

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD CO.
--Lease--
CSX TRANSPORTATION, INC.

**REQUEST OF THE
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
FOR ORAL ARGUMENT**

In its Decision No. 2 in this proceeding the Board indicated that it might hold a hearing or argument in this case during the week of October 4, 2004. To date the Board has not published notice of its intentions in this regard. After reviewing the Response of Buckingham Branch RR Co. and CSX Transportation, received by counsel for the Brotherhood of Maintenance of Way Employees ("BMWE") yesterday September 28, 2004, BMWE respectfully requests the Board hear oral argument in this case.

BMWE respectfully submits that after review of BMWE's Comments and the CSXT/BB response, oral argument would be helpful to the Board in this case to help it address several issues, including:

- 1) consideration of the National Rail Transportation Policies in Section 11324(d) transactions, particularly in light of the recent Supreme Court and appellate decisions in *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Kulmer v. STB*, 236 F. 3d 1255 (10th Cir. 2001); and *Redmond-Issaquah Railroad Preservation Ass'n. v. STB*, 223 F. 3d 1057 (9th Cir. 2000) that are cited in BMWE's Comments (at 17-18);
- 2) the inconsistency between CSXT's description of the condition of the line and the

description of the line provided by BMW declarants Brassell and Griffith, as well as in the Federal Railroad Administration reports cited by BMW;

3) the definition of a lease for purposes of Sections 11323 and 11324, particularly in the context of the proposed transaction. Applicants have broken-down BMW's argument into separate factors—duration, retention of trackage rights (156,000 empty cars and 7900 carloads), proportion of use of the line by the alleged lessor (11,700 carloads for BB [7200 non-CSXT carloads] versus 7900 for CSXT), the lease terms (such as the 10 year termination provision and the comparison of \$2 million per year payments from CSXT to BB and the \$140,000 per year in rent). However, BMW's arguments are premised on the combination of factors;

4) the significance of BB' announcement of a new "Maintenance-Of-Way Plan", including the new claim that there would be 12 maintenance of way employees rather than the 8 indicated in the application

5) the legitimacy of the transaction as a lease given applicants' reliance on its form and the precedent they have cited, and BMW's reliance on the facts and precedent it has cited.

For the foregoing reasons, BMW requests that the Board hear oral argument in this case.

Respectfully submitted,

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Dated: September 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused copies of the foregoing to be served by First Class Mail on all parties of record indicated on the attached service list and also by facsimile transmission to representatives of applicants and parties that submitted comments.

Date

Richard S. Edelman