

BEFORE THE
SURFACE TRANSPORTATION BOARD

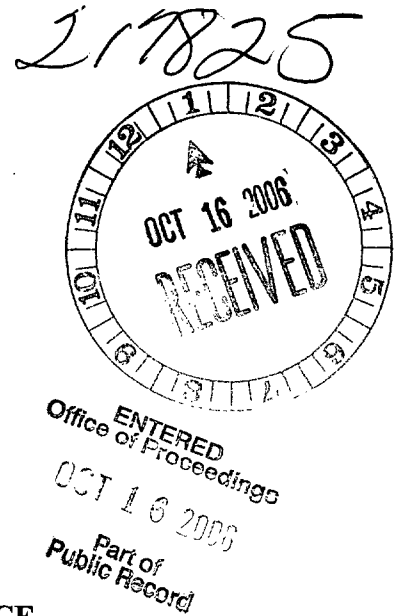
Finance Docket No. 34914

DESERTXPRESS ENTERPRISES, LLC-
PETITION FOR DECLARATORY ORDER

COMMENTS OF THE IBT RAIL CONFERENCE

Pursuant to the Board's decision served on August 31, 2006, the International Brotherhood of Teamsters Rail Conference and its affiliated organizations, the Brotherhood of Locomotive Engineers and Trainmen Division/IBT, and the Brotherhood of Maintenance of Way Employees Division/IBT, ("Rail Conference") submit these comments in response to the Board's institution of a declaratory order proceeding and request for comments.

BMWED represents the workers who perform work on the track, right of way and related structures and buildings of the major railroads, and most other railroads. BLET represents engineers and trainmen who work on the major railroads and most other railroads. Both organizations are affiliated with the Rail Conference. BLET and BMWED represent their members for purposes of collective bargaining, and represent their interests before Congress and administrative agencies. Both organizations seek to protect the work of their crafts, secure adequate compensation and benefits and safe and healthy working conditions for their members, preserve and expand statutory and regulatory protections for rail workers and to extend the benefits of union representation to currently unrepresented employees. The Rail Conference and



its affiliates have a strong interest in ensuring that rail transactions are properly classified under the Interstate Commerce Act, or ICC Termination Act (“ICA”) and that entities that are involved in railroad operations are properly classified as rail carriers under the ICA and other statutes that cover rail carriers or utilize the ICA definition of rail carrier.

The Rail Conference supports the petition filed by DesertXpress because, as the planned operations are described, DesertXpress will be a rail carrier under the ICA.

The Board generally has jurisdiction over transportation by rail carrier over a line of railroad between two States. 49 U.S.C. §10501(a). As DesertXpress notes, the ICA defines “rail carrier” as an entity that provides common carrier railroad transportation for compensation; “railroad” as including a road used by a rail carrier as well as track, bridges, switches, spurs, terminals, and yards used or necessary for transportation; and “transportation” as including locomotives, cars and equipment related to movement of passengers or property by rail, as well as services related to that movement. 49 U.S.C. §10102. Furthermore, a person may construct or extend a rail line, provide transportation by rail or acquire a railroad only pursuant to Board authorization. 49 U.S.C. §10901.

As described by the Petition, DesertXpress will construct rail lines and related structures and facilities for new railroad operations to provide transportation for compensation by rail between points in two States: California and Nevada. This work and the planned operations plainly describe a rail carrier under the ICA. Furthermore, it is clear that DesertXpress will require STB authorization for construction of the line and authorization to operate the new line. Indeed, DesertXpress states that it will seek such authority. Accordingly, DesertXpress will be a rail carrier subject to the jurisdiction of the STB and implementation of its plans will require

STB authorization.

In its Petition, DesertXpress seeks a declaration that its project is not subject to State and local environmental, land use and other permitting regulation; and that such regulation is preempted pursuant to ICA Sections 10501 and 10901. Of course, as set forth in the Petition, such preemption is dependent on DesertXpress' status as a rail carrier. Based on the facts presented, DesertXpress will be a rail carrier and the preemption declaration will be appropriate, but that declaration will necessarily be dependent on DesertXpress' rail carrier status.

The Rail Conference respectfully submits that the Board should grant the declaration sought by DesertXpress. While DesertXpress' status as a rail carrier will be implicit in the declaration DesertXpress seeks, the Rail Conference submits that the Board should affirmatively state that it is because DesertXpress will be a rail carrier that it will issue the requested declaration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Edelman', is written over a horizontal line.

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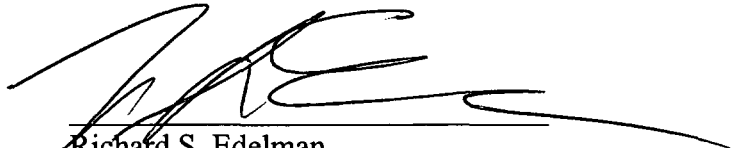
Dated: October 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Comments of the IBT Rail Conference, BLET and BMWD in this proceeding to be served by first-class mail, postage prepaid, to the offices of

Linda Morgan
Covington & Burling, LLP
1201 Pennsylvania Avenue
Washington, DC 20004-2401

10/16/06
Date


Richard S. Edelman