

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 8)]

Railroad Cost of Capital—2004

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2004 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2004. The decision solicits comments on: (1) The railroads' 2004 current cost of debt capital; (2) the railroads' 2004 current cost of preferred stock equity capital (if any); (3) the railroads' 2004 cost of common stock equity capital; and (4) the 2004 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 17, 2005. Statements of the railroads are due by March 28, 2005. Statements of other interested persons are due by April 25, 2005. Rebuttal statements by the railroads are due by May 16, 2005.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565-1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877-8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, <http://www.stb.dot.gov>. In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202-306-4004 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339), or by e-mail at asapdc@verizon.net.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 13, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34540]

The Columbus & Ohio River Rail Road Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.

By notice of exemption published on October 20, 2004 (69 FR 61702-03) and served on October 21, 2004, the Columbus & Ohio River Rail Road Company (CUOH), a Class III rail carrier, was granted authority under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 114 miles of rail line: (1) by purchase, between Columbus, OH, milepost BP 138.0, and Newark, OH, milepost BQ 0.0, totalling approximately 32.6 miles;¹ and (2) by lease, between Mt. Vernon, OH, milepost BQ 25.9, and Cambridge, OH, milepost BP 49.49, via Newark, milepost BQ 0.0, totalling approximately 81.4 miles.² The lines are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, OH. CUOH states that following this transaction, CSXT will no longer operate trains on any of the above-described rail lines, and that CUOH will be the sole operator of the rail lines. The transaction also includes approximately 1.5 miles of incidental trackage rights assigned by CSXT to CUOH over a line of the Ohio Southern Railroad, Inc. (OSR)³ between milepost 16.7 and milepost 18.2 in Zanesville, OH.⁴

On October 22, 2004,⁵ CUOH submitted a supplemental notice to

¹ CSXT presently holds a 50% ownership interest in the rail line from Columbus to Newark (the C&N Subdivision). The balance of the ownership interest in this line is held by the State of Ohio, and both CUOH and CSXT currently hold operating rights over the C&N Subdivision. See *Caprail I—Acquisition Exemption—Consolidated Rail Corporation*, Finance Docket No. 31961 (Sub-No. 1), *Ohio Department of Transportation—Lease Exemption—Caprail I Lines in Ohio*, Finance Docket No. 31961 (Sub-No. 2), and *Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines*, Finance Docket No. 31961 (Sub-No. 3) (ICC served Jan. 15, 1992). CUOH states that, through this transaction, it will purchase CSXT's 50% share in the Columbus to Newark line.

² The line to be leased consists of the Lake Erie Subdivision (Newark to Mt. Vernon) and the Central Ohio Subdivision (Newark to Cambridge).

³ OSR and CUOH are subsidiaries of Summit View, Inc., a noncarrier holding company.

⁴ Prior to this transaction, CUOH and the Ohio Central Railroad (OHCR) interchanged traffic at Morgan Run (Coshocton), OH. Following this transaction, CUOH and OHCR will exchange traffic at both Coshocton and Zanesville.

⁵ Although the supplemental notice was submitted on October 22, 2004, the required filing

increase the amount of rail lines it proposed to acquire from approximately 114 miles to approximately 120.35 miles, as follows: (1) By purchase, between Columbus, OH, milepost BP 137.0, and Newark, OH, milepost BP 100.6, and between milepost BBW 0.0 and milepost BBW 1.8 in Newark, totalling approximately 38.2 miles; and (2) by lease, between Cambridge, OH, milepost BP 49.49 and Newark milepost BP 100.6, between Cambridge milepost BPB 0.0 and Byesville, OH, milepost 5.14, and between Newark milepost BQ 0.0 and Mt. Vernon, OH, milepost BQ 25.9, totalling approximately 82.15 miles. Accordingly, the notice of exemption in this proceeding is being republished to give notice of CUOH's supplemental filing to include the additional 6.35 miles of rail line.

Because CUOH's projected annual revenues will exceed \$5 million, CUOH certified to the Board on August 30, 2004, that it had complied with the requirements of 49 CFR 1150.42(e) providing for notice to employees and their labor unions on the affected lines. CUOH also certified that its projected revenues as a result of this transaction would not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after October 29, 2004, which was 60 days after CUOH's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.⁶

fee of \$1,400 was not received until October 28, 2004, which therefore constitutes the actual filing date of the supplemental notice.

⁶ On September 13, 2004, the Brotherhood of Locomotive Engineers & Trainmen (BLET) filed a protest asking the Board to reject CUOH's notice and a notice filed in *Indiana & Ohio Central Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34536 (STB served Oct. 1, 2004), for another shortline carrier to operate through lease approximately 107 miles of CSXT's rail line between NA Tower, OH, and Oakley, OH, and Oakley and Columbus, OH. On September 15, 2004, the United Transportation Union (UTU) filed a pleading titled as a petition to revoke, seeking relief identical to that sought by BLET. In their filings, BLET and UTU sought the same relief regarding CUOH's notice filed here.

On September 24, 2004, an amended petition to revoke was filed by UTU. By facsimile filed on September 30, 2004, UTU certified to the Board that it served a copy of its pleadings upon CUOH, and UTU filed another petition to revoke and sought discovery. On October 19 and 28, 2004, CUOH filed replies. On November 16, 2004, UTU filed a motion to compel. CUOH responded on December 6, 2004.

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