

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35776

**UNION PACIFIC RAILROAD COMPANY
-- OPERATION EXEMPTION --
IN BEXAR AND WILSON COUNTIES, TX**

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**REPLY OF FRAC RESOURCES, L.P. AND MISSION RAIL INDUSTRIAL PARK LLC
TO BNSF'S PETITION TO REJECT NOTICE OF EXEMPTION**

Frac Resources, L.P. and Mission Rail Industrial Park LLC (collectively, "FRAC") respectfully submit this Reply to the BNSF Railway Company ("BNSF") to Petition to Reject the Notice of Exemption ("BNSF Petition") filed by the Union Pacific Railroad Company ("UP") in this docket. For the reasons discussed below, FRAC requests that the Board accept and consider these comments, move expeditiously to decide the issues raised by the BNSF and vacate the housekeeping stay issued by the Board's Notice served November 15, 2013.

By way of background, FRAC approached the UP in 2012 and requested that it provide service over a right of way UP owned but which had apparently been abandoned a number of years earlier. The restored rail operations were intended to provide rail service to a new industrial rail facility called the Mission Rail Park, which is a complex consisting of over 1,000 acres just south of San Antonio, Texas. Mission Rail Park plans to serve industrial tenants of all sizes, ranging from large distribution and manufacturing centers to small rail users, oil field service companies and oil midstream companies looking to transport products to and from the Eagle Ford Shale region of Texas.

Frac Resources is one of the first tenants of Mission Rail Park and is purchasing significant quantities of frac sand for development of the Eagle Ford Shale area. At this point, it is estimated that Frac Resources will be bringing in approximately 60,000 tons of frac sand annually into the Mission Rail Park facility. Consequently, Frac Resources, as well as many of the other existing and prospective tenants, will be heavily dependent upon receiving rail service that will involve a combination unit train, train load and manifest train operations.

UP correctly states that FRAC initially approached that railroad in 2012 for the purpose of obtaining the needed rail service. Those discussions culminated earlier this year when the parties entered into an Industry Track Agreement (“ITA”). One of the terms of the ITA required FRAC to construct approximately 1 1/2 miles of track between the Mission Rail Park and a UP line that extends onto a UP main line in the Elmendorf, TX switching district. As noted in UP's Reply to the BNSF Petition, the line over which this new track was constructed was a small portion of a longer line that had been abandoned in 1994.¹ Once FRAC constructed the track, UP then purchased this track, over which it is to provide rail service to the Mission Rail Park. UP in turn then filed the Notice of Exemption to authorize common carrier service over this track.

One of the key provisions of the ITA, for FRAC, was that it contemplated the possibility for other railroads to have the right to use the track to provide service to the Mission Rail Park facility, subject to their ability to negotiate an appropriate arrangement with UP or pursuant to the order of the Board. This was important to FRAC in view of the anticipated volume and traffic profile of rail operations to and from the Mission Rail Park; simply stated, the facility's shippers will need rail service by both UP and BNSF. Indeed, in making its decision to acquire

¹ That abandonment was accomplished in the proceeding entitled *S. Pac. Transp. Co. – Abandonment Exemption – In Bexar, Karnes, & Wilson Counties, TX*, AB-12 (Sub-No. 163 X)(ICC served May 3, 1994).

the property needed for the industrial rail park, FRAC believed that it would be considered to be a 2-to-1 point within the meaning of the Restated and Amended Settlement Agreement (“RASA”) in the UP/SP Merger proceeding. FRAC understands that UP and BNSF have had discussions on this issue, but apparently have been unable to come to a commercially acceptable agreement at this point that is satisfactory to those parties.

In filing its Petition to Reject the UP Notice of Exemption, BNSF apparently determined to advance its position - - that it is entitled under the RASA to service the Mission Rail park - - by having the Board adjudicate that issue in this proceeding. While sympathetic to that motive, FRAC is nonetheless concerned about the process BNSF has selected. As long as this proceeding is held in abeyance, neither Frac Resources nor any other shipper will apparently be able to receive badly needed rail service.

In that regard, UP has advised FRAC and the Board that it will not provide service to the Mission Rail Park unless and until the notice of exemption it filed in this docket becomes effective.² However, any further delay in providing service will have severe adverse consequences for both Frac Resources and the Mission Rail Park. There are approximately 200 rail cars that are already en route to the facility and that are badly needed by Frac Resources in order to service its customers in the Eagle Ford Shale area. These cars were ordered by Frac Resources under the not unreasonable assumption that the Notice of Exemption in this docket was a routine, uncontroversial matter, so that the exemption would become effective in the usual 30-day time period provided under 49 C.F.R. §1150.32.

If the exemption does not become effective by the time those cars reach this location, those cars will need to be held somewhere, probably on the UP system, clogging that railroad's

² See UP Reply, at p. 4, filed November 18, 2013, indicating that it "would be at serious risk if it commences service over the new line without obtaining approval or exemption from the Board."

rail system, incurring significant costs. Similarly, the Mission Rail Park cannot finalize leases and other arrangements with a number of potential tenants unless it can demonstrate that it and they will have reliable rail service. Thus, notwithstanding the representations in the BNSF Petition, any continued stay will result in substantial harm to the very shippers that both UP and BNSF want to serve.

For these reasons, FRAC urges the Board to vacate the housekeeping stay of the Notice of Exemption and permit it to go into effect immediately, so that badly needed service to this facility can commence. While FRAC does wish to have dual railroad service, it should not be caught in the middle of this inter-railroad dispute, especially given the substantial harm it will suffer from any further delay of the effectiveness of this Notice of Exemption. And, if UP and BNSF are still unable to agree on the issue of dual service to this facility, there are other procedures that are available for getting that issue adjudicated. But, as this Notice of Exemption proceeding presents the simple issue of whether UP should be permitted to provide badly needed rail service along a right of way and over track it owns, the stay should be lifted.

Accordingly, the Notice of Exemption in this proceeding should be made effective as soon as possible.

Respectfully submitted,



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Dated: December 11, 2013

CERTIFICATE OF SERVICE

I hereby certify this 11th day of December, 2013, that I have caused the foregoing Reply of Frac Resources, L.P. and Mission Rail Industrial Park LLC to BNSF's Petition to Reject Notice of Exemption to be served as indicated below on the following counsel of record for the parties:

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