

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35092

220888

**PROGRESSIVE RAIL INC.
- CONTINUANCE IN CONTROL EXEMPTION -
MONTGOMERY SHORT LINE, LLC**

AND

FINANCE DOCKET NO. 35093

220889

**MONTGOMERY SHORT LINE LLC
- LEASE AND OPERATION EXEMPTION -
UNION PACIFIC RAILROAD COMPANY**

**UNITED TRANSPORTATION UNION'S
PETITION TO REVOKE**

**Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
(216) 228-9400
(216) 228-0937**

**Attorney for
United Transportation Union**

United Transportation Union ("UTU") respectfully submits its Petition to Revoke in the above-captioned proceeding on the ground that the notice contains false and misleading information. UTU presents several grounds on which to base this claim.

First, current annual operating revenues on the section of track at issue in the proposed transaction should exceed \$5 million based on UTU's information and belief regarding UP's present revenues from shippers on this line. As a result, the 60-day notice requirement set forth in 49 C.F.R. § 1150.32(e) should be applicable here, and obviously has not been complied with since the notice was filed by Montgomery Short Line ("MSL") on October 24, 2007.

In addition, based on information and belief, the rail property involved in the proposed transaction apparently has possible environmental contamination issues at certain locations, which have not been disclosed herein. First, at M.P. 38.2, in Jordan, Minnesota, over 2000 gallons of diesel fuel apparently were dumped into the ground. Also, at M.P. 53.9, in downtown New Prague, Minnesota, another significant level of diesel fuel was also apparently spilled on the ground. In addition, at M.P. 61.3, in downtown Montgomery, Minnesota, more diesel fuel was apparently spilled on the ground.

While UTU understands that a transaction of this nature normally does not require any environmental documentation, this particular action "has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and either an EA or an EIS [should] be prepared." 49 C.F.R. § 1105.16(d). Spills of this nature could cause rail fires and require precautionary measures to eliminate the possibility of any incidents that this situation could create. MSL should equip all locomotives operating on these portions of the trackage with

exhaust stack spark arresters, fire extinguishers suitable for flammable liquid fires, and low-spark brake shoes. In addition, these spills could pose a problem through possible contamination of the ground in these specified areas causing water problems and other issues of this nature.

Moreover, the UP's New Prague depot is apparently over 50 years old, and there is some concern about whether there are any plans to alter or dispose of it. As a result, UTU believes a historic report should be required to be filed. *See* 49 C.F.R. § 1105.8

Also, based on the information contained in the notice, MSL's new operation may cause unnecessary delays to interstate commerce. It appears that MSL will interchange and operate on the UP's mainline at the Merriam Junction, M P. 34, on the Mankato Subdivision of the Twin Cities Service Unit. UP mainline operations now include the meeting and staging of through train movements and switching for blocking and set-outs of mainline movements at this point. UP trains have in fact occupied this track for train meets on the trackage that MSL will now operate over. The MSL operations may now cause a delay to interstate commerce by interfering with UP operations at this junction.

Finally, the MSL has not properly fulfilled its legal duties of notice based on Minnesota law. MS § 222.86(1) provides in pertinent part:

ACQUISITION REPORTING AND DISCLOSURE.
Subdivision 1. Notice of exempt transaction. An acquiring carrier shall submit written notification to the attorney general and the commissioner of transportation of its intent to initiate an exempt transaction under Code of Federal Regulation, title 49, part 1150, at least 14 days before filing a notice of exemption with the Surface Transportation Board

The Minnesota Department of Transportation and Office of Attorney General have confirmed

to UTU that they have not been contacted or otherwise noticed by UP or MSL, pursuant to the provisions set forth in Minnesota Statute § 222.86.

CONCLUSION

As a result, UTU respectfully asks that its petition to revoke be granted or alternatively, that the Board hold a hearing to further investigate this matter.

Respectfully submitted,

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
Fax: (216) 228-0937

CERTIFICATE OF SERVICE

This is to certify that a copy of United Transportation Union's Petition to Revoke in Finance Docket Nos. 35092 and 35093 have been served this 4th day of December, 2007 via first-class postage pre-paid mail upon the following:

Janet H Gilbert
Michael J Barron, Jr.
Fletcher & Sippel
29 N. Wacker Drive, Ste. 920
Chicago, IL 60606-2832
(312) 252-1500

*Attorneys for Montgomery Short Line
and Progressive Rail Inc*

Daniel R. Elliott, III