

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD CO.

--Lease--

CSX TRANSPORTATION, INC.

**NOTICE REGARDING ORAL ARGUMENT AND
SUMMARY OF PLANNED ARGUMENT**

Pursuant to the Board's Decision No. 4 in this proceeding, the Brotherhood of Maintenance of Way Employes ("BMWE") gives notice of its intention to present oral argument in this proceeding through its counsel, Richard S. Edelman of O'Donnell, Schwartz & Anderson, P.C. BMWE appreciates the opportunity to present oral argument in this case and requests that it be allotted twenty minutes of speaking time.

In its oral presentation BMWE will address the following points:

I THE RICHMOND-CLIFTON FORGE LINE IS IN EXTREMELY POOR CONDITION

BMWE has correctly characterized the conditions of the Richmond-Clifton Forge Line, and the Applicants have not.

II. APPLICATION OF NATIONAL RAIL TRANSPORTATION POLICIES

It is appropriate for the Board to consider the National Rail Transportation Policies in Section 11324(d) transactions. BMWE submits that this is inherent in anything the Board does and that it is required in light of the recent Supreme Court and appellate decisions in *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Kulmer v. STB*, 236 F. 3d 1255 (10th Cir. 2001); and *Redmond-Issaquah Railroad Preservation Ass'n. v.*

STB, 223 F. 3d 1057 (9th Cir. 2000) that are cited in BMW's Comments (at 17-18).

Applicants are in error in asserting that the Board must approve the transaction if it does not find any anti-competitive impact.

III. THE PROPOSED TRANSACTION IS INCONSISTENT WITH THE NATIONAL RAIL TRANSPORTATION POLICIES

BMW submits that approval of the proposed "lease" would be contrary to the National Rail Transportation Policies for development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; operation of transportation facilities and equipment without detriment to the public health and safety; and encouragement of honest and efficient management of railroads.

Buckingham Branch ("BB") is not qualified to be operator of the Richmond-Clifton Forge Line. BMW does not question BB's capabilities with respect to its current line, but BMW asserts that BB cannot effectively assume responsibility for the Richmond-Clifton Forge Line. As BMW has shown, CSX Transportation ("CSXT") has allowed the line to deteriorate and the line is in abysmal condition. BB does not have the resources, expertise or manpower to do what is necessary for this line. Applicants' response touting BB's success with its current line does not demonstrate that it is capable of operation of the Richmond-Clifton Forge Line with all of its many difficulties. Nor is BB in a position to handle the consequences of the potential problems that may well occur on the line. CSXT must be responsible for this line and it would be contrary to the National Rail Transportation Policies to approve this transaction.

IV. THE PROPOSED LEASE IS A SHAM AND INVOLVES USE OF BOARD PROCESSES FOR IMPROPER PURPOSES

BMW has demonstrated the proposed transaction is not a legitimate lease. BMW has cited a number of factors that collectively demonstrate that this is not a real lease transaction, and that the transaction is merely a device for CSXT to remove the Richmond-Clifton Forge lines from its inventory, to cease being responsible for the Lines, for their maintenance, for liability in case of a derailment and for the FRA citations for a short time, while still retaining ownership, control, and operations over the Lines and revenue from local traffic on the Lines. Applicants have challenged BMW's reliance on separate factors but have failed to refute BMW's showing that in combination, these factors demonstrate that this is not a legitimate lease.

V. RESPONSE TO COMMONWEALTH OF VIRGINIA COMMENTS

Although BMW urges the Board to deny the application, BMW agrees that if the transaction is approved, the conditions requested by the Commonwealth of Virginia should be imposed. By this transaction, CSXT is seeking to escape responsibility for the maintenance and safe operation of the Richmond-Clifton Forge lines. The potential problems that may arise on this line, and the substantial rehabilitation needs of this line are likely to fall to the Commonwealth of Virginia and its citizens. CSXT is responsible for these lines and the conditions sought are therefore appropriate.

Respectfully submitted,

/s/

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