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March 5, 2002

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Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of the Secretary

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Public Record

204905
Re: Finance Docket No. 34145, *Bulkmatic Railroad Corporation -- Acquisition Exemption -- Bulkmatic Transport Company*
and
Finance Docket No. 34179, *Bulkmatic Railroad Corporation -- Operation Exemption -- Rail Line of Bulkmatic Transport Company at Chicago Heights, IL* 204906

Dear Mr. Williams:

This responds to the stay aspect of a Petition to Reject and/or to Revoke and for Stay of Exemption, filed in behalf of Joseph C. Szabo on March 4, 2002.^{1/} The proposed exemption is scheduled to become effective at 12:01 a.m., Wednesday, March 6, 2002.

The issues regarding stay of the proposed exemption here are virtually identical to those involved in conjunction with Mr. Szabo's requested stay in Finance Docket No. 34145, *Bulkmatic Railroad Corporation -- Acquisition Exemption -- Bulkmatic Transport Company*, and embraced cases. In fact, the operation exemption involved in Finance Docket No. 34179 was sought only out of an abundance of caution. An exemption for Bulkmatic Railroad Corporation to operate the involved trackage was inherent in the exemption in Finance Docket No. 34145 for that company to acquire that trackage. Consequently, the exemption for the operation proposed here has already been received by virtue of the acquisition exemption issued in Finance Docket No. 34145.

^{1/} Applicant will reply to the rejection and revocation aspects of Mr. Szabo's Petition within the 20-day period of 49 C.F.R. § 1104.13(a) allowed for such replies.

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The stay requested here should be denied for the same reasons that the stay requested in Finance Docket No. 34145, et al. was denied in a decision served December 27, 2001. The proposed operation falls squarely within the Board's authority under 49 U.S.C. § 10901 pursuant to the tenant-use test as applied in a decision on reconsideration in *Effingham Railroad Company -- Petition for Declaratory Order -- Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253 at 8-9, decision served Sept. 18, 1998, *aff'd sub nom. United Transp. Union v. Surface Transp. Bd.*, 183 F.3d 606, 614 (7th Cir. 1999). Petitioner has failed to effectively distinguish that decision from the proposed transaction.

In addition, the absence of irreparable injury requires denial of a stay. As found in the decision served December 27, 2001, *supra*, and in *The Central Illinois Railroad Company -- Lease and Operation Exemption -- Lines of The Burlington Northern and Santa Fe Railway Company at Chicago, IL*, STB Finance Docket No. 33960, decision served Nov. 22, 2000 (not printed) at 3-4, the harm alleged by the Petitioner is not irreparable because affected employees could seek damages for lost wages if Petitioner were to prevail in a petition to revoke the exemption.

WHEREFORE, the requested stay should be denied.

Respectfully submitted,

David C. Dillon

DAVID C. DILLON

Attorney for Bulkmatic Railroad Corporation