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UPS Next Day Air

July 12, 2004

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1519

211 555



Re: Finance Docket No. 34502

Dear Secretary Williams:

Please find enclosed the original and 10 copies of United Transportation Union's comments for filing in the above-captioned matter. In accordance with prior Board requirements, we have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

cc: C. J. Miller, III, General Counsel

ENTERED
Office of Proceedings

JUL 13 2004

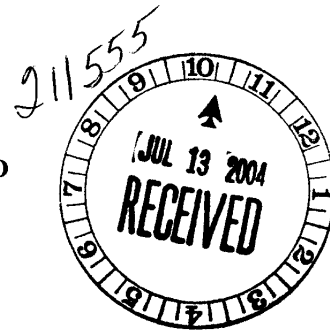
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34502

AMERICAN ORIENT EXPRESS RAILWAY COMPANY LLC
PETITION FOR DECLARATORY ORDER

UNITED TRANSPORTATION UNION'S COMMENTS



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Office of Proceedings

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Public Record

United Transportation Union ("UTU") respectfully submits its comments in this proceeding pursuant to the Board's Order herein. UTU supports the position that American Orient Express Railway Company LLC ("AOERC") is a common carrier by rail subject to the Board's jurisdiction.

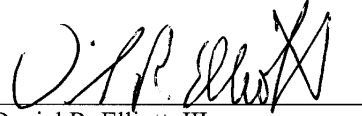
Under 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction over transportation by rail carriers. The term "rail carrier" is defined as "a person providing common carrier railroad transportation for compensation" under 49 U.S.C. § 10102(5). AOERC asserts that it does not meet the definition of a "railroad" under 49 U.S.C. § 10102(6) because it does not own or operate any of the listed equipment; it does not own or operate any road or railroad right-of-way; and it does not own or operate any of the listed facilities or equipment. AOERC maintains that it cannot be considered a "rail carrier" subject to the Board's jurisdiction because it does not meet the definition of a "railroad."

However, AOERC's reasoning is flawed as correctly determined by the Railroad Retirement Board – appointed Hearing Examiner in his May 13, 2003 report, which found AOERC to be a common carrier by railroad. UTU will not repeat these findings but rather adopts and incorporates by reference the report as support of this position that AOERC is a common carrier by rail.

Since the Board clearly has jurisdiction over rail passenger service as unambiguously

provided in 49 U.S.C. § 10501, UTU urges the Board to reject the Petition here by declaring AOERC
a common carrier by rail.

Respectfully submitted,

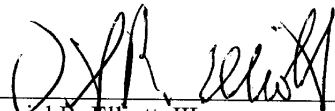
A handwritten signature in black ink, appearing to read "D. R. Elliott, III", written over a horizontal line.

Daniel R. Elliott, III
Associate General Counsel
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Cleveland, Ohio 44107
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Comments has been served this 12th day of July, 2004 via first-class, postage pre-paid mail upon the following:

Robert Bergen
Holland & Knight, LLP
195 Broadway
New York, NY 10007



Daniel R. Elliott, III