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June 27, 2008

By e-filing

Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Ex Parte No. 673, *Information Required In Certain Notices of Exemption*

Dear Ms. Quinlan:

Hereby transmitted is a Reply To Consensus Position Of American Short Line And Regional Railroad Association And Association Of American Railroads, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Replicants

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BEFORE THE
SURFACE TRANSPORTATION BOARD

INFORMATION REQUIRED IN)
CERTAIN NOTICES OF EXEMPTION) EX PARTE NO. 673

REPLY TO CONSENSUS POSITION OF
AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION AND
ASSOCIATION OF AMERICAN RAILROADS

BULKMATIC RAILROAD CORPORATION
2351 State Street
Chicago Heights, IL 60411

CHICAGO PORT RAILROAD COMPANY
11701 South Torrence Avenue
Chicago, IL 60617

Replicants

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Attorney for Replicants

Due Date: June 30, 2008

INFORMATION REQUIRED IN)
CERTAIN NOTICES OF EXEMPTION) EX PARTE NO. 673

Pursuant to 49 C.F.R. § 1104.13(a), BULK MATIC RAILROAD CORPORATION and CHICAGO PORT RAILROAD COMPANY (referred to collectively as Replicants) hereby reply to a pleading entitled "Consensus Position Of American Short Line And Regional Railroad Association And Association Of American Railroads," filed by those Associations on June 9, 2008

The primary reason for Replicants' participation in this proceeding is to oppose the request by the Petitioners that the Board overrule the principle established in *Effingham RR Co - Pet. for Declaratory Order*, 2 S.T.B. 606 (1997), *aff'd sub nom. United Transportation Union v. STB*, 183 F.3d 606, 613 (7th Cir. 1999). The Board's well-reasoned and judicially-approved interpretation of 49 U.S.C. § 10901 and 49 U.S.C. § 10902 in *Effingham* should not be vacated to further the narrow political objective sought by Petitioners.

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railroad industry will legitimately hold itself out to perform common carrier service. It has always been the law that the test of a legitimate rail common carrier is based on a holding out in good faith to perform common carrier service. The Board should not heed the request of the Railroad Associations to "make clear" what has never been the law; namely, that the test of common carriage is whether common carrier services are actually being performed from the start.

Replicants do not agree that the class exemption should not be available for acquisition and operation of trackage theretofore operated as a plant railroad. (Consensus Position at 4). As a result of extensive railroad abandonment programs in the past, and the more recent strong demand for railroad services, numerous companies that lost rail service through abandonment now seek to take advantage of rail service as much as possible by means of rail-truck or truck-rail transloading. Extensive railroad facilities within plant sites provide for maximum efficiency for transloading from rail to truck or from truck to rail. As a result, a number of shippers have converted plant trackage to common carrier track in order to provide transloading services that are in strong public demand. These are legitimate common carrier rail operations, not potentials for abuse that should send up a red flag to anyone. See, e.g., *New York, Susquehanna & Western Ry. Corp v Jackson*, 2007 U.S. Dist. LEXIS 11907 (D., N.J., Feb. 20, 2007) at 55-58.

Similarly, Replicants oppose the proposed additional information that would be required if the class exemption involves acquisition of private trackage or ancillary trackage. (Consensus Position at 5-6). Our opposition is based on the same rationale explained above in relation to the proposal regarding track theretofore operated as a plant railroad. Newly-created railroads providing rail service in good faith on former private or industrial trackage should not be burdened with additional regulatory requirements merely because a handful of operators may

have abused the system. The *Effingham* principle ensures that all new entrants will come before the Board for acquisition and/or operating exemptions. The Board's recent amendment to provide 30 days rather than 7 days before such an exemption becomes effective should enable those concerned about potential abuse to conduct more thorough investigations of potential new entrants. That should obviate a need for the extensive additional informational requirements proposed by the Railroad Associations.

Respectfully submitted,

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Attorney for Replicants

Due Date: June 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2008, I served the foregoing document, Reply To
Consensus Position Of American Short Line And Regional Railroad Association And
Association Of American Railroads, by first-class, U.S. mail, postage prepaid, on the following:

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