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204881

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34145 ✓ 204880

BULKMATIC RAILROAD CORPORATION
--ACQUISITION EXEMPTION--
BULKMATIC TRANSPORT COMPANY

Finance Docket No. 34179 204881

BULKMATIC RAILROAD CORPORATION
--OPERATION EXEMPTION--
BULKMATIC TRANSPORT COMPANY

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MAR 4 2002

PETITION TO REJECT AND/OR TO */
REVOKE AND FOR STAY OF EXEMPTION

MAR 4 2002

SURFACE
TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

March 4, 2002

Attorney for Joseph C. Szabo

*/ Expedited handling is requested for the stay request, inasmuch as the operation exemption (F.D. No. 34179) is published to become effective 12:01 AM Wednesday, March 6, 2002.

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PETITION TO REJECT AND/OR TO
REVOKE AND FOR STAY OF EXEMPTION

Preliminary Statement

Joseph C. Szabo^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), petitions the Surface Transportation Board (Board) that it reject the two notices of exemption, filed December 21, 2001 and February 27, 2002, respectively, and/or that the Board revoke the two exemptions noticed thereby, wherein Bulkmatic Railroad Corporation (BMRC) proposes to acquire and operate 16 tracks subleased from its affiliate, Bulkmatic Transport Company (BTC), which 16 tracks BTC in turn holds under lease from an as yet unidentified person,

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

in the Bulkmatic Distribution Center at Chicago Heights, IL.^{2/}

Request for Stay

Pending disposition of this petition to reject/revoke, the Board is requested to stay the operation of the notice/exemption in Finance Docket No. 34179, so as to deny BMRC the status of a common carrier, and the ability to divert work presently being performed by Union Pacific Railroad Company (UP) and its personnel, which include UP employees represented by United Transportation Union (UTU).

Discovery Request

UTU-IL seeks certain discovery. A discovery request has been served today, generally concerning agreements between BTC, BMRC, owner(s) of the rail trackage, Chicago Heights Switching Company (CHSS) and/or its affiliates.^{3/} This petition will be supplemented in accordance with 49 CFR §1121.2.

Background

BTC is a motor carrier. Attached as Appendix 1 hereto is a 6-page description of BTC, with its history and activities, taken from its website. BTC has leased tracks and other facilities in

2/ BMRC has captioned its two notices (F.D. Nos. 34145 and 34179) as to acquire and operate "a rail line" of its affiliate BTC. Protes-tant strongly disagrees with the proposed caption, which was not adopted by the Board in publishing the notice in F.D. No. 34145, served January 15, 2002. 67 Fed. Reg. 2010. (1/5/02). BTC has acquired some 16 excepted tracks by lease from an unidentified source, and now proposes to sublease the excepted tracks to BMRC, for operation by BMRC.

3/ See: Finance Docket No. 34179, Notice, at p. 3 n.1; Finance Docket No. 34146, Chicago Heights Switching Company--Operation--Exemption--Bulkmatic Railroad Corporation; Finance Docket No. 34147, Paula J. Mudge-Gibson and Don L. Gibson--Continuance in Control Exemption--Chicago Heights Switching Company.

the Bulkmatic Distribution Center, situated on the UP (former Chicago & Eastern Illinois Railroad Company) at Chicago Heights, IL. Some 16 tracks leased by BTC have been subleased to BMRC. These tracks are spur, industrial, switching and side-tracks in the area of the former Chicago Heights Terminal Transfer Railroad Company (CHTT). They are 16 specifically listed tracks, and are depicted on a map included with the Notice in Finance Docket No. 34179.^{4/}

On December 21, 2001, BMRC filed its Notice in the instant Finance Docket No. 34145 to acquire the 16 tracks in the Bulkmatic Distribution Center yard by sublease from BRT; however, BMRC did not at that time intend to operate the 16 tracks. Instead, BMRC entered into an agreement (in principle) for Chicago Heights Switching Company (CHSS) to operate the trackage, with CHSS on December 21, 2001 filing its own Notice in Finance Docket No. 34146, Chicago Heights Switching Company--Operation Exemption--Bulkmatic Railroad Corporation (served January 15, 2002). Since CHSS is affiliated with another carrier in the Chicago area, Central Illinois Railroad Company, a notice of exemption for common control also was filed on the same day. Finance Docket No. 34147, Paula J. Mudge-Gibson and Don L. Gibson--Continuance in Control Exemption--Chicago Heights Switching Company (served January 15, 2002).

UTU-IL on December 26, 2001, requested that the Board stay the exemptions in Finance Docket Nos. 34145 and 34146, raising a

^{4/} See: Finance Docket No. 34179, Notice, Appendix 1-A, 1-B. The map is markedly different from that in Finance Docket No. 34145, Notice, Appendix 1-B.

number of objections to the notices. The Board's Chairman on December 27, 2001, denied the request for stay, stating that the map and description of the involved trackage describe the transaction adequately. The Chairman added that whether the trackage is excepted under §10906 is a complex fact bound issue requiring considerable analysis. The Chairman concluded that UTU-IL had not demonstrated any harm to railroad employees would be irreparable.^{5/}

The transfer of operation to CHSS was not consummated in accordance with the Notice in Finance Docket No. 34146. Instead, the instant notice in Finance Docket No. 34179 was filed February 27, 2002, whereby BMRC would operate as well as acquire the 16 tracks subleased from BTC; however, BMRC stated in its new Notice, at p. 3, n.1, that the operation, in fact, may be performed by CHSS acting as an agent for BMRC. The Notice in Finance Docket No. 34145, and that in Finance Docket No. 34179, were verified by outside counsel for BMRC.

The present manner of rail service to the BTC trackage at Chicago Heights, IL is set forth in the verified statement of Dennis G. Martz, attached as Appendix 2 hereto. Mr. Martz is the Yard Foreman who works the assignment serving the BTC facilities, and also is General Chairman for UTU on the affected UP property and operations.

These proceedings involve an estimated 3.9 miles of tracks in

^{5/} The Chairman's stay decision did not indicate consideration of any reply by BTC, BMRC, CHSS, or other person or party.

the Bulkmatic Distribution Center yard at Chicago Heights, IL.^{6/}

In actual fact, this trackage consists of only 16 tracks. The trackage presently is served by UP, and also sometimes with an engine operated by BTC, the latter operating solely within the BTC yard. BTC has established a subsidiary, BMRC, and proposes that BMRC become a franchised rail carrier.

The sole basis for BMRC claim that this transaction over excepted yard track comes within the Board's authority pursuant to 49 U.S.C. 10901 is an unreported 1998 Board adjudication (not a rulemaking) involving trackage at Effingham, IL. Finance Docket No. 34179, Notice, pp. 2-5.

I. BOTH NOTICES SHOULD BE REJECTED, OR BOTH
EXEMPTIONS REVOKED, BECAUSE THE BOARD CANNOT
AUTHORIZE OR EXEMPT THE TRANSACTIONS PURSUANT
TO THE CLASS EXEMPTION OR 49 U.S.C. § 10901.

The notices in Finance Docket Nos. 34145 and 34179 should be rejected, or the exemptions revoked, because the trackage proposed for acquisition and operation is excepted under the provisions of 49 U.S.C. 10906:

The Board does not have authority under this chapter over construction, acquisition, operation abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

Here, an "acquisition and/or operation" are both involved;

^{6/} BMRC in its Caption Summary terms the transaction involves "3.9 miles of right-of-way and trackage," but this is misleading based upon its map and response to questionnaire, for 3.9 miles is calculated upon feet of track, not right-of-way. See: Finance Docket No. 34179, Notice, p.6 & App. B.

and the trackage clearly is spur, industrial, team, switching or side-tracks. Verified Statement of Dennis G. Martz, Appendix 2, p.2.^{7/} To be sure, the Board has certain exclusive "jurisdiction" over excepted trackage, 49 U.S.C. 10501(b)(2), but the Board does not have authority to approve, or to exempt the acquisition or operation of such trackage.

BMRC argues that acquisition and/or operation of excepted trackage by non-carriers converts the trackage into a regulated "line of railroad," thus giving BMRC carrier status--all under a so-called "tenant-use" test. BMRC cites the Board's decision denying reconsideration in Docket No. 41986, Effingham RR Co.-Pet. for Declaratory Order,^{8/} and the court's decision denying review, United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999). BMRC cites in accord, Chicago Rail Link, L.L.C.-Lease & Oper.-Union Pacific RR Co., 2 S.T.B. 534 (1997), aff'd United Transp. Union-Illinois v. Surface Transp., 169 F.3d 474 (7th Cir. 1999).

BMRC is incorrect in stating the Board has an automatic rule whereby non-carriers acquiring or operating excepted yard trackage may file non-carrier class exemption notices and thus become carriers over "line of railroad." In Effingham, a 206-foot spur track owned by ConRail was involved; in Chicago Rail Link, one

^{7/} One of the tracks is listed as "runaround," which demonstrably is excepted. (Finance Docket Nos. 34145, 34179, App. 1-A. Track No. 76).

^{8/} The Board's order denying reconsideration is not reported. The earlier decision is reported at Effingham RR Co.-Pet. for Declaratory Order, 2 S.T.B. 606 (1997). The BMRC reference to 193 F.3d is a misprint, and should read 183 F.3d, as it refers to the same and earlier citation of 183 F.3d 606. (Finance Docket Nos. 34145 and 34179, Notices, 4).

existing rail carrier was acquiring the tracks of another existing carrier. Here, a non-carrier (BMRC) is being established to operate over the tracks of its non-carrier affiliate (BTC), and claims such a legal step now causes BMRC to be a "carrier."

The court did not infer any automatic agency determination that all excepted track acquisitions and operations by non-carriers are to constitute "line of railroad" acquisitions or operations, requiring prior Board approval for acquisition, operation, or for abandonment/discontinuance. The court likewise did not adopt any "tenant-use" test as exclusive, but merely declined to set aside the Board's individual and deferential determination under Chevron ^{9/} in a specific and limited factual situation. United Transp. Union v. Surface Transp. Bd., 183 F.3d 606, 612-14 (7th Cir. 1999).

Automatic use of the so-called "tenant-use" test to determine "spur" vs. "line of railroad" was set aside by the same court in Illinois Commerce Com'n v. United States, 779 F.2d 1270 (7th Cir. 1985). Upon remand, the former ICC recognized its error in adopting "use" as too expansive in determining "line of railroad." If applied literally, the Board would never find a track to be excepted. CNW--Aband. Exemp.--in McHenry County, IL, 3 I.C.C.2d 366, 368 (1987).

Moreover, BTC is not shown to be the "owner" of the trackage, but is itself a lessee; it will sublease the trackage to BMRC. The situation is unlike Conrail's operation over a short spur at Effingham, IL.

^{9/} Chevron U.S.A. v. Natural Res. Def. Council, 467 U.S. 837 (1984).

Finally, it should be emphasized that the shipper-carrier relationship here is not arms-length, but is contrived where a single entity is setting up a device to become an exclusive shipper and an exclusive carrier. There is nothing "common" or for the "public" in such a relationship, unlike the situations cited by BMRC.

The rule for the Board proposed by BMRC is bold and breathtaking. Any shipper/receiver (or motor carrier) situated on excepted trackage automatically could convert to common carrier rail status as serving a "line of railroad." There is no such automatic enfranchisement for a rail carrier. The real impact would be to deprive many hundreds, perhaps thousands, of railroad employees from their employment with existing rail carriers, such as UP. The proposition would be equivalent--if not to exceed--the displacement of employees brought about under the guidance of the ICC headed by Chairperson Gradison through the non-carrier acquisition class exemption. The gimmick here would be to turn a "spur" track into a "line of railroad." The Board should turn this proposition down.

The two BMRC notices should be rejected. The Board is not authorized to approve or exempt acquisitions or operations of excepted trackage under 49 U.S.C. 10901. This is by virtue of 49 U.S.C. 10906. The class exemption employed BMRC is limited to transactions (not including construction) otherwise subject to 49 U.S.C. 10901, which is not present here. Class Exemption--Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985).

If the two notices are not rejected as outside § 10901, because the transaction involves excepted trackage under § 10906,

then application of the class exemption should be revoked, and the transactions made subject to a petition for exemption or an application. The Chairman in her December 27, 2001 decision denying a stay indicated a view that whether track is excepted under § 10906 is a complex fact bound issue. Although UTU-IL disagrees with any notion that the instant situation is complex,^{10/} if the matter is complicated it should not be resolved under the class exemption, but made subject to an application or individual exemption petition.

II. THE EXEMPTIONS SHOULD BE REVOKED
AS NECESSARY TO CARRY OUT THE
RAIL TRANSPORTATION POLICY.

The two exemptions should be revoked to carry out the rail transportation policy. 49 U.S.C. 10101. See: 49 U.S.C. 10502(d).

The creation of a rail carrier, wholly owned by an affiliated shipper, to perform services solely for the single shipper, in a single yard setting, has created great and many controversies over the years. The policy of the former ICC was to deny carrier status for such plant-owned carriers. Considerable preference was accorded shippers who were able to establish carrier status for their plant operations. The preferences involved division of rates for the bogus carriers, favored treatment for car-hire and demurrage, among other evils.

The ICC's absolute prohibition of the very type of arrangement at issue here was modified as a result of a Supreme Court

^{10/} BMRC does not claim the matter is complex, but rather one of law--seizing upon an unreported adjudication involving a very different factual situation.

decision. Industrial Railways Case, 29 I.C.C. 212 (1913), Tap Line Cases, 234 U.S. 1 (1914). However, the line-haul carriers (such as UP) were not required to accede to such arrangements, and agency policy was to discourage them. Industrial Railways Case, 32 I.C.C. 129 (1914); Second Industrial Railways Case, 34 I.C.C. 596 (1915). For a general overview, see: I.L. Sharfman, The Interstate Commerce Commission, Vol. 2, Industrial Railroads, at pp. 142-75 (1931). There were numerous proceedings undertaken by the former ICC, involving hundreds of "carriers," with the aim of ending the abuses created by plant "carriers."

Here, there is no showing in the BMRC notices that BMRC has any intent to solicit or to handle traffic other than for BTC. BMRC is not a true common carrier, and its entire operation is projected to be on trackage leased from BTC, and involves trackage ordinarily classified as excepted, and located in a single yard.

The Rail Transportation Policy (RTP) requires that such arrangements be subject to regulation under the "public convenience and necessity" standard. Subjects of concern include safety, for there is no showing that BMRC personnel can meet the Federal Railroad Administration safety standards, which now including licensing for locomotive engineers. § 10101(3).

It would be unsound and inefficient transportation, and contrary to competitive policy, to inject an additional carrier in the routing of traffic to and from the Bulkomatic Distribution Center trackage leased to BTC and subleased to BMRC, which also would involve additional record-keeping and confusion. § 10101(4)-(5), (9). See: Verified Statement of Dennis G. Martz, Appendix 2 at p. 4.

Employee interests require regulation in this instance. The RTP is directed to fair wages and safe and suitable working conditions. § 10101(11). Safety of UP employees is involved along with the safety concerns of § 10101(3).

III. THE BOARD SHOULD STAY THE
OPERATION EXEMPTION PENDING
OUTCOME OF THESE PROCEEDINGS.

The Board should stay the exemption permitting BMRC operation of the trackage (Finance Docket No. 34179) pending disposition of this petition to reject/revoke.

1. Merits. UTU-IL has a strong likelihood it will prevail on the merits; in particular, that the Board is not authorized to exempt the transaction under 49 U.S.C. 10901, as the trackage is excepted under 49 U.S.C. 10906. These arguments are set forth in this petition.

However, even if the Board has authority to exempt the transaction, the matter of establishing a separate rail carrier involves issues that traditionally have required an investigation by the agency, or its predecessor. The provisions of the RTP suggest close examination of this arrangement at Chicago Heights, IL. A single entity (BTC) proposes to establish a "rail carrier" (BMRC) which would only handle BTC business, and only operate over excepted tracks leased by BTC.

The transaction is not a typical "short line" spin-off, or a bona fide non-carrier acquisition/operation of a rail carrier's "line of railroad." Instead, this transaction is akin to the

notorious "industrial railroad" controversy that plagued the former ICC.

UTU-IL expects to prevail, such that the exemption will be revoked, requiring an individual petition for exemption under 49 U.S.C. 10502, or the filing of an application under 49 U.S.C. 10901.

2. No Injury to BTC/BMRC. There will be no injury to BTC or to BMRC if a stay is granted. BTC can continue to operate its locomotive on BTC's tracks within the Bulkmatic Distribution Center. There are hundreds of plant railroads which do not have Board certification as a franchised regulated carrier.

3. No Injury to UP. There will be no injury to UP if a stay is granted. Indeed, line-haul carriers traditionally have not favored the establishment of industrial rail carriers, and UTU-IL has no reason to believe this policy is any different at Chicago Heights, IL.

4. Injury to UP Employees. UP employees will suffer irreparable injury without a stay of the operation exemption. The verified statement of Dennis G. Martz shows the loss of 6 jobs, with 60 others standing to be adversely affected. Moreover, damages cannot be secured for the lost wages or lost jobs, even if UTU-IL ultimately prevails on the merits. Thus the injury would be irreparable. Of course, there cannot be adequate recompense for damage sustained to the employee quality of life during any period prior to restoration of the status quo. (Appendix 2, pp. 3-4).

It is doubtful that damages could be secured from UP, the employer of UTU-represented employees, for interim employee losses, inasmuch as UP is not a party to the transaction and would

not be the cause of employee injury; indeed, UP may itself suffer if a stay is not granted. We are aware that the Board's Chairman in another proceeding has suggested that the Board has power to award reparations to displaced employees if a line acquisition is subsequently revoked. Finance Docket No. 33960, The Central Illinois Railroad Company--Lease and Operation Exemption-Lines of The Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL, decisions served November 22 and November 30, 2000. The liability of BMRC for damages to UP employees is doubtful, particularly inasmuch as BMRC would not be a carrier subject to Board regulation, apart from the legal difficulty for any employee relief. See: Railway Labor Executives Ass'n v. Atchison, T. & S.F. Ry. Co., 430 F.2d 994 (9th Cir. 1970), cert. den. 400 U.S. 1021.

A stay is necessary to prevent irreparable injury to railroad employees.

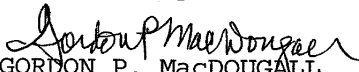
5. Public Interest. The public interest strongly suggests a stay. The conversion of a plant or yard rail operation into a franchised rail carrier, operating solely on excepted trackage for a single entity, is contrary to sound transportation policy, and creates obvious disparities among competitive entities. This is not the typical spin-off of a non-carrier from an existing carrier, for which the non-carrier class exemption was designed. Rather, this is an attempted reincarnation of the roundly condemned industrial railroad ploy, with obvious impacts on rate divisions, car-hire reclaims, demurrage, etc. and other improper favoritism.

CONCLUSION

The Board should reject the two notices of exemption and/or should revoke the exemptions.

The Board should stay the exemption in Finance docket No. 34179, pending disposition of the rejection/revocation proceedings.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
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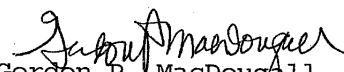
March 4, 2002

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon David C. Dillon, and Thomas F. McFarland, by overnight express mail, with telephone notification and offer of facsimile transmission, this 4th day of March, 2002.

Washington DC


Gordon P. MacDougall

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Quality Driven

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About Bulkmatic

Established in 1965, Bulkmatic Transport Company is now one of the fastest growing common carriers in

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the country.

Bulkmatic has a full range of specialized equipment, including the most advanced liquid, dry, and self-loading vacuum units. We don't compromise in providing you with the precise equipment for your needs.



Bulkmatic is a lifesaver. When it's an emergency, when your shipment encounters an unexpected problem or delay, when you need a transport company with the experience and equipment to get the shipment moving again, call Bulkmatic.

Bulkmatic now:

- Is one of the top 100 common carriers in the U.S.
- Is the fifth largest bulk carrier in the U.S.
- Is the largest dry bulk carrier in the U.S.
 - We are the largest plastic carrier -- over 60,000 loads per year.
 - We are the largest flour carrier -- over 20 million lbs. per day.

Our operations include:

- All 48 continuous states, Canada, Mexico and Europe
- 52 terminals in 17 states
- 25 tank washes
- 52 rail-to-truck transloading operations in the U.S. and

Mexico

- 5 warehouses for converting bulk to bags, gaylords, and supersacks
- A 105 truck liquid edible division
- A 102 truck liquid chemical division

APPENDIX 1

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Our recent achievements include:

- *Logistic Magazine's* "Quest for Quality" award in 1995, 1997, 1998, 1999, 2000 and 2001
- Solvay Polymer's "Supplier of the Year" award

Our recent innovations include:

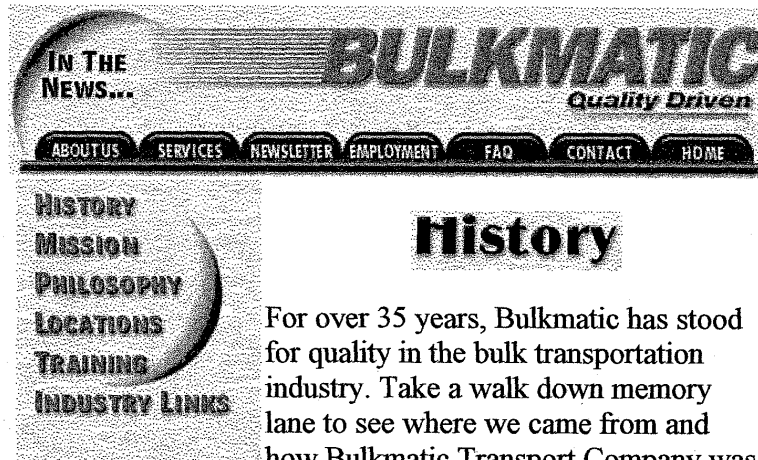
- Tip chassis
- Transloading facility management software
- Rail car management / leasing
- 2 bar (high pressure) technology
- Remote silo inventory management
- Rail fleet reduction through container storage
- Satellite tracking
- European bulk logistics

Currently Bulkmatic employs more than 1,200 people, including 800 well-trained, courteous drivers, all of whom have made a commitment to provide our customers with 100% on-time, contaminate-free deliveries... followed by efficient and accurate billing.

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Bulkmatic Transport Company

2001 North Cline Avenue • Griffith, Indiana 46319
Phone 219-972-7630 • Fax 219-972-7655



built.

- 1965 Bulkmatic is founded.
- 1969 Hire Spray-Away to clean trailers
- 1970 Present management takes control of Bulkmatic
- 1979 Buy W. W. Young's warehouse operations in Chicago, Illinois.
- Start CS Transport - Winston-Salem, North Carolina
- 1981 Buy Harmon Trucking - Saginaw, Michigan
Start liquid chemical division
- 1983 Buy Tri-City Tank Wash - Louisville, Kentucky
- 1986 Buy Satellite Transport - Flora, Indiana
Buy Miltrack Trucking - Teutopolis, Illinois
- Start Bay Bulk Transport - Tampa, Florida
- 1987 Buy Feather Trucking - Altoona, Pennsylvania
Buy Bellochio Trucking - Chicago, Illinois
- Sell Tri-City Tank Wash
- 1988 Buy Smith's Truck Lines - Muncy, Pennsylvania
Buy Dunes Transport - Chicago, Illinois
- 1989 Adopt Quality Process
New motto - "Quality Driven"

1990 Move headquarters to Griffith, Indiana

Buy Best Transport's plastic division -
Chicago, Illinois

1991 Start liquid sweetener division - Chicago,
Illinois
Start Bulkmatic University

1995 Buy Dyna-Bulk - Illinois/Michigan/Ohio

1996 Began Mexican alliance with Transportez
Lopez

1997 Buy Metroplex - Ft. Worth, Texas

Buy Bulk Distribution - Alanta, GA

1998 Buy Intermodal Distribution - North
Bergen, NJ

1999 Begin Mexico joint venture with GATX
Begin Europe joint venture with DB Cargo
and Bertschi
Buy Butler & Co. - Alabama/Georgia

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In The News

Bulkmatic Fuel Surcharge: 0%*

**Effective Feb 17, 2002 thru Feb 23, 2002*

Heightened Security Concerns

In the post 9/11 world, Bulkmatic and our customers face many security concerns and exposures between trans-loading and bulk deliveries. At this point we do not know the definition of "reasonable care", however we do know:

1. We will never completely eliminate our exposure to a terrorist act,
2. Terrorists are likely to hit the easiest target, and
3. There are things we can do to deter terrorists from our cargo.

The trucking industry is working with the government to develop a plan, and we are on that task force.

Basically, Bulkmatic's goal is to become the carrier of "least choice" for the terrorists. This is not something we can do alone. We need your help and input. While we do not know what will evolve, we do have one request: help us standardize the response. Right now, we all are designing our individual security practices. Please keep an open mind to alternative solutions as we seek to develop a common response that will be more universally accepted and effective. None of us can be all things to all people, but if we can work together we should

Bulkmatic's Improved Billing

We are driving to improve accuracy and become more efficient. One opportunity for improvement seems to lie in our billing process. We are taking steps to centralize our billing and introduce document imaging. This, combined with our new software system of last summer, should dramatically reduce billing errors. In addition, we are considering eliminating the delivery receipt, which seems to add no value to the customer. We are aiming for a start up of these improvements by April 1, 2002.

New NSRR Transfer Site

We are pleased to announce the opening of a new rail to truck transfer facility in Chicago (God's Country). Our new TBT site has great access – at the intersection of 103rd and the Dan Ryan. It is fenced, lit and paved. Better yet it is adjacent to the NS's rail yard; so the switching service is terrific. If you need some rail to truck transfer work done in Chicago, give us a call. You will be pleased with our service.

Philadelphia Terminal Moving

Our new home in Philadelphia is a 60+ car rail yard (completely paved with a scenic view of Naval battleships). It is serviced by the

come up with a solution which is both feasible and sensible.

Mexico is Doing Great!

Folks, we are very proud to report that Bulkmatic de Mexico is doing well and growing rapidly. Most of the credit goes to General Manager Francisco "Paco" Soto and Alejandro "Alex" Doria in Mexico City. They have pulled off the very difficult feat of growing while improving service quality and accounts receivable. Yes, accounts receivable problems seem to be an international phenomena – not just isolated to the U.S.A. In addition, our partner, Transportes Lopez e Hijos has done a terrific job of handling the growth while focusing on improved quality. If you have any business into or out of Mexico that we can handle please give us a try. We have operations based in Monterrey, Altamira, Mexico City, Guadalajara, Leon, Queretaro and Torreon. As you can imagine, we depend on first-rate service from the railroads in Mexico. The TFM, Ferro Mex, Ferro Sur and TFVM railroads have greatly added to our service quality.

Canadian Pacific Railroad and operated by Bulkmatic. So if anyone out there is looking to ship into Philly, give us a call. We are currently handling dry products loading with vac trailers and we have a conveyor, if you bring it we will transfer it! Please call Karl Watkins @ 215-989-7263.

APPENDIX 1
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Bulkmatic Transport Company
2001 North Cline Avenue • Griffith, Indiana 46319

F.D. No. 34179

VERIFIED STATEMENT
OF DENNIS G. MARTZ

My name is Dennis G. Martz. I am a Yard Foreman (and some times Switchman) employed by Union Pacific Railroad Company (UP) in its Chicago Terminal Complex, primarily on trackage comprising the former Chicago & Eastern Illinois Railroad Company (C&EI), and its non-operating affiliate, the former Chicago Heights Terminal Transfer Railroad Company (CHTT). My seniority dates from April 1969, when I was first employed by C&EI, and has continued with its successors Missouri Pacific Railroad Company (MP), and now UP.

I am a member of the United Transportation Union (UTU), which represents yard foremen and switchmen, and serve as its General Chairman for former C&EI operations.

I have read the notice of exemption in Finance Docket No. 34179, filed February 27, 2002 with the Surface Transportation Board (STB or Board), by Bulkmatic Railroad Corporation (BMRC).

I am fully familiar with the railroad operations at the Bulkmatic Distribution Center, situated at Chicago Heights, IL, where Bulkmatic Transportation Company (BTC) leases certain trackage and, in turn, has subleased the trackage to BMRC. I submitted a verified statement, dated December 26, 2001, in Finance Docket No. 34145, Bulkmatic Railroad Corporation--Acquisition Exemption--Bulkmatic Transport Company, in opposition to the sublease from BTC, a motor carrier, to what I understand is the newly-formed BMRC, with no prior rail carrier authority. The BTC trackage formerly was utilized by Marias Industries.

I serve as the foreman for the UP crew that switches the BTC facilities with loaded and empty cars. My most recent tour of duty for UP at the BTC trackage was conducted on Friday, March 1, 2002.

The tracks listed on Appendix 1-A of the current notice (Finance Docket No. 34179), i.e., Nos. 73 thru 88, are regularly worked by UP crews. Actually, these tracks are denominated Nos. 873 thru 888, and we receive our instructions from BTC and from UP, by these 800-series numbers.

The total length of the existing yard trackage, to be sub-leased to BMRC and operated by BMRC, listed on Appendix 1-A, is 3.9 miles, as stated. However, this trackage is not "line of railroad" or "main track" by any stretch of the imagination. There are no stations on the leased trackage. The tracks are of light rail, as are commonly found in yards and sidings. There are no mileposts or communication systems. These tracks are spur, switching, industrial, side-tracks, and team tracks.

UP crews exclusively serve the BTC trackage. A three-man yard engine crew (foreman, switchman, and engineer) performs the switching. The locomotive employed is of low power, usually between 1300 and 1600 HP. The Elgin, Joliet & Eastern Railway Company (EJ&E) delivers and receives cars at certain tracks, but the spotting and pulling of cars from the BTC facilities is performed solely by UP crews.

BTC in the past has maintained a small Pettibone vehicle which plant personnel have utilized as a trackmobile to move rail cars between various locations (different warehouse positions or from a siding) when the UP crew is unavailable. However, on or

about February 10, 2002, a 1200 HP locomotive unit, with "Bulkmatic" displayed, has performed this function.

The elimination of UP work at the BTC facilities would adversely affect UP employment at the yard. Present service is provided six days per week with deliveries to the yard, and cars are normally pulled three time per week. The substitution of BMRC for UP crews in servicing BTC would result in the loss of two crew assignments (six persons). The exercise of seniority by job displacement would adversely affect approximately 40 other switchmen, and 20 engineers. Moreover, I fear that once BMRC becomes a franchised rail carrier, it would be in a position as a rail carrier to provide service over UP and other carrier tracks, by means of trackage rights or leases, to and from industries situated outside the Bulkmatic Distribution Center, thus creating further job losses and adverse impacts.

I note that the current BMRC notice (Finance Docket No. 34179) at page 3, footnote 1, states that BMRC may contract with Chicago Heights Switching Company (CHSS) for the latter to provide rail switching service as an agent of BMRC. From my contacts with other railroad people in the Chicago area, I am told that crews employed by Central Illinois Railroad Company (CIRY), an affiliate of CHSS, have been advised of rail developments at the Bulkmatic Distribution Center. The utilization of CHSS as a "contract carrier" or "agent" for BMRC to my mind underscores the bogus nature of the BMRC proposed acquisition and operation.

If the proposed transfer of work from UP to BMRC or to CHSS should be permitted, and the Board at a later date should reject

the notice of exemption, or revoke the exemption, I know of no way under our UTU-UP collective bargaining agreements where UP employees whom I represent could have claims satisfied for monetary damages incurred during the period of BMRC or CHSS operations. Moreover, there can be no monetary compensation for the reduced quality of life during the interim period.

Finally, it would be inefficient for BMRC to be franchised, with an additional carrier thus added to the routing, along with an additional interchange, record-keeping, and operational problems.

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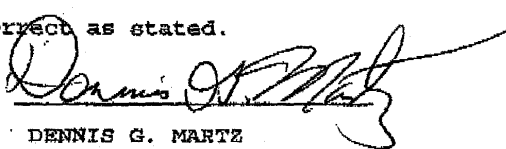
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APPENDIX 2
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VERIFICATION

STATE OF ILLINOIS)
COUNTY OF COOK)

Under the penalties of perjury, I affirm that the foregoing
verified statement is true and correct as stated.


DENNIS G. MARTZ

Dated at
Chicago Heights, IL
March 2, 2002

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