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June 18, 2008

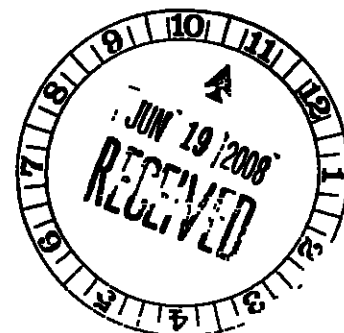
UPS Next Day Air

Anne K. Quinlan, Secretary
SURFACE TRANSPORTATION BOARD
395 E Street, S W.
Washington, DC 20423

FILED

JUN 19 2008

**SURFACE
TRANSPORTATION BOARD**



Re Finance Docket No 35137 - The Indiana Rail Road
Company - Trackage Rights Exemption - CSX
Transportation, Inc.

Dear Ms Quinlan.

Please find enclosed the original and 10 copies of United Transportation Union and Brotherhood of Locomotive Engineers and Trainmen's Petition to Revoke in the above-captioned matter for filing. Also enclosed please find United Transportation Union's check No U205639 in the amount of \$200 to cover the filing fee. In accordance with Board orders we have also enclosed a disk in WordPerfect format.

Thank you for your attention to this matter

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

ENCLOSURES

cc. C J Miller, III, General Counsel
H. A. Ross, Acting General Counsel-BLET (w/encl)

FEE RECEIVED

JUN 19 2008

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JUN 19 2008

**Part of
Public Record**



222639

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35137

**THE INDIANA RAIL ROAD COMPANY
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.**

**UNITED TRANSPORTATION UNION'S
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
AND TRAINMEN'S PETITION TO REVOKE**

**ENTERED
Office of Proceedings
JUN 19 2008
Part of
Public Record**

Brotherhood of Locomotive Engineers and Trainmen ("BLET") and United Transportation Union ("UTU") respectfully submit their petition to revoke the exemption in the above-captioned transaction because it contains misleading information. Specifically, CSX Transportation, Inc ("CSXT") owns at least 85% of Indiana Rail Road Company ("INRD"), a fact undisclosed in INRD's notice, which establishes that this transaction simply is subterfuge through its alter ego for CSXT's avoidance of its collective bargaining agreement obligations to BLET and UTU

FACTS

INRD basically describes the transaction in innocuous terms as if the two entities involved are engaging in an arms-length transaction without any connection between the two parties. INRD states that the transaction covered by this notice is the acquisition of limited non-exclusive (overhead) trackage rights by INRD over CSXT's CE&D Subdivision between the connection of CSXT and INRD trackage at Sullivan, IN at approximate CSXT Milepost OZA 205 5, and the connection of CSXT with tracks leading to a Sunrise Coal Company loading facility at Carlisle, IN at approximate CSXT Milepost OZA 214 5, a distance of 9 0 miles ("Line" or "subject trackage")

INRD claims the purpose sought to be accomplished by the proposed transaction is it will be able to move coal in single line service between the Sunrise Coal Company mine at Carlisle, IN and two power plants located on its line at Indianapolis and Merrom, IN INRD claims this new single line service will be more economical and reliable, given the short distances involved, than would joint line service INRD states that it will not provide any other service over the Line

In the agreement between CSXT and INRD regarding these trackage rights between Sullivan and Carlisle, IN, CSXT granted INRD the right to operate its trains (locomotives or cars) with its own crews over this segment of CSXT's railroad (Trackage Rights Agreement, attached to Verified Notice of Exemption as Exhibit 2, at Article 1) INRD's use of the subject trackage is to be in common with CSXT and any other user of the Line, and CSXT's right to use the Line shall not be diminished by the agreement CSXT retains the exclusive right to grant to other persons rights of any nature in the subject trackage (*Id* at Article 2)

CSXT has exclusive control of the management and operation of the Line. INRD shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the subject trackage by INRD is interrupted or delayed at any time from any cause. (*Id*)

When operating over the Line, INRD's locomotives and crews shall be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the CSXT trackage Procedures for qualification and occupancy of the subject trackage shall be arranged by the local supervision of each carrier All control and usage shall be subject to the approval of CSXT's representative or its designee. (*Id* at Article 4)

CSXT shall maintain, repair and renew the Line with its own supervision and labor. CSXT shall use commercially reasonable efforts to keep and maintain the subject trackage (or any

replacement of it) in condition for the use herein contemplated, but CSXT does not guarantee the condition of the subject trackage at any time during the term of the agreement or that operations thereover shall not be interrupted. Furthermore, INRD shall not, by reason of failure or neglect on the part of CSXT to maintain, repair or renew the subject trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damage of any nature suffered by INRD resulting from any such failure or neglect. (*Id.* at Article 8)

Any additional connections to the Line which may be required shall be subject to CSXT's approval (including design) (*Id.* at Article 9). CSXT from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the subject trackage (*Id.* at Article 10).

INRD in its use of the Line must comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of INRD's trains (locomotives and cars), over the subject trackage, shall at all times be subject to the orders of the transportation officers of CSXT. INRD's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Line as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT (*Id.* at Article 11).

INRD shall make such arrangements with CSXT as may be required to have all of its

employees who shall operate its trains, locomotives and cars over the Line qualified for operation thereover (*Id*)

CSXT may conduct an investigation at its option, if an INRD employee working on CSXT's property is alleged to have violated CSXT's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules (*Id*) If CSXT conducts an investigation, CSXT has the right to exclude from the subject trackage any employee of INRD except officers, determined by CSXT, as the result of CSXT's investigation or hearing described below, to be in violation of CSXT's rules, regulations, orders, practices or instructions. (*Id*) If CSXT conducts an investigation, its officer shall conduct the investigation (*Id*)

In the event that a train of INRD shall be forced to stop on subject trackage, and such stoppage is due to insufficient hours of service remaining among INRD's crew, or due to mechanical failure of INRD's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of INRD's fails to maintain the speed required by CSXT on the Line, or if in emergencies, crippled or otherwise defective cars are set out of INRD's trains on the subject trackage, CSXT has the option to furnish motive power or such other assistance (including but not limited to the right to re-crew INRD's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the subject trackage, and INRD shall reimburse CSXT for the cost of rendering any such assistance (*Id.*) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the subject trackage, such work shall be done by CSXT, and INRD shall reimburse CSXT for the cost thereof (*Id*)

In the event CSXT and INRD agree that CSXT should retain employees or provide additional employees for the sole benefit of INRD, these parties shall enter into a separate agreement under which INRD shall bear all cost and expense for any such retained or additional employees provided, including, without limitation, all cost and expense associated with labor protective payments which would be made by CSXT and which would not have been incurred had the retained or additional employees not been provided (*Id*)

Whenever INRD's use of the Line requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures (*Id.* at Article 13)

During the term of the trackage rights agreement, INRD has agreed to procure and maintain at its sole cost and expense railroad operating and liability insurance naming INRD the insured and covering the liability assumed by it and its agents under the terms of said agreement and by virtue of INRD's usage of the Line, CSXT shall be listed as an additional insured (*Id* at Article 16) The insurance shall contain provisions obligating the insurer to provide CSXT with notice of cancellation, material modification or non-renewal at least thirty (30) days prior to the effective date thereof. (*Id*)

CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the subject trackage or any portion thereof (*Id* at Article 19). In such event, INRD shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Line or portion thereof (*Id.*) If INRD does not promptly file an application seeking approval of the discontinuance of INRD's operations, over the subject trackage or portion thereof, CSXT shall be deemed to have been given INRD's power of attorney to take such action on

INRD's behalf. (*Id*)

However, nowhere in its notice does INRD mention that CSXT has an 85% ownership in its railroad. See *Indiana Railroad Company – Acquisition – Soo Line Railroad Company*, Finance Docket No. 34783, *1 (STB served April 11, 2006).

ARGUMENT

If a notice of exemption contains false or misleading information, the exemption is void *ab initio*. Here, where the petitioner fails to disclose the ownership interest between the parties to the transaction, the notice must be considered misleading. Where there is “substantial identity of interest” between the parties like here, the Board has declared a notice void *ab initio* in the past. Cf. *National Corporation – Acquisition and Operation Exemption – Lines of Indiana Hi-Rail Corporation*, Finance Docket No. 32523 (ICC Served June 29, 1994). Since CSXT owns 85% of INRD as stated herein, which was not ever mentioned in the notice of exemption, failure to disclose this pertinent information is misleading, and the petition for exemption should be found to be void *ab initio*.

In addition, CSXT has exclusive control of the management and operation of the Line. (Agreement at Article 2) Moreover, all communications on the Line by INRD are on CSXT radio frequencies (*Id.* at Article 4). Above all, INRD cannot hold CSXT liable for any delay, injury or damage whatsoever due to CSXT's own neglect on the Line. (*Id.* at Articles 2 and 8) Furthermore, INRD must follow all CSXT safety rules, operating rules, and other regulations when on the Line, in other words, INRD must run its trains like they are CSXT trains on the Line. (*Id.* at Article 11) As well, INRD employees who operate on the Line must be qualified under CSXT rules and can be excluded from the Line by CSXT for violation of these CSXT rules. Additionally, if INRD's trains

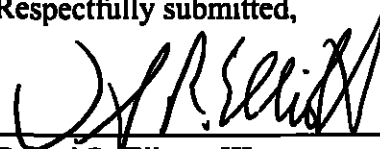
cannot move on the Line, for whatever reason, CSXT can move these trains on its own (*Id* at Articles 11 and 13) Also, CSXT can abandon the Line and act for INRD by abandoning its right to operate over the Line at the STB (*Id* at Article 19) In sum, CSXT essentially controls INRD's entire operation over the Line

Based on these all-encompassing controls over INRD's operations over this Line, this transaction is obviously a sham that was devised to avoid the more expensive collective bargaining agreement in effect on CSXT. This ownership interest and these numerous requirements in the trackage rights agreement that provide CSXT total control over this service demonstrate that there is a substantial identity of interest between the parties

CONCLUSION

As a result, this exemption should be revoked since it is misleading

Respectfully submitted,



Daniel R. Elliott, III
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Harold A. Ross
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Brotherhood of Locomotive Engineers
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation's Petition to Revoke has been served this 18th day of June, 2008, via first-class mail, postage prepaid, upon the following.

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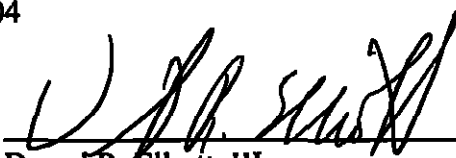
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Daniel R. Elliott, III