

**Before the
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35410
ADRIAN & BLISSFIELD RAIL ROAD COMPANY
- CONTINUANCE IN CONTROL EXEMPTION -
JACKSON AND LANSING RAILROAD COMPANY**

**FINANCE DOCKET NO. 35411
JACKSON & LANSING RAILROAD COMPANY
- LEASE AND OPERATION EXEMPTION -
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY
IN INGHAM AND JACKSON COUNTIES, MI**

**FINANCE DOCKET NO. 35418
JACKSON & LANSING RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**RESPONSE OF ADRIAN & BLISSFIELD RAIL ROAD COMPANY AND
JACKSON & LANSING RAILROAD COMPANY TO PETITION TO
REVOKE FILED BY BLET & UTU**

Submitted By:

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Dated: October 29, 2010

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Adrian & Blissfield Rail Road Company (“ADBF”) and Jackson & Lansing Railroad Company (“JAIL”), by their undersigned counsel, hereby oppose the Petition to Revoke filed by the Brotherhood of Locomotive Engineers and Trainmen (“BLET”) and the United Transportation Union (“UTU”) on October 18, 2010 (hereinafter, the “Petitioners”) in the above-captioned proceeding.

other existing class III short line railroads operating in Michigan. Such extensive operations bespeak a stable, responsible operator; and that ADBF's subsidiary JAIL is similarly well positioned to discharge its common carrier obligations on the Lansing Secondary Branch and related rail properties.

JAIL operating employees will receive the same level of training as their NSR and CSX counterparts. In fact, JAIL employees will be required to pass the same rules exams as the Class I employees. JAIL employees have passed the JAIL rules test and have passed the NSR rules exam to operate over the trackage rights at Jackson. See, Dobronski V.S. at 6.

Nor is there any validity to the argument that the Line is not currently in a state of good repair. This is an existing rail Line in current service. Prior to these exemptions taking effect, the Lansing Secondary Branch was being operated and maintained by NSR in a state of good repair. JAIL will endeavor, and indeed, is required by Lease to maintain the Line to Class I standards or better. See, Dobronski V.S. at 8. Petitioner's suggestion that NSR should be called upon to undertake emergent repairs to return the Line to safe operating condition is a red herring and should be disregarded.

C. Labor:

Finally, petitioners claim, with no supporting evidence, that 16 NSR employees will be displaced as a result of this proposed transaction. This claim,

and perhaps by implication, the entire petition, is suspect. The UTU has advised its membership that only 11 jobs will be affected, not the 15 claimed. See, “UTO, BLET oppose Mich. lease deal”, which currently appears on the organization’s website at http://www.utu.org/worksites/detail_news.cfm?ArticleID=53639, annexed hereto as Exhibit A.

According to NS, as a result of the transaction, one signal maintainer, two engineer, two conductor and one brakeman position on NS will be eliminated. The signal maintainer already has been reassigned as a divisional maintainer out of NS’s Jackson, MI headquarters as before. The individual employees currently holding the other five positions to be eliminated have seniority that affords them work opportunities with NS, and NS does not anticipate furloughing any of such employees. Further, JAIL projects that 21 jobs will be created once JAIL’s operations are up and running, more than offsetting any claimed losses. See, Dobronski V.S. at 9. Nor does the allegation of economic harm rise to the level of sustaining a finding of irreparable harm. See, STB Finance Docket No. 34145, Bulkmatic Railroad Corporation - Acquisition Exemption - Bulkmatic Transport Company (served December 27, 2001).

CONCLUSION

Petitioners BLET and UTU have failed to sustain the heavy burden of proof required in support of their Petition to Revoke. Therefore, Applicants respectfully request

BACKGROUND

By three class exemption notices filed on September 20, 2010, ADBF and JAIL sought authorization from the Surface Transportation Board (“the Board”) for three transactions resulting in the creation of a new class III short line railroad, JAIL. First, by class exemption notice filed in FD No. 35410, pursuant to 49 CFR 1180.2(2)(d), ADBF, an existing Class III common carrier by rail, requested an exemption to continue in control of JAIL, the newly created common carrier that is the subject of this proceeding. FN1. Second, by class exemption filed in FD No. 35411 pursuant to 49 CFR 1150.31, and the provisions of 49 U.S.C. 10901, JAIL sought to lease and operate 44.5 miles of track from Norfolk Southern Railway Company (“NSR”) in Michigan known as the “Lansing Secondary Branch” and related properties and facilities. Third, by class exemption filed in FD No. 35418 pursuant to 49 CFR 1180.2(d)(7), JAIL sought to acquire trackage rights from NSR to permit it to operate over 1.06 miles of existing trackage owned by NSR and leased to CSX Transportation, Inc. (“CSXT”). By Decisions issued October 6, 2010, the Board issued Decisions exempting each of these related transactions. FN2. Accordingly, JAIL became a Class III rail common carrier upon commencing operations October 21, 2010.

¹ Petitioners do not raise any factual or legal argument whatsoever in opposition to ADBF’s continuance in control exemption. Accordingly, the Board should summarily deny the Petition to revoke ADBF’s class exemption in FD No. 35410.

² Commissioner Mulvey dissented from the Board’s Decision in FD-35411 only.

LEGAL ARGUMENT

Under 49 U.S.C. 10502(a), the Board shall exempt a transaction from the rail provisions of its governing statute when it finds that: (1) regulation is not necessary to carry out the provisions of the rail transportation policy of 49 U.S.C. 10101 ("RTP"); and (2) either (a) the transaction is limited in scope or (b) regulation is not needed to protect shippers from the abuse of market power.

Because JAIL is a non-carrier, its lease of the rail lines is subject to 49 U.S.C. 10901, *rather than 49 U.S.C. 10902 as Petitioners erroneously suggest*, and the class exemption procedures of 49 CFR 1150.31.

A petition to revoke an effective exemption is governed by 49 C.F.R. Part 1121 which, in pertinent part, requires a party seeking to revoke a notice of exemption to "provide all of its supporting information at the time it files its petition." 49 C.F.R. § 1121.3(c). The Petition, however, is devoid of any meaningful information addressing the statutory standard for revoking an exemption.

The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of Section 10101. 49 U.S.C. § 10502(d). Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. Minnesota Comm. Ry. Inc. - Trackage Exempt. - BN R.R. Co., 8 I.C.C.2d 31, 35-36 (1991); STB Finance Docket

No. 31617, Chesapeake & Albemarle R. Co. -Lease, Acq. & Oper. Exemp. - Southern Ry. Co. (served Sep. 19, 1991); STB Finance Docket No. 31102, Wisconsin Central Ltd. - Exemp. Acq. & Oper. - Certain Lines of Soo L.R. Co. (served July 28, 1988).

The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. *Id.* Because Petitioners have submitted no evidence in support of their revocation request, they have failed to meet their burden of proof and the requested relief should be denied.

Where, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke. Therefore, under 49 C.F.R. § 1115.3(b) it must state in detail whether reopening is supported by material error, new evidence, or substantially changed circumstances. Petitioners have failed to address these standards much less introduce any evidence to warrant a favorable finding under these standards.

Petitioners raise three categorical objections to the exemptions: that the transaction is anti-competitive, that the transaction threatens to compromise safety and that the transaction will impose economic hardship upon a small number of Petitioners' membership. The objections are addressed below in the same order in which they were raised.

A. Competition:

Petitioners first assert that the NSR-JAIL Lease Agreement contains an anti-competitive provision, *to wit*: providing for a Lease Credit whereby JAIL may

reduce its lease payments by receiving a credit for each car interchanged with NSR. The provision is neither a total ban on interchange, nor does it provide for a penalty payment if such third party interchange occurs.

In its October 6th Decision, a majority of the Board found no fault with these arrangements. NSR initially proposed a fixed rental payment with no option to reduce the rent, but JAIL insisted on a lease credit option to provide an opportunity for JAIL to earn a lower rental payment so it would be able to invest in improvements on the lease lines to increase traffic levels. In the first place, the Board's rules expressly provide for the filing of transactions involving an interchange commitment under 49 C.F.R Part 1150.33(h). It would be fundamentally unfair to change those rules, or the application of those rules, in the context of this proceeding.

Moreover, the Board's rules contemplate the challenging of an interchange commitment by "a shipper or other affected party". Section 1150.33(h)(2). Consequently, if any shipper or other affected party on the leased lines wishes to challenge the interchange commitment contained in the Lease Agreement it may do so. Petitioners are not shippers and it is unlikely that they could qualify as "affected parties". Significantly, no shipper has come forward to challenge this transaction as anti-competitive.

Petitioners have failed to demonstrate how their interests will be adversely affected by what they term to be an interchange commitment. Rather, Petitioners

appear to be using the Board's rules governing interchange commitments for other purposes.

Petitioners liken this proceeding to the case where the Board denied the petition of Michigan Central Railway, LLC ("MCR") for an exemption from the requirements of 49 U.S.C. 10901 authorizing it to acquire and to operate certain railroad lines of the Norfolk Southern Railway Company (NSR). See, STB Finance Docket No. 35063, Michigan Central Railway, LLC-Acquisition and Operation Exemption-Lines of Norfolk Southern Railway, LLC (STB Served Dec. 10, 2007). There the Board found that NSR would have sufficient control of MCR so that the transaction would not come within the scope of section 10901. MCR is easily distinguished from the proceeding herein. The interchange restrictions were but one of several indicia of control retained by NSR over MCR. In its Decision, the Board focused on NSR's retention of ownership rights and never specifically addressed interchange restrictions.

In the present situation, and unlike the MCR transaction, NSR holds no ownership interest in JAIL (or ADBF), NSR holds no share in JAIL profits, NSR holds no management rights over JAIL, NSR retains no trackage or haulage rights over JAIL, nor does NSR impose any restriction on JAIL's ability to interchange traffic with other carriers. FN3.

³ The NSR-JAIL Lease Agreement contrasts markedly with the traffic restrictions imposed in the NSR-MCR Transaction Agreement. Those restrictions generally barred MCR from interchanging

Contrary to Petitioners pure speculation, competition will be enhanced by this transaction. JAIL expects to establish an interchange with CSX at Lansing, and further anticipates establishing an interchange with CN in the near future. Shippers on the Lansing Secondary Branch now have connections through JAIL to three different Class I rail carriers. See, Verified Statement of JAIL President Mark Dobronski (hereinafter “Dobronski V.S.”) at Paragraph 4.

B. Safety:

Petitioners next make the highly speculative assertion that the exemptions compromise safety. The prongs of their argument are that both ADBF and JAIL are undercapitalized, that Applicants cannot be entrusted with transporting hazardous materials, and that the Line is in disrepair. None of these assertions hold water.

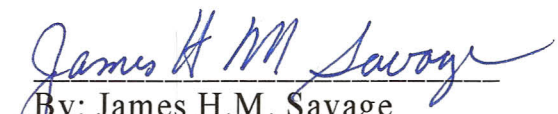
Petitioners submit no evidence supporting their bare assertion that either ADBF or JAIL is undercapitalized. JAIL’s parent corporation, ADBF, is an existing Class III common carrier by rail with an exemplary record for safe operations. See, Dobronski V.S. at 5. As set forth in its exemption notice, ADBF currently operates trackage in Michigan in its own right, and further controls three

existing or future rail traffic, either by “steel wheel or rubber wheel,” with any carrier other than NSR other than those existing at an “Interchange Point” as of the closing date, except that traffic could be interchanged if: (1) the traffic both originates and terminates on MCR’s lines; (2) the traffic is interchanged only with a Class III rail carrier and both originates and terminates within Michigan; or (3) the traffic “originates or terminates at customers open to reciprocal switching[.]”

the Board to deny Petitioners' request.

Respectfully submitted,

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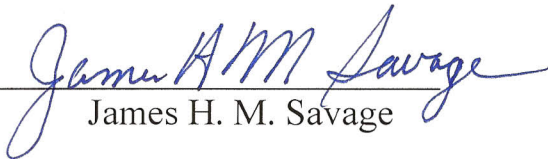
And

Adrian & Blissfield Rail Road
Company

Dated: October 29, 2010

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day a true copy of the within pleading by first class mail, postage prepaid upon Harold A. Ross, interim General Counsel for the BLET and upon Clinton J. Miller, III, General Counsel for the UTU, and by electronic mail upon David L. Coleman, General Attorney for Norfolk Southern Corporation.


James H. M. Savage

Dated: October 29, 2010

EXHIBIT A



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News

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 PRINTER-FRIENDLY VERSION

UTU, BLET oppose NS Mich. lease deal

A Norfolk Southern sought lease of trackage to a newly created short line railroad in Michigan is being opposed by the UTU and the Brotherhood of Locomotive Engineers and Trainmen, which represent affected train and engine workers.

The U.S. Surface Transportation Board (STB) is being asked by the UTU and the BLET to revoke an exemption from regulatory review previously provided a proposed transaction of NS and Adrian & Blissfield Rail Road, a holding company intending to create a new shortline to lease and operate almost 45 miles of NS track near Lansing.

The new short line, to be called Jackson & Lansing, is expected -- as is the case with virtually all upstart shortlines -- to hire a new workforce that will be paid lower wages and benefits than NS now pays the five trainmen, three engineers and three other employees now assigned to that trackage by NS.

The UTU and the BLET are asking the STB to revoke a previously granted STB exemption that would permit the transaction to move to completion without regulatory scrutiny. Such exemptions are permitted if the STB is satisfied that neither competition, continued rail service, safety nor other so-called public interest considerations will be jeopardized as a result of the transaction.

In fact, STB Vice Chairman Frank Mulvey filed a dissent in the previous 2-1 decision granting the exemption, saying that the outward written commitments imposed by the parties require more information, "particularly when they contain outright bans on interchange with third party carriers or, as here, economic incentives that can only be evaluated with the provision of additional information."

Specially, the UTU and the BLET ask the STB to reconsider its granting of the exemption for the following reasons:

*** Competition and reasonable rates:** The transaction, as proposed, would exclude third party carriers (other than NS) from operating over the line, and limit interchange to and from other carriers. Also, the transaction, as proposed, appears to limit competition in order that Jackson & Lansing be able to increase freight rates to fund upgrades to the leased track and facilities. This would be in violation of congressionally imposed national rail transportation policy that supports rail-to-rail competition and fair and reasonable freight rates.

*** Safety:** The so-far known facts of the transaction suggest it is highly

unlikely either the holding company or its shortline, Jackson & Lansing, currently have sufficient funds and cash flow to upgrade the leased track and facilities to provide safe and reasonably timely operations. As expected carloadings will contain industrial waste, track and rail operating safety must be of significant concern.

*** Fair wages and working conditions:** In the current economy -- especially in Michigan, where unemployment is twice the national average -- the affected employees and their families, and the State of Michigan, will suffer significant economic harm. By granting an exemption from regulatory scrutiny, the STB is permitting the transaction to move forward without imposing labor protection.

This also would violate national rail transportation policy, as it requires "fair wages and suitable working conditions." The STB is obligated to consider (which can only be done by revoking the exemption and investigating the transaction) whether the new entity will impose substandard wages and working conditions, thereby significantly circumventing the terms and conditions of current collective bargaining agreements under which the affected employees are now covered.

Click [here](#) to read the joint UTU/BLET filing.

October 18, 2010



EMAIL THIS ARTICLE



PRINTER-FRIENDLY VERSION

VERIFIED STATEMENT OF MARK W. DOBRONSKI

I, Mark W. Dobronski, of full age, state the following, under penalty of perjury:

1. I am the President of Adrian & Blissfield Rail Road Company ("ADBF") and Jackson & Lansing Railroad Company ("JAIL"), collectively, "the Applicants". I am responsible for financial and legal matters with respect to ADBF and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

2. I submit this verified statement in opposition to the October 18, 2010 Petition to Revoke Exemption filed in this proceeding by the Brotherhood of Locomotive Engineers and Trainmen ("BLET") and the United Transportation Union ("UTU"), collectively, "the Petitioners".

3. ADBF is a licensed Class III common carrier by rail. It is not a holding company. ADBF currently owns four subsidiary Class III common carriers by rail, including JAIL. Applicants have made a significant and ongoing investment in providing rail service in Central Michigan. In connection therewith, JAIL has leased NSR's Lansing Secondary Branch between Jackson and Lansing, MI. JAIL has also leased ancillary rail properties and facilities from Norfolk Southern Railway Company ("NSR") which will enable JAIL to provide a thorough level of service to shippers in Central Michigan. JAIL has further acquired interchange trackage rights from NSR on NSR's Michigan Main Line in Jackson, MI.

4. In addition to interchanging with NSR at Jackson, by this transaction JAIL will be able to interchange with CSX Transportation, Inc. ("CSXT") at Lansing, and with Canadian National d/b/a Grand Trunk Western Railroad ("CN") at Lansing. These interchange points will enable shippers to benefit from increased competition.

5. ADBF has an exemplary safety record. Since my becoming President of ADBF in 2003, ADBF has received the prestigious Jake Award each and every year. The Jake Award is issued

annually by the American Short Line and Regional Railroad Association to those shortline railroads which have demonstrated outstanding safety achievements.

6. Not only must JAIL operating employees successfully pass an ADBF/JAIL rules examination, JAIL operating employees are additionally required to successfully pass the same rules examinations given to Class I employees in Michigan. JAIL operating employees have also passed the NSR rules examination required to operate over the trackage rights in Jackson. Further, JAIL operating employees have also passed the CSXT rules examination required to operate over the trackage rights in Lansing.

7. Employees of ADBF and JAIL enjoy working conditions, salary and benefits comparable to those received by Class I employees, in addition to not being subject to the union's bid and bump process, by which an employee might be displaced and reassigned to a terminal remote from their home and family.

8. JAIL has made a major commitment to maintaining the Lansing Secondary Branch and related rail properties and facilities to FRA Class I standards or better. This commitment is expressly set forth in the NSR Lease Agreement with which JAIL will be required to comply.

9. As a result of this transaction, JAIL estimates that 21 railroad jobs will be created on its Line alone, as well as the ancillary economic benefits to the hard-pressed Central Michigan region from revitalized freight rail service.



Mark W. Dobronski

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: October 27, 2010.



Mark W. Dobronski