, which includes warehouses as well as the transloading facilities. This further indicates that BRC will operate as a common carrier providing service to shippers who may avail themselves of the warehouse space or locate elsewhere on the premises. The sublease also enables BRC to solicit transloading business from other shippers without interference from BTC. BRC states that it has no financial interest in the goods that it transports for BTC, and that it will serve the general public and provide rail service for any other transloaders and/or shippers that might locate at the Distribution Center.¹¹ UTU-IL does not demonstrate that this statement is false.

¹⁰ BRC's service agreement with BTC (attached to UTU-IL's supplemental statement filed on May 1, 2002) provides as follows:

7. *Independent Contractors.* Nothing herein shall be deemed to establish or otherwise create a relationship of principal and agent between the parties. Each party is an independent contractor and shall not be deemed an agent of the other party for any purpose whatsoever.

¹¹ Reply filed on March 15, 2001, at 11-12.

Furthermore, BRC will serve BTC for compensation, and the arrangements between these separate entities do not tie BRC to serving BTC alone, to the exclusion of the general public. BRC is not BTC's agent, and it will be the common carrier responsible for service on the Chicago Heights Track, dealing with customers on its own. BRC's sublease and service agreements with BTC appear to be arm's-length transactions, and do not, by their mere existence, turn this into a sham transaction.

Nor does the fact that BRC will use employees of CHSC to perform the work on the line, as well as maintain it, detract from BRC's status as the licensed common carrier, authorized and obligated to provide service on the line. UTU-IL has not cited any authority for the proposition that a carrier such as BRC must employ its own crews to establish itself as a common carrier. Although CHSC employees may physically operate the equipment on the Chicago Heights Track, the CHSC-BRC lease does not allow CHSC to deal with BRC's customers or give CHSC any independent right or obligation to serve them. Contrary to UTU-IL's assertions, this contractual arrangement does not preclude BRC from being a bona fide common carrier. Indeed, even if CHSC operated as a common carrier in its own right, BRC would retain a residual common carrier obligation and would remain subject to our jurisdiction by virtue of its acquisition and ownership of the track.

Section 10906. Under our well established intended use test, the applicability of section 10906 is determined by the intended (future) use that the sublessee BRC will make of the Chicago Heights Track, not by the use to which the lessor BTC put the trackage in the past.¹² Applying this test, we find that section 10906 does not prevent our exercise of licensing authority over BRC's operations here.

In *Effingham*, 2 S.T.B. at 609-10, we discussed the intended use test and determined that our authorization would be required prior to commencement of rail operations in circumstances that were similar to those in the instant proceeding.¹³ There, we determined that a new carrier created to serve an

¹² See: *Effingham, supra*; and *Nicholson v. Missouri Pacific Railroad Company*, 366 I.C.C. 69 (1982), *aff'd*, *Nicholson v. I.C.C.*, 711 F.2d 364, 367 (D.C. Cir. 1983). In *Brotherhood of Locomotive Engineers v. United States*, 101 F.3d 718, 728 (D.C. Cir. 1996), the intended use test was affirmed, subject to the qualification that the focus on use must not obscure "the larger purpose and effect of the transaction at issue." See *Texas & Pac. Ry. v. Gulf, Etc., Ry.*, 270 U.S. 266 (1926).

¹³ The Effingham Railroad Company (ERRC) was involved in a series of cases that address Board authority over startup operations of noncarriers. Beginning with *Effingham RR Co.—Pet. for* (continued...)

industrial park was subject to our licensing authority under 49 U.S.C. 10901, notwithstanding the small size of its planned operations, because: (1) the larger purpose and effect of the transaction were to create a new railroad that would be competing with other carriers in territory that it had not previously served; (2) the track would constitute the new carrier's entire line of railroad; and (3) the new railroad would interchange traffic with the national rail system. Here, as in *Effingham*: (1) the larger purpose and effect of the transaction are to create a new railroad (BRC) that will provide a competitive alternative to UP for rail service to the Bulkmatic Distribution Center; (2) the track of the new railroad

¹³(...continued)

Declaratory Order, 2 S.T.B. 606 (1997) (*September 12, 1997 decision*), we determined that ERRC needed Board authority to implement its plan to serve a new industrial park at Effingham, IL. For the initial phase of the plan, ERRC, then a noncarrier, filed a notice to operate under the class exemption for noncarriers at 49 CFR 1150.31 in *Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation*, STB Finance Docket No. 33468 (STB served October 22, 1997) (*October 22, 1997 notice*). Pursuant to that notice, ERRC became a rail carrier and the operator of approximately 206.05 feet of track that served a shipper in the industrial park and connected with a Consolidated Rail Corporation (Conrail) line. After thus becoming a carrier, ERRC extended its operations over an additional 400 feet of track constructed entirely within the industrial park. ERRC did not need Board authority for this phase of its plan because, as an existing carrier conducting additional operations within the industrial park that did not extend its lines into a new territory, the extension of its operations was statutorily exempt. ERRC then sought to extend its operations again over 9,201 feet of track to connect a shipper's facility with an Illinois Central Railroad Company (ICR) rail line. This extension left the boundaries of the industrial park to a new connection, and Board authorization was required and obtained by filing a notice of exemption in *Effingham Railroad Company—Operation Exemption—Line Owned by Total Quality Warehouse*, STB Finance Docket No. 33528 (STB served December 30, 1997) (*December 30, 1997 notice*).

Petitions for reconsideration and/or revocation of the notices of the *September 12, 1997 decision*, the *October 22, 1997 notice*, and the *December 30, 1997 notice* were denied in the proceeding cited in the main text above (*Effingham*). In the September 18, 1998 decision on reconsideration, slip op. at 5, we concluded that ERRC's notices involving operations over track crossing the boundaries of the industrial park to establish connections with other railroads (Conrail in the initial notice and ICR in the second notice) were proper subjects of notices of exemption, whereas its other operations over new trackage entirely within the boundaries of the industrial park are exempted from the licensing provisions as siding, spur, or industrial trackage.

In the most recent case involving ERRC, we dismissed and vacated a notice of exemption it filed involving operations over additional track that was designed to improve an existing interchange and which would be operated solely for the convenience and benefit of existing shippers. We found that the new operations would not constitute an extension of service into new territory or establish a connection with a new carrier. This decision was served in *Effingham Railroad Company—Operation Exemption—Line Owned by Total Quality Warehouse*, STB Finance Docket No. 34081 (STB served April 10, 2002) (*Post-Effingham*).

6 S.T.B.

(BRC) will constitute its entire line of railroad; and (3) the new railroad (BRC) will be interchanging traffic with the national rail system.

In support of its position that the Chicago Heights Track is section 10906 excepted trackage, UTU-IL points to the fact that BRC's connections to UP and EJ&E are located inside the "limits of the Bulkmatic Distribution Center," and argues that the location of the connection was found to be a key element in our recent decision in *Post-Effingham supra*, note 13. According to UTU-IL, our decision in *Post-Effingham* interpreted our earlier two decisions in *Effingham* as requiring a license when a new carrier physically connects with the national rail system at a location outside of the boundary of the industrial park that it served. Here, because the line at issue does not itself leave the industrial park, UTU-IL's position is apparently that it is excepted track.

UTU-IL's reliance on *Post-Effingham* to establish that the transaction at issue here is not subject to our licensing authority is misplaced. As the *UTU* court decision makes clear, *Effingham* did not turn on whether the line left the industrial park, and our decision in *Post-Effingham* did not construe it in that manner.¹⁴

II. Revocation

Under 49 U.S.C. 10502(d), we may revoke an exemption if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The party seeking revocation must express reasonable, specific concerns to demonstrate that revocation of the exemption is warranted.¹⁵ Here, the statutory

¹⁴ In that decision, we found that Effingham Railroad Company, over whose original operation we had previously asserted authority in *Effingham*, did not need our authorization to operate a new segment of track. The newly constructed track was to be acquired by an existing shipper and operated for that shipper's sole benefit for the purpose of providing a more efficient interchange with another carrier. Unlike BRC, the Effingham Railroad Company was not at that point seeking to *become* a common carrier due to its operation over the new segment. It already was a common carrier authorized to serve the industrial park. We did not assert licensing authority over the new segment in *Post-Effingham* "[b]ecause the new operation does not constitute an extension of service to new territory or connection with a new carrier." *Post-Effingham*, at 2. Here, in contrast, BRC is being created as a new railroad that will operate in new territory and connect with the national rail network.

¹⁵ *I&M Rail Link LLC—Acq. & Oper. Exem. Canadian Pacific Ry.*, 2 S.T.B. 167 (1997) (*I&M*), at 174, *aff'd sub nom. City of Ottumwa v. STB*, 153 F.3d 879 (8th Cir. 1998). In considering whether to revoke an exemption, our analysis focuses on the sections of the rail transportation policy related to the underlying statutory section from which the exemption is sought. See *Missouri Pac. R. Co.—Aban. Exempt.—Counties in Oklahoma*, 9 I.C.C.2d 18, 25 (1992); *Village of Palestine v. I.C.C.*, 936 F.2d 1335 (D.C. Cir. 1991), *cert. denied*, 111 S. Ct. 868 (1992), (*Village of Palestine*); (continued...)

provision from which BRC was exempted is 49 U.S.C. 10901. Under section 10901(c), we are required to issue authority to BRC unless we find affirmatively that such authority would be “inconsistent with the public convenience and necessity.” Thus, to revoke the exemption in accordance with *Village of Palestine*, we must find that BRC’s commencement of operations would be inconsistent with the provisions of the rail transportation policy that relate to the public convenience and necessity, without regard to the other provisions. *Id.* at 1338-39. Many of UTU-IL’s arguments do not relate precisely to public convenience and necessity, but even assuming that they did, as discussed below, UTU-IL has not demonstrated that revocation is necessary here.

UTU-IL argues that BRC’s operation is inefficient and wastes fuel, contrary to the policies of sections 10101(3), (9), and (14), on the grounds that it replaces one crew (UP’s crew) with two crews (UP’s crew and BRC’s crew) and inefficiently uses locomotives. UTU-IL has given us no reason for second-guessing BTC (or any other shipper using BRC) as to the most efficient way to move its traffic.¹⁶ Moreover, the alleged inefficiencies have not resulted in any complaints as to any deficiencies in BRC’s service. UTU-IL has not borne its burden here.

UTU-IL also argues that the exemption is contrary to the policy expressed in section 10101(11) of promoting fair wages and safe and suitable working conditions in the railroad industry, allegedly by substituting part-time work for full-time work and causing the loss of employment by UP crews. However, UTU-IL has not specifically shown that BRC’s operation, via CHSC, would be unsafe for employees, and it has made no showing that the Federal Railroad Administration (FRA), which has safety enforcement jurisdiction, has found any safety problems with BRC. Nor has UTU-IL identified any employees who have suffered any hardship from this transaction. And UTU-IL does not offer any

¹⁵(...continued)

Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR Co., 8 I.C.C.2d 31, 35-38 (1991), *aff’d*, *Winter v. I.C.C.*, 992 F.2d 824 (8th Cir. 1993).

¹⁶ UTU-IL witness Martz contends that BRC’s operation would be less efficient than the prior UP operation based on his analysis of the crew and locomotive use that would be required by each operation. However, he did not consider other relevant considerations, such as: (1) whether UP crews and locomotives that are displaced from serving the Bulkmatic Distribution Center can be given other needed work; (2) whether BRC’s crews can perform other work when they are not moving cars; (3) the comparative size and efficiency of the switching engines used by UP and BRC; and (4) whether BRC, acting as a railroad common carrier, can spread fixed costs by putting the facility to more intensive use than BTC. The issue would require more detailed study exploring these matters before warranting a negative conclusion as to the efficiencies of BRC’s operations.

evidence to support its assertion that UP employees have lost overtime pay resulting from this lease. Thus, we find these arguments to be unpersuasive.

UTU-IL maintains that the exemptions promote unsound transportation, contrary to policies favored under sections 10101(4) and (5). UTU-IL argues that the assumption of operating authority by a small carrier like BRC is unsound because it injects an additional carrier in the routing of traffic to the Distribution Center, creates additional record-keeping, and could cause confusion. These concerns are not really germane to the issue at hand here, which is whether these transactions need to be subjected to regulatory scrutiny. UTU-IL has not specifically identified any real problems in these areas that would be remedied by revocation of the exemptions and that would require the filing of an application or petition for exemption.

UTU-IL also argues that these notices of exemption are an improper use of regulatory provisions designed for other purposes and designed to be used by larger carriers.¹⁷ According to UTU-IL, BRC's lack of legitimate operational reasons for seeking operating authority is demonstrated by the fact that many nearby industries do their own switching without either being exempted or certificated as rail carriers. We are unwilling to speculate as to why BTC seeks to purchase its transportation from a newly created common carrier rather than to run its own private switching operation outside of our jurisdiction. There is nothing improper about the course of action BRC has chosen to pursue here, however, and UTU-IL has not pointed to any specific regulatory provision suggesting that the use of the rail licensing provisions by BRC (or other small carriers) would be contrary to any of the rail transportation policies of section 10101.

UTU-IL also maintains that UP is involved in the ownership and/or control of the facility and that this adversely affects the transportation soundness of the

¹⁷ To support this theory, UTU-IL cites the *Industrial Railways* cases as precedents. See: *Industrial Railways Case*, 32 I.C.C. 129 (1914); and *Second Industrial Railways Case*, 34 I.C.C. 596 (1915). In these cases, the Interstate Commerce Commission (ICC) found that certain "industrial line" carriers were not in fact operating as legitimate common carriers but were actually acting as private carriers serving single shippers. Because of their improper assumption of common carrier status, they were able to take advantage of statutory provisions allowing them to enter into divisional and car allowance arrangements with their long-haul connecting common carriers. The ICC ordered the parties to these arrangements to cancel them out of concern that they would allow the long-haul connecting carriers to unlawfully discriminate in favor of the shippers served by the industrial railways by granting them preferential rate treatment in the form of favorable divisions and allowances. Here, however, statutory changes and exemptions occurring long after the *Industrial Railways* cases have made these cases of limited relevance to the situation involved here.

exemption.¹⁸ Even if it were true that UP is somehow involved with the ownership of the Center—which UTU-IL has not established—UTU-IL has not explained how this involvement would adversely affect transportation or the soundness of the rail transportation system.

UTU-IL also argues that the regulation-reducing policies of sections 10101(2) [minimize Federal regulatory control] and 10101(7) [reduce regulatory barriers to entry and exit] would be better served if we were to find that the transactions were not subject to our licensing authority. UTU-IL in effect is asking us to overturn our decision in *Effingham*. However, UTU-IL has offered no reason why we should do so.

Finally, we find that, by preventing BTC and future customers of BRC from obtaining an alternate common carrier service option, revocation of the exemption would frustrate the provisions of the rail transportation policy that favor competition and the needs of the shipping public [sections 10101(1), (4), and (5)].

Conclusion. For all of the reasons discussed above, there is no basis upon which to revoke BRC's notices of exemption. We conclude that UTU-IL's petition lacks merit.

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

It is ordered:

1. The petition for revocation of the exemptions is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

¹⁸ See the statement of Dennis G. Martz, attached to UTU-IL's supplemental statement filed on May 1, 2002, at 5-6. There, witness Martz alleges that the site is "subject to UP ownership and control" based on the fact that two signs on the property can be read as identifying the property as belonging jointly to "Bulkmatic" and UP. One sign at the entrance has three top lines that together read "BULKMATIC Union Pacific Railroad Bulk Terminal Facility" and a bottom line that reads "UP/EJ&E Railroads Quality Driven." The other sign, apparently attached to a building, has two top lines that together read "BULKMATIC Building #1" and a bottom line that also reads "UP/EJ&E Railroads Quality Driven."