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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 659

PUBLIC PARTICIPATION IN CLASS EXEMPTION PROCEEDINGS

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COMMENTS

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Due Date: May 15, 2006

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COMMENTS

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits these comments in response to Notice of Proposed Rulemaking (NPRM), served March 10, 2006. 71 Fed. Reg. 13563-65 (Mar. 16, 2006).

The NPRM proposes to extend the time period between filing a notice of exemption, and the effective date of the exemption, for 10 class exemptions, and 2 other class exemptions dealing with acquisitions creating Class I or Class II carriers. In general, a minimum of 30 days would elapse after filing before the exemption could become effective; however, Federal Register publication of the notice would be a lesser 16 days after filing.

UTU/GO-386 has participated in a number of proceedings involving exercise of the class exemptions, particularly those in the NPRM indicated by (1), (2), (4), (9), (10), and the two class exemptions dealing with the creation of Class I or Class II carriers.

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660.

1. UTU/GO-386 supports extension of the present 7-day notice provisions of the 10 class exemptions, in favor of the proposed enlarged 30-day period; and UTU/GO-386 supports the proposed Federal Register publication within 16 days from the filing of the notice of exemption. The present 7-day period is inadequate, as is publication of the notice 30 days thereafter, both usually occurring after consummation of the transaction.^{2/} The present process frequently prevents timely knowledge of the filing, or the contents of the notice, or an orderly evaluation of whether to submit a stay request and/or petition to revoke, prior to consummation. Moreover, even after acquiring knowledge that a notice has been filed, and although the notice may be posted 1-2 days after filing on the Board's website, the precise nature of the transaction may not be apparent from the website due to color-coding of maps and graphs, which often are not legible for analysis.

2. Railroad employees frequently learn about the exemption notices only after they have become effective at the end of the 7-day period. Moreover, apart from instituting or participating in an agency proceeding, railroad employees also need greater advance notice in order to take steps to rearrange their lives and those of family members. Frequently, changes involve relocation, and a family may have more than one person gainfully employed, either by a railroad or another employer in the area. Although certain transactions governed by a class exemption may include a 20-day or 90-day notice by applicable employee protective condi-

^{2/} Trackage rights are governed by an earlier 20-day publication requirement.

tions, such is not always the case, particularly for transactions exempted from 49 U.S.C. §10901, 10902.

3. The proposed stay provisions are necessary and are long overdue. Under the present 7-day notice practice,^{3/} stay procedures are not specifically mentioned, and when sought are often very hurried and stressful for all parties, as well as for agency staff, frequently leading to manifest error in numerous situations. Provision for stay petitions until 7 days prior to expiration of the 30-day notice should relieve this situation.

4. Extension of the notice periods, and provision for stay procedures, will not succeed without proper administration by the Board and its staff. We believe the purpose to be not only to ensure more time for agency staff processing, but also additional time for the public to evaluate the proposed transaction and/or prepare for any stay or revocation petitions.^{4/} For example, the filing of an exemption notice if not immediately made public by the Board through its public reference room and website, could defeat the purpose of the new time frames, even though Federal Register publication is made 16 days after filing. Should the Board keep confidential, or delay, public release of the exemption filing until 16 days after filing, then the 7-day period, in effect, would be reinstated for the public insofar as seeking a

^{3/} As indicated in the NRPM, procedures involving creation of new Class I or Class II carriers presently provide for stay petitions.

^{4/} The NPRM is not exactly clear on this point, but recognizes the Board's need to process notices of exemption and petitions for stay in a timely fashion; however, the NPRM, insofar as the public is concerned, appears to limit its purpose to ensuring the public is given notice before an exemption becomes effective. (NPRM 1, 1-2).

stay of the transaction.5/

Respectfully submitted,



Attorney for John D. Fitzgerald

May 15, 2006

5/ Our concern with secrecy is not unfounded. The Board withholds even non-confidential filings from public access for considerable periods in situations preceding public hearings, which serves to limit more effective advocacy. The most recent example is Ex Parte No. 661, Rail Fuel Surcharges. Similar situations, involving the Board's website, even in non-hearing proceedings, have occurred.