

Voting Conference, September 15, 2005

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East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—
CSX Transportation, Inc.
STB Finance Docket No. 34505

Good morning, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

On May 12, 2004, East Brookfield & Spencer Railroad, LLC, a noncarrier, filed a notice under the Board's class exemption at 49 CFR 1150.31 to acquire by lease from CSX Transportation, Inc. (CSXT), and operate approximately 4 miles of rail line in East Brookfield and Spencer, Worcester County, MA, together with approximately 270 feet of lead track running to the property line of the proposed New England Automotive Gateway Facility (Facility) in East Brookfield, MA. The exemption took effect on May 19, 2004, with East Brookfield & Spencer Railroad's common carrier operations scheduled to begin on or after that date.

Because of operational limitations at other auto ramp facilities in Massachusetts, CSXT sought to develop a new auto ramp, and located land suitable for this purpose. The owner of the land, the "Seven Mile Trust," was interested in operating such a facility, and sold the land to a noncarrier land holding company affiliated with CSXT, which then leased the land to CSX Real Property, Inc. CSX Real Property developed the facility and subleased it to an entity formed by the principals of Seven Mile Trust to operate the facility. That entity formed East Brookfield & Spencer Railroad to perform switching services at the facility, and to interchange rail cars with CSXT.

The United Transportation Union (UTU) filed a petition to revoke the exemption on October 21, 2004, and a supplemental petition to revoke on December 20, 2004. UTU argues that this transaction does not fall within the class exemption, that regulation of the transaction is necessary to carry out the rail transportation policy of 49 U.S.C. 10101, and that the notice contains false or misleading information. UTU also argues that the transaction is a device to move jobs from under a collective bargaining agreement between CSXT and UTU to a nonunion carrier.

Under 49 U.S.C. 10502(d), the Board may revoke an exemption if it finds that regulation of the transaction is necessary 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, specific concerns demonstrating that regulation of the transaction is necessary.

The draft decision concludes that UTU has not met this burden. The evidence does not support a claim that the transaction is a sham. East Brookfield & Spencer Railroad is a financially independent business entity that is not affiliated with CSXT. UTU has not shown that the railroad entered into these agreements for any reason other than to satisfy customer concerns, or that it is merely an alter ego of CSXT. Nor has UTU shown that the notice is contrary to the

rail transportation policy, that the notice is defective, or that the labor impact here is different than the impacts typically associated with the acquisition of track by a new carrier. Accordingly, the draft decision before you would deny the petition to revoke the exemption.

We would be happy to answer any questions you might have.