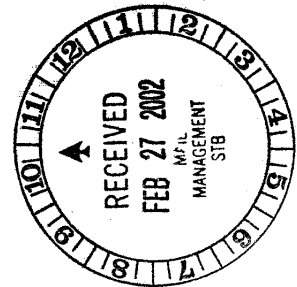


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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

BULKMATIC RAILROAD)
CORPORATION -- OPERATION) FINANCE DOCKET
EXEMPTION -- RAIL LINE OF) NO. 34179
BULKMATIC TRANSPORT COMPANY)
AT CHICAGO HEIGHTS, IL)



VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

ENTERED
Office of the Secretary

FEB 27 2002

Part of
Public Record

BULKMATIC RAILROAD CORPORATION
9 East Lockerman Street
Dover, DE 19901

Applicant

FILED

FEB 27 2002

DAVID C. DILLON
Dillon & Nash
111 West Washington Street
Suite 719
Chicago, IL 60602
(312) 782-9025

SURFACE
TRANSPORTATION BOARD

Attorney for Applicant

FEE RECEIVED

0101895002

FEB 27 2002

DATE FILED: February 27, 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

BULKMATIC RAILROAD	)	
CORPORATION -- OPERATION	)	FINANCE DOCKET
EXEMPTION -- RAIL LINE OF	)	NO. 34179
BULKMATIC TRANSPORT COMPANY	)	
AT CHICAGO HEIGHTS, IL	)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.* and 49 U.S.C. § 10502(a), BULKMATIC RAILROAD CORPORATION (BMRC), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for its operation of approximately 3.9 miles of railroad right-of-way and trackage at transloading and freight house facilities subleased from Bulkmatic Transport Company, known as Bulkmatic Distribution Center, at Chicago Heights, IL ("Chicago Heights trackage"). The Chicago Heights trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this Notice.

On December 21, 2001, in Finance Docket No. 34145, *Bulkmatic Railroad Corporation -- Acquisition Exemption -- Rail Line of Bulkmatic Transport Company at Chicago Heights, IL*, BMRC, a noncarrier, filed a verified notice of exemption for its acquisition of the Chicago Heights trackage by sublease from Bulkmatic Transport Company. On the same date, in Finance Docket No. 34146, *Chicago Heights Switching Company -- Operation Exemption -- Bulkmatic Railroad Corporation*, Chicago Heights Switching Company (CHSC), a noncarrier, filed a verified notice of exemption for its operation of the Chicago Heights trackage pursuant to an operating agreement with BMRC.

It is proposed that Bulkmatic Transport Company sublease the Chicago Heights trackage to BMRC, which would provide rail service within the Distribution Center.^{1/} The Chicago Heights trackage would constitute the entire line of railroad of BMRC.

In those circumstances, the Chicago Heights trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transp. Bd.*, 183 F.3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed

^{1/} BMRC may contract with CHSC for the latter to provide rail switching service within the Distribution Center as agent of BMRC, but in all instances such service would be performed in the name of BMRC and in behalf of BMRC.

operation because the Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original):

... (I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to a sublease rather than a lease, and when the prior use of the track was by a third-party rail carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union v. Surface Transportation Bd.*, *supra*, 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be BMRC's initial railroad acquisition and operation, and the Chicago Heights trackage will constitute the entire line of railroad of BMRC,

it follows that the Chicago Heights trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant;

The full name and address of the applicant is Bulkmatic Railroad Corporation, 9 East Lockerman Street, Dover, DE 19901.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

BMRC's representative is David C. Dillon, Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602, (312) 782-9025.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement between Bulkmatic Transport Company and BMRC for the latter's operation of the Chicago Heights trackage has been reached.

(d) The operator of the property;

BMRC will be the operator of the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property,

The sublessor of the line is Bulkmatic Transport Company, 2001 North Cline Avenue, Griffith, IN 46319.

(2) The proposed time schedule for consummation of the transaction,

The lease and operation are proposed to be consummated no earlier than seven days after the filing of this notice of exemption.

(3) The mile-posts of the subject property, including any branch lines, and

The Chicago Heights trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) The total route miles being acquired;

A total of 3.9 miles of trackage is to be operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States;

The required map is attached to this Notice as Appendix 1-B.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed operation does not require environmental and historic reporting. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification of David C. Dillon in behalf of BMRC is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notice in the *Federal Register* of the filing of this notice of exemption. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,



BULKMATIC RAILROAD CORPORATION
9 East Lockerman Street
Dover, DE 19901

Applicant

DAVID C. DILLON
Dillon & Nash
111 West Washington Street
Suite 719
Chicago, IL 60602
(312) 782-9025

Attorney for Applicant

DATE FILED: February 27, 2002

Appendix 1-A

TRACKAGE AT BULKMATIC DISTRIBUTION CENTER CHICAGO HEIGHTS, IL

North to South		East to West	
Track Number:	88 1635 ft to P.S.	73	1331 ft to P.S.
	87 1521 ft to P.S.		
	86 1508 ft to P.S.	74	1150 ft to Road
	85 1402 ft to P.S.	75	1221 ft to P.S.
		76 Runaround	940 ft to P.S. to P.S.
	84 1399 ft to P.S.	77	960 ft to P.S.
	83 1374 ft to P.S.		
		78	1040 ft to P.S.
	82 1239 ft to P.S.		
	81 1221 ft to P.S.		
	80 1343 ft to P.S.		
	79 1321 ft to P.S.		

TOTAL TRACKAGE - 20,605 feet equals 3.9 miles

ALTA/ACSM
LAND TITLE SURVEY



LEGEND

1	Unimproved land
2	Improved land
3	Water
4	Highway
5	Power line
6	Telephone line
7	Gas line
8	Water line
9	Drainage ditch
10	Other ditch
11	Other structure
12	Other feature
13	Other feature
14	Other feature
15	Other feature
16	Other feature
17	Other feature
18	Other feature
19	Other feature
20	Other feature
21	Other feature
22	Other feature
23	Other feature
24	Other feature
25	Other feature
26	Other feature
27	Other feature
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37	Other feature
38	Other feature
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44	Other feature
45	Other feature
46	Other feature
47	Other feature
48	Other feature
49	Other feature
50	Other feature



LEGEND

1. Unimproved land

2. Improved land

3. Water

4. Highway

5. Power line

6. Telephone line

7. Gas line

8. Water line

9. Drainage ditch

10. Other ditch

11. Other structure

12. Other feature

13. Other feature

14. Other feature

15. Other feature

16. Other feature

17. Other feature

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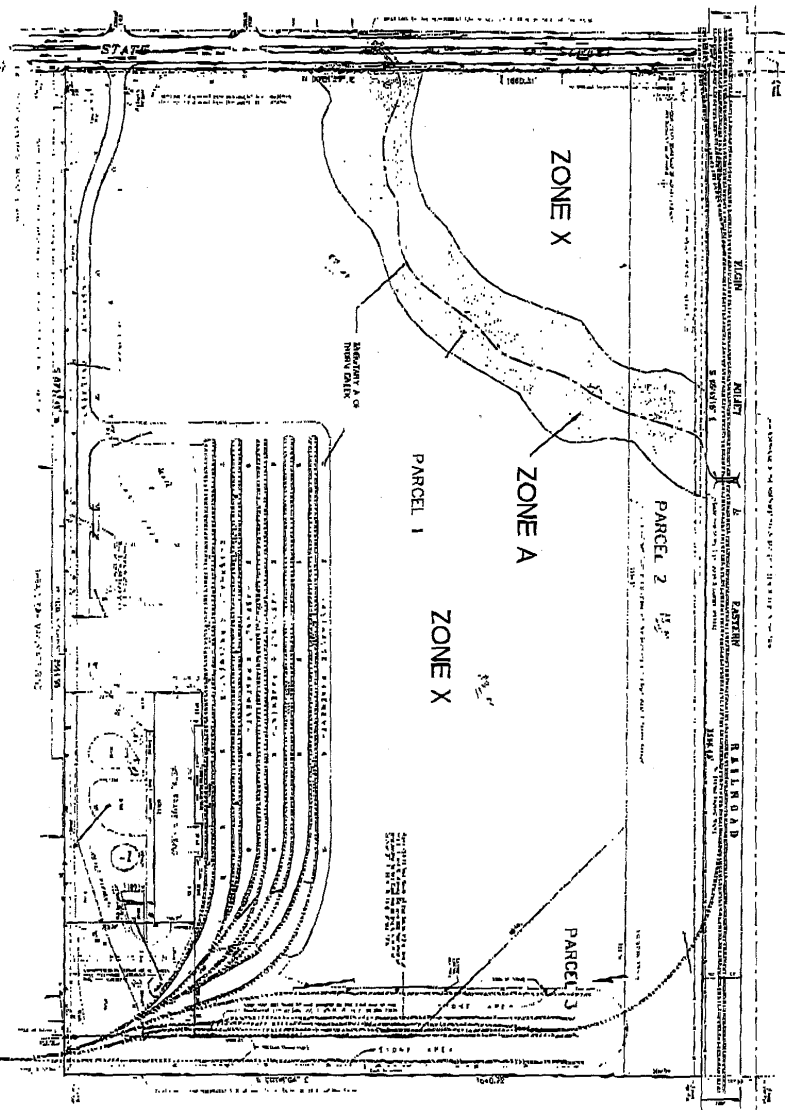
46. Other feature

47. Other feature

48. Other feature

49. Other feature

50. Other feature



LEGEND

1. Unimproved land

2. Improved land

3. Water

4. Highway

5. Power line

6. Telephone line

7. Gas line

8. Water line

9. Drainage ditch

10. Other ditch

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Finance Docket No. 34179

Appendix 2

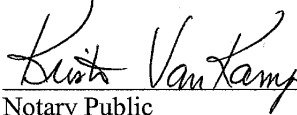
CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Bulkmatic Railroad Corporation hereby certifies under 49 C.F.R. § 1150.3(g), that the projected revenues from the operations proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



David C. Dillon
Authorized Representative of
Bulkmatic Railroad Corporation

SUBSCRIBED AND SWORN to before
me this 21st day of February, 2002.



Notary Public



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34179,

***BULKMATIC RAILROAD CORPORATION
-- OPERATION EXEMPTION --
RAIL LINE OF BULKMATIC TRANSPORT COMPANY
AT CHICAGO HEIGHTS, IL***

Bulkmatic Railroad Corporation (BMRC), a noncarrier, has filed a Notice of Exemption to operate a rail line to be subleased from Bulkmatic Transport Company consisting of approximately 3.9 miles of right-of-way and trackage at Bulkmatic Distribution Center, Chicago Heights, Illinois. Comments must be filed with the Board and be served on BMRC's representative, David C. Dillon, Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602, (312) 782-9025.

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

(SEAL)

Vernon A. Williams, Secretary

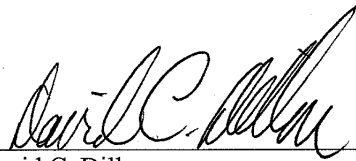
Finance Docket No. 34179

Appendix 4

VERIFICATION

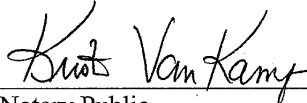
STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Bulkmatic Railroad Corporation (BMRC); that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of BMRC; and that such allegations are true as stated.



David C. Dillon

Subscribed and Sworn to before me
this 21st day of February, 2001.



Notary Public

