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Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. FD-34502

AMERICAN ORIENT EXPRESS RAILWAY COMPANY
PETITION FOR DECLARATORY ORDER



OPPOSITION TO MOTION TO STRIKE

ENTERED
Office of Proceedings

AUG 20 2004

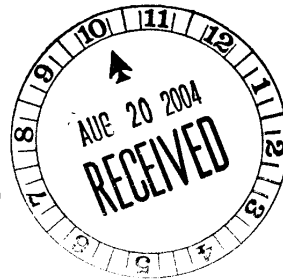
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Attorneys for
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Dated: August 19, 2004

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. FD-34502

AMERICAN ORIENT EXPRESS RAILWAY COMPANY
PETITION FOR DECLARATORY ORDER

OPPOSITION TO MOTION TO STRIKE

This submission is made in opposition to a motion to strike a letter dated August 9, 2004 and submitted by Petitioner American Orient Express Railway Company LLC ("AOERC") to the Surface Transportation Board (the "Board") in connection with this proceeding. The motion, dated August 12, 2004, was filed with the STB by Gordon P. MacDougall on behalf of the United Transportation Union-General Committee of Adjustment, GO-386 ("UTU").

The order instituting this proceeding was made in response to a petition by Petitioner seeking such relief. The order provided that all comments were to be submitted to the Board by July 13, 2004.

Inasmuch as Petitioner had petitioned for this proceeding and, in connection with its petition, had submitted the relevant facts, records and its position, it did not submit further comments to the Board on or before July 13, 2004. As of that

date, there were no further comments or positions of record as to which Petitioner could make comments.

The Board received comments from a number of sources in response to its order initiating this proceeding. Petitioner believed that some of those comments required that a reply be made to clarify the facts and the law as to certain limited matters. Consequently, on behalf of Petitioner, I submitted a letter to the Board dated August 9, 2004 submitting those comments and asking that the Board exercise its discretion and consider them.

Granting a person in Petitioner's situation the opportunity to submit a reply to an adverse pleading is commonplace in United States jurisprudence and in administrative proceedings. The Board's own rules typically permit replies in adversarial matters. 49 CFR §1104.13. While it is true that the Board's order by which this proceeding was instituted did not provide for replies to comments, because certain of the comments submitted were adversarial and, in any event, were erroneous or misleading and required correction, Petitioner has requested that the Board consider its brief reply letter of August 9, 2004.

The reasons underlying Petitioner's request that the Board consider its reply are precisely why it is commonplace that, at least in adversarial proceedings, a person in Petitioner's situation is entitled to reply to an answer. An answer may be wrong, misleading and incomplete, as were some of the comments received here by the Board, and a person in Petitioner's situation is normally allowed the chance to

correct the record through a reply. The Board should grant Petitioner's request to consider Petitioner's reply and should deny UTU's motion to strike.

Just as it is typical in judicial and administrative proceedings for replies to be permitted to responsive pleadings, it is equally typical that sur-replies are disallowed. The Board's own rules prohibit a "reply to a reply. . ." 49 CFR §1104.13(c). For this reason, so much of the UTU's motion that seeks leave to reply to Petitioner's reply should be denied.

Dated: New York, New York
August 19, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Bergen", with a stylized flourish extending to the right.

Robert Bergen
HOLLAND & KNIGHT LLP.
Attorneys for Petitioner AOERC

Certificate of Service

I hereby certify I have served a copy of the foregoing by first class mail postage-prepaid upon the following:

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Robert Bergen