

STB Finance Docket No. 34145

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

STB Finance Docket No. 34179

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– OPERATION EXEMPTION –
BULKMATIC TRANSPORT COMPANY

Statement of Maynard Dixon, Staff Attorney, Office of Proceedings

Good [morning/afternoon] Chairman Nober and Commissioner Morgan.

In these related proceedings, the Bulkmatic Railroad Company invoked our class exemption to begin operations as a new railroad over about 3.9 miles of track serving a rail/truck transloading facility in the Chicago area. That track connects with track owned by the Union Pacific Railroad Company at its southeast end. Before Bulkmatic began its operations pursuant to our exemption, UP provided switching service to the transload facility over the 3.9 miles of track.

The exemptions are opposed by the Illinois Legislative Board of the United Transportation Union, the petitioner. The petitioner previously argued in its petition to revoke the exemptions that the Board lacks jurisdiction over Bulkmatic's operation, and thus lacks jurisdiction to exempt it, for two reasons. First, the petitioner argued that Bulkmatic is not operating as a railroad common carrier because it is serving only one shipper. Second, the petitioner maintained that Bulkmatic's operation is excepted from our licensing authority pursuant to 49 U.S.C. 10906 because the line is switching or spur track. In contesting our jurisdiction over the transaction, the petitioner attempted to distinguish the Board's Effingham decision and argued that the precedent from that case should not be followed here. In the

Effingham decision, the Board found that the exception to the Board's licensing authority for spur or switching track does not apply if the track is the carrier's only rail line.

The petitioner also argued that, even if we have authority to license Bulkmatic's operation, the exemptions should be revoked because regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101.

In a decision served on November 19, 2002, the Board found that it had authority over Bulkmatic's operation and denied the petitioner's request to revoke the exemptions.

In the case before you, the petitioner has sought reconsideration of that decision. The petitioner, for the most part, reiterates its previous arguments, and again stresses that the Effingham precedent is not applicable.

The draft decision before you would deny the petition for reconsideration. The draft reaffirms Board licensing authority under Effingham because that precedent is well established and has been upheld judicially. The draft also finds that petitioner has not presented sufficient grounds for reversal of the Board's prior refusal to revoke the exemptions.

This concludes our summary. We would be happy to address any of your questions.