



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

September 7, 2004

211972

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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ATTN: Case Control Unit

Re: Finance Docket No. 34536
Indiana & Ohio Central Railroad, Inc. - -
Acquisition and Operation Exemption - -
CSX Transportation, Inc.

Dear Secretary Williams:

The Brotherhood of Locomotive Engineers & Trainmen ("BLET"), as the collective bargaining representative for the craft of locomotive engineers on CSX Transportation, Inc. ("CSXT"), and for the operating employees on Indiana & Ohio Central Railroad ("IOC"), hereby protests the acceptance of the above-entitled Notice of Exemption which was submitted to the Surface Transportation Board on September 1, 2004.

BLET's protest is based upon the fact that the IOC is seeking an automatic exemption to acquire and operate about 107 miles of railroad from CSXT. This line runs from Cincinnati to Columbus, Ohio. It is mainline and is a part of CSXT's program to rid itself of over 3,500 miles of track through multiple transactions. CSXT appears to be encouraging these small transactions in order to bypass review by the Board of the Transaction under 49 U.S.C. §§11323 and 11324. As shown below, this matter involves a transaction or transactions having regional or national transportation significance.

In addition to the continuing exemptions that the agency can expect from CSXT in the coming months, there is currently before it a similar notice in Finance Docket No. 34540, *Columbus Ohio River Railroad - - Acquisition Exemption - - Lines of CSXT between Columbus and Cambridge, Ohio*, and between Newark and Mt. Vernon, Ohio, a distance of approximately 114 miles of CSXT's main lines in Central Ohio. This constitutes a huge abandonment by a Class I carrier of most of its operations in this well populated sector of Ohio.

In both cases, CSXT is merely leasing the right-of-way to IOC and to Columbus Ohio River. From the simple, sparse filings required by the Class Exemption regulations, it is impossible to ascertain if they are arm's length transactions which carry out Rail Transportation Policy set forth at 49 U.S.C. §10101, particularly subparagraph (11) concerning employee wages and safety and suitable working conditions. As provided in 49 U.S.C. §10901, the STB must insure that the

transaction serves the "public convenience and necessity." Employee concerns, the shippers' needs, and maintenance of fair and reasonable rates are all matters that the agency needs look to in ruling that the "public convenience and necessity" have been met. The enormity of the transaction requires the agency to make an appropriate investigation.

In the instant case, BLET submits that the Notice of Exemption in Finance Docket No. 34536 and the Notice of Intent in Finance Docket No. 34540 be rejected and that the matter raised herein as to whether CSXT and the purchasers have followed the proper procedures in this mass selling of significant main line tracks in central Ohio and destined to be coming on future portions of CSXT, be the subject of an inquiry. Moreover, the situation has such regional or national transportation significance that the Surface Transportation Board should set this subject for hearing to determine whether the parties must follow the procedures set forth in Section 11325(d).

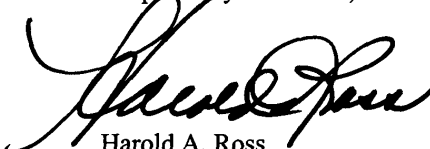
In addition to the facts of the cited situations in Finance Docket No. 34536 and 34540, it would appear that if the exemptions were granted, the Class II and Class III railroads involved in these present and future proceedings could take advantage of the Proposed Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads pending before the Board in STB Ex Parte No. 647.

This should not be permitted.

CONCLUSION

Based upon the foregoing reasons and authorities, the Brotherhood of Locomotive Engineers & Trainmen respectfully submits that the Notice of Exemption in this Docket should be rejected; that the matter be declared one of regional importance to be handled under 49 U.S.C. §11325(d); and (3) the subject be scheduled for briefing and hearing. Ten copies of this document accompany the original.

Respectfully submitted,



Harold A. Ross
General Counsel

cc: Louis E. Gitomer, Esq.
D. M. Hahs, National President-BLET
E. W. Rodziewicz, Nat'l FVP-BLET
W. C. Walpert, Nat'l ST-BLET
D. Menefee, General Chairman-BLET

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing protest and request to reject the Notice of Exemption were served upon Gary A. Laakso, Esq., Vice President Regulatory Counsel, Indiana & Ohio Central Railroad, Inc., 5300 Broken Sound Blvd., NW, Second Floor, Boca Raton, FL 33487, and Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, D.C. 20006, attorneys for Indiana & Ohio Central Railroad, Inc.; and Andrew B. Kolisar, III, Esq., Slover & Loftus, 1224 Seventeenth Street, N. W., Washington, D.C. 20036-3003, attorneys for the Columbus & Ohio River Railroad, on this 7th day of September, 2004.


Harold A. Ross
General Counsel
Brotherhood of Locomotive Engineers & Trainmen