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December 20, 2007

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: **Finance Docket No. 35092**
Progressive Rail Inc.—Continuance In Control Exemption—
Montgomery Short Line LLC

Finance Docket No. 35093
Montgomery Short Line LLC—Lease and Operation Exemption—
Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings is the Verified Joint Response of Montgomery Short Line LLC and Progressive Rail Inc. to the Petition to Revoke filed in the above-referenced dockets on December 4, 2007 by the United Transportation Union.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Very truly yours,


Michael J. Barron, Jr.
Attorney for Progressive Rail Inc. and
Montgomery Short Line LLC

MJB: arw

Enclosures

cc. Daniel R. Elliott, III
Gary Johnson

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35092

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

and

FINANCE DOCKET NO 35093

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

VERIFIED JOINT RESPONSE TO PETITION TO REVOKE

**Janet H. Gilbert
Michael J. Barron, Jr.
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Chicago, Illinois 60606-2832
(312) 252-1500**

**ATTORNEYS FOR
PROGRESSIVE RAIL INC. AND
MONTGOMERY SHORT LINE LLC**

Dated: December 20, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35092

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

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

VERIFIED JOINT RESPONSE TO PETITION TO REVOKE

Progressive Rail Inc. ("PRI") and Montgomery Short Line LLC ("MSL") hereby jointly respond to the Petition to Revoke ("Petition") filed in these dockets by the United Transportation Union ("UTU"). As the party seeking revocation, UTU has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). The UTU has presented no evidence that supports revocation or even refers to the applicable standard for such relief. Furthermore, contrary to the UTU's contention that MSL's notice contained false or misleading information, both MSL and PRI fully complied with the applicable requirements in their notices. Consequently, the Petition to Revoke should be denied.

**THE NOTICES OF EXEMPTION IN THESE DOCKETS
CONTAINED ALL PROPER, TRUTHFUL AND CORRECT
INFORMATION REQUIRED BY 49 C.F.R. § 1150.31, ET SEQ.**

In Finance Docket No. 35093, MSL submitted a certificate that projected that annual revenues for MSI. would not exceed \$5,000,000 (See Exhibit B to the Notice of Exemption filed in Finance Docket No. 35093). MSL stands by the certification it made in the Notice of Exemption in Finance Docket No. 35093. The Montgomery Sub runs from the interchange point with Union Pacific Railroad Company ("UP") near Merriam, Minnesota to the end of track near Montgomery, Minnesota, a distance of 23.5 miles. MSL's freight business on the line will consist exclusively of moving freight cars between interchange with the UP at Merriam and customers located on the Montgomery Sub.¹ For this service, MSL will receive a set per car charge from UP for handling a car between the interchange point and the customer. Given the per car amount and the projected traffic counts MSL is supremely confident its revenues on the line will fall well below \$5,000,000. The UTU has presented no evidence to refute this nor to support its allegation that projected revenues on the line "should" exceed \$5,000,000. Indeed, MSL projects it will handle 4,000 cars yearly to and from UP on the Montgomery Sub. In order to reach \$5,000,000.00 in revenue, MSL would have to charge \$1,250.00 per car, an unconscionable figure. MSL's per car charge with UP is confidential but needless to say it is substantially below \$1,250.00 per car.

Further, UTU alleges there is some concern about altering or disposing of the depot at New Prague and, therefore, MSL should submit an historic report pursuant to 49 C.F.R. § 1105.8. The STB should disregard this allegation. MSL will lease the depot at New Prague as

¹ MSL doubts it will ever have any local moves on the Montgomery Sub

part of the transaction set forth in Finance Docket No. 35093 and MSL has no plans to alter or dispose of the depot at New Prague. Therefore, a historic report is not required.

**NO ENVIRONMENTAL DOCUMENTATION
SHOULD BE REQUIRED AS PART OF THESE DOCKETS**

The lease transaction contemplated in Finance Docket No. 35093 will not change rail operations on the Montgomery Sub. MSL will do what UP is currently doing on the Montgomery Sub—moving cars between customers on the line and the junction at Merriam, where the cars are added to or subtracted from UP trains. Therefore, no environmental documentation should be required. 49 C.F.R. § 1105.6(c)(2). MSL appreciates that UTU has called attention to the possibility of prior diesel fuel discharges on the property, but an EIS or EA is not necessary. The lease will not change the environmental status or condition of the line and therefore there is no significant environmental impact as a result of the lease. If remedial action is necessary, federal law and Minnesota law already determine the obligation of UP, as owner, and MSL, as Lessee.

In any event, MSL is ready and prepared to comply with the requirements of state or federal law as they pertain to the environmental condition of the Montgomery Sub.

**MSL'S PROTECTED OPERATIONS WILL NOT
CAUSE CONGESTION NOR ANY DELAYS TO INTERSTATE COMMERCE**

UTU claims MSL's operations may cause a delay on UP's Mankato Subdivision of the Twin Cities Service Unit. UP, however, has not raised that issue and they are in the best position to determine their network fluidity and what it can handle. To reiterate, MSL will be doing nothing different than what happens today on the Montgomery Sub. UP has an engine that currently moves cars between Merriam Junction and customers on the Montgomery Sub. MSL

will have an engine to do the same thing. Since there will be no change of train operations on the line, the STB should disregard UTU's concerns about possible delays to interstate commerce

**MSL'S AND PRI'S NOTICES COMPLIED
WITH APPLICABLE NOTICE REGULATIONS**

UTU contends that MSL's Notice of Exemption should be revoked because MSL did not fulfill its duties under Minn. Stat. Ann. § 222.86, regarding notification of Minnesota officials. However, the Minnesota Department of Transportation ("MDOT") has received notice of this transaction pursuant to notices that appeared in the Federal Register on November 9, 2007. 72 FR 63657 MDOT has not raised any objections to the Notice of Exemption. If the state of Minnesota has not objected to this transaction nor compliance with Minn. Stat. Ann. § 222.86, the UTU should not be able to base its Petition to Revoke on Minn. Stat. § 222.86.²

It is clear, based on the text of Minn. Stat. Ann. § 222.86, that the statute is primarily concerned with allowing the State of Minnesota the opportunity to review a transaction. The statute was not designed as a mechanism to give a third-party standing to revoke a transaction. Moreover, even if the Minnesota Statute were not preempted by 49 U.S.C. § 10501(b), which appears likely, UTU's Petition to Revoke cannot be granted based on the alleged non-compliance with Minn. Stat. Ann. § 222.86, where MDOT has not expressed any opposition to the Notice of Exemption.

The Interstate Commerce Commission, the predecessor to this Board, reviewed a similar notice statute and found that state law is not controlling on the issue of notice. Finance Docket No. 31089, Montana Rail Link, Inc.-Exemption Acquisition and Operation-Certain Lines of Burlington Northern Railroad Company, Slip Opinion at page 3, served July 30, 1987. In

² In addition, although it was not necessary, MSL sent additional notice of its exemption to MDOT on December 5, 2007.

Docket No. 31089, Montana Rail Link filed a notice of exemption under 49 C.F.R. § 1150.31, the same regulation at issue in this proceeding. The Montana Department of Commerce and the Montana Public Service Commission attempted to stay the exemption based on a Montana statute, Mont Code Ann. § 69-14-1102, requiring 30 days' notice to the Public Service Commission and the Montana Attorney General prior to filing with the ICC. The ICC rejected this argument, stating that it had exclusive jurisdiction over such exemptions and compliance with the Montana statute was not required.

A similar result is warranted in the current proceeding. The Minnesota statute is nearly identical to the Montana statute rejected by the ICC. The only difference is the amount of advanced notice required. Based on ICC precedent, UTR's contention that MSL is bound by the Minnesota statute must be denied.

Additionally, MSL's and PRI's verified notices in these dockets provided all information required by 49 C.F.R. 1150.31, et seq. and 49 C.F.R. Part 1180. No further information is required under the applicable rules. Notwithstanding any state statutory provisions, pursuant to 49 U.S.C. § 10501(b), the STB has exclusive jurisdiction over the acquisition of rail lines by carriers and the procedures required to be followed in such acquisitions. In STB Ex Parte 659, the STB expressly denied a request that acquiring carriers give "actual notice" to interested parties, including state DOT's, of their intent to engage in an exempt transaction. The STB stated that notice in the Federal Register is adequate notice and that the pleadings are also widely available on the Internet. STB Ex Parte 659, Public Participation in Class Exemption Proceedings, Slip Opinion at pages 2-3, STB served October 19, 2006. Therefore, since MSL and PRI complied with applicable requirements, the STB should deny the Petition to Revoke

CONCLUSION

For the reasons set forth herein, the STB should deny the Petition to Revoke filed in these dockets.

Respectfully submitted,

By: 
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(312) 252-1500

**ATTORNEYS FOR
PROGRESSIVE RAIL INC. AND
MONTGOMERY SHORT LINE LLC**

Dated: December 20, 2007

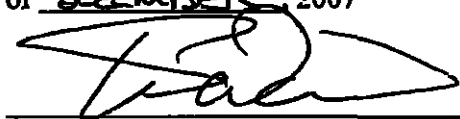
VERIFICATION

State of Minnesota)
)
County of Dakota) ss:

James M. Mattsen, being duly sworn, deposes and says that he is Administrator of Montgomery Short Line LLC and that he has read the foregoing Joint Response to Petition to Revoke and knows the facts asserted therein, and that the same are true as stated.


James M. Mattsen

SUBSCRIBED AND SWORN TO
before me this 11th day
of DECEMBER, 2007



Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

I, Michael J. Barron, Jr., an attorney, certify that a true copy of the foregoing instrument was served upon the address listed below by mailing a true and correct copy via first-class mail, postage pre-paid and depositing the same in the United States Mail, Chicago, Illinois the 20th day of December, 2007.



Michael J Barron, Jr.

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107