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February 6, 2012

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Public Record

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: Docket No. AB-33 (Sub-No. 277X), *Union Pacific Railroad Company --  
Abandonment Exemption -- in Lafourche Parish, LA*

Dear Ms. Brown:

As permitted by the Board's decision in the above proceeding served January 30, 2012, this constitutes additional argument in behalf of Valentine, LLC (Valentine).

**1. UP Has Effectively Conceded That BNSF Has Current Board Authority To Operate Over The Lockport Branch**

UP's basic argument, in its letter to the Board dated December 23, 2011, is that BNSF does not have a right to access the Lockport Branch unless Louisiana & Delta Railroad, Inc. (LDR) consummates Board authority to discontinue LDR's service over that Branch.

Valentine disagrees with that contention, but the Board need not rule on that argument because on December 28, 2011, LDR notified the Board that it is consummating the authority received from the Board to discontinue its service over the Lockport Branch, effective December 31, 2011.

In view of that consummation, UP has effectively conceded that BNSF has a current right to access the Lockport Branch, i.e., that BNSF has authority from the Board to operate over the Branch.

**2. In View Of BNSF's Operating Authority, Physical Abandonment Of The Branch Must Be Conditioned On Consummation By BNSF Of Discontinuance Of Its Service Over The Branch**

In *Illinois Central Gulf R. Co. - Abandonment*, 360 I.C.C. 104 (1978), Illinois Terminal Railroad Company (IT) had trackage rights over a rail line owned by Illinois Central Gulf

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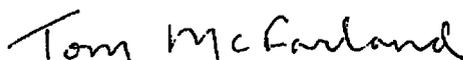
Railroad Company (ICG). ICG filed an application for abandonment of the line, but IT did not seek authority for discontinuance of its service pursuant to trackage rights. The Board's predecessor authorized ICG to discontinue service over the line, but conditioned physical abandonment authority on IT's consummation of authority for discontinuance of its service over the line pursuant to trackage rights (at 105-106).

The same result is appropriate in the case at hand. UP can be authorized to discontinue rail service over the Branch, but physical abandonment of the line must be conditioned on BNSF's consummation of discontinuance of its service over the Branch pursuant to Board-authorized access rights.

**3. The Board Should Clarify That An OFA For Purchase Of The Branch Can Be Filed If BNSF Were To Be Authorized To Discontinue Service Over The Branch**

Inasmuch as UP will not be authorized to physically abandon the Branch at this time, and BNSF will continue to be authorized to provide service over the Branch, the filing of an OFA to purchase the Branch for continued rail service is not required nor appropriate at this time. If and when BNSF were to be authorized to discontinue service over the Branch, UP would be enabled for the first time to physically abandon the Branch. It is at that time that an OFA for purchase of the Branch for continued rail service would be required and appropriate. Accordingly, the Board should clarify that an OFA for purchase of the Branch for continued rail service can be filed if and when BNSF were to be authorized to discontinue rail service over the Branch.

Respectfully Submitted,



Thomas F. McFarland  
*Attorney for Valentine LLC*

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cc: Parties of Record