

204583

BEFORE THE
SURFACE TRANSPORTATION BOARD

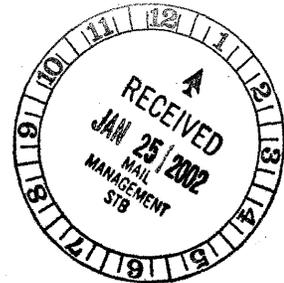
Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY

—ABANDONMENT AND DISCONTINUATION OF OPERATION—

IN POLK COUNTY, IOWA

(BELL AVENUE INDUSTRIAL LEAD IN DES MOINES, IOWA)



0101879001

**OFFER OF FINANCIAL ASSISTANCE
OF MID-AMERICA RAILROAD, L.L.C.**

FILED

JAN 25 2002

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary
JAN 25 2002
Part of
Public Record

MID-AMERICA RAILROAD, L.L.C.

Steven E. Zumbach
William D. Bartine
Holly M. Logan
Christopher M. Miller
BELIN LAMSON McCORMICK
ZUMBACH FLYNN, P.C.
666 Walnut Street, Suite 2000
Des Moines, IA 50309
515-243-7100 (Telephone)
515-243-1408 (Facsimile)

FEE RECEIVED

JAN 25 2002

SURFACE
TRANSPORTATION BOARD

ATTORNEYS FOR MID-AMERICA

Dated: January 25, 2002
Filed: January 25, 2002

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SURFACE TRANSPORTATION BOARD

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UNION PACIFIC RAILROAD COMPANY
—ABANDONMENT AND DISCONTINUATION OF OPERATION—
IN POLK COUNTY, IOWA
(BELL AVENUE INDUSTRIAL LEAD IN DES MOINES, IOWA)

**OFFER OF FINANCIAL ASSISTANCE
OF MID-AMERICA RAILROAD, L.L.C.**

MID-AMERICA RAILROAD, L.L.C.

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515-243-1408 (Facsimile)

ATTORNEYS FOR MID-AMERICA

Dated: January 25, 2002
Filed: January 25, 2002

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing offer of financial assistance was served upon the following:

Union Pacific Railroad Company
Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, #1920
Chicago, IL 60606
(by overnight mail)

Ringling Brothers and Barnam
and Bailey Circus
8607 Westwood Center Drive
Vienna, VA 22182
(by regular mail)

Des Moines Water Works
2201 Valley Drive
Des Moines, IA 50321
(by regular mail)

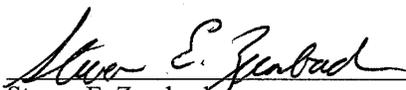
Iowa Interstate Railroad, Ltd.
Terry Bailey
1300 Des Moines Building
405 Sixth Avenue
Des Moines, IA 50309
(by regular mail)

Iowa Transportation Department
Modal Division
Tom Jackson
800 Lincoln Way
Ames, IA 50010
(by regular mail)

Smurfit-Stone Container Corporation
Jim Shelley
2201 Bell Avenue
Des Moines, IA 50321
(by regular mail)

Dated this 25th day of January, 2002.

MID-AMERICA RAILROAD, L.L.C.



Steven E. Zumbach

William D. Bartine
Holly M. Logan
Christopher M. Miller
BELIN LAMSON McCORMICK
ZUMBACH FLYNN, P.C.

ATTORNEYS FOR MID-AMERICA

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SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY

—ABANDONMENT AND DISCONTINUATION OF OPERATION—

IN POLK COUNTY, IOWA

(BELL AVENUE INDUSTRIAL LEAD IN DES MOINES, IOWA)

**OFFER OF FINANCIAL ASSISTANCE
OF MID-AMERICA RAILROAD, L.L.C.**

Mid-America Railroad, L.L.C., a wholly owned subsidiary of Mid-America Development Company (collectively and individually referenced as “Mid-America”), hereby submits an offer of financial assistance to purchase Union Pacific’s Bell Avenue Industrial Lead. Offers of financial assistance need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. *See Conrail Abandonments Under NERSA*, 365 I.C.C. 472 (1981). In accordance with 49 U.S.C. § 10904 and the applicable Board regulations, Mid-America submits the following information.

Identification of Line: 49 C.F.R. § 1152.27(c)(1)(ii)(A)

This offer of financial assistance is for the purchase of Union Pacific’s Bell Avenue Industrial Lead (“the Line”), understood to be located between milepost 221.10

near SE 18th Street and milepost 217.38 near SW 30th Street, a total distance of 3.63 miles, in the City of Des Moines, Polk County, Iowa. This purchase offer is inclusive of the “corridor” through Union Pacific’s Bell Avenue Rail Yard as detailed in Appendix H of Union Pacific’s Abandonment Application, Union Pacific’s interests in all underlying real estate, and any and all rail track and other fixed railroad equipment necessary for the functional operation of the Line.

Union Pacific filed an application for abandonment in accordance with 49 U.S.C. § 10903 on September 28, 2001. Mid-America, in conjunction with Smurfit-Stone Container Corporation, filed a protest in accordance with 49 C.F.R. § 1152.25 on November 13, 2001, and in that protest indicated its interest in filing an offer of financial assistance to preserve the Line for rail service if the abandonment should nonetheless be approved. The Board granted Union Pacific’s application on January 15, 2002. *Union Pacific Railroad Company – Abandonment – In Polk County, Iowa*, Docket No. AB-33 (Sub-No. 170) (STB served January 16, 2002). Subsequently, on January 22, 2002, Union Pacific representatives indicated to Mid-America that Union Pacific would be willing to negotiate a sale of the line to Mid-America, if Mid-America in fact filed an offer of financial assistance.

Financial Responsibility: 49 C.F.R. § 1152.27(c)(1)(ii)(B)

Mid-America is a full service real estate company, located in West Des Moines, Iowa, which plans, develops, owns, and manages Class A office and industrial real estate. Exhibit A (Verified Statement of Mr. Joseph E. Pierce). Since 1975, Mid-America has owned and developed properties in the Des Moines area. *Id.* Mid-America has more

than sufficient financial resources to meet its obligations under this offer of financial assistance. *Id.*

Because Mid-America has not itself traditionally been involved in the operation of rail lines, it has entered into negotiations with Iowa Interstate Railroad, a Class II regional railroad with more than 500 miles of track, regarding operation of the Line should Mid-America and Union Pacific reach a purchase agreement. Exhibit B (Copy of Verified Statement of Mr. Terry Bailey filed as an Exhibit to Protest). Mid-America has an interest in ensuring continuing rail service on the Line because it owns a large tract of commercial real estate serviced by the Line. Mid-America's tenant, Smurfit-Stone Container Corporation, is the Line's major shipper.

Offer for Purchase: 49 C.F.R. § 1152.27(c)(1)(ii)(C)

Mid-America hereby submits an offer of \$5,000 to purchase the entire Bell Avenue Industrial Lead. This offer is expressly conditioned upon Mid-America's satisfaction that Union Pacific does in fact hold fee title or a non-reversionary interest (i.e., not simply a reversionary interest) in 92 percent of the real estate through which the Bell Avenue Industrial Lead traverses as represented by Union Pacific agent John Herdzina in Appendix H of Union Pacific's Abandonment Application. This offer is also expressly conditioned upon Mid-America's satisfaction that there are no material undisclosed impairments associated with the underlying real estate that substantially impact its economic value, including, but not limited to, environmental clean-up obligations or other environmental hazards.

Union Pacific's estimated net liquidation value of the Line is \$1,682,894. (Application Appendix C, Exhibit 4 and Application Appendix H). This figure is based

upon an estimated market value of \$1,500,000 for the underlying real estate and an estimated net liquidation value of the actual track and other salvageable equipment of \$182,894. Mid-America's own estimated net liquidation value of the Line approaches zero or is perhaps a negative value based upon a lower estimated real estate value, Union Pacific's unfactored liability for removal of the Des Moines River bridge upon abandonment, and a drop in market price for scrap iron since Union Pacific calculated its estimates in September 2001.

Mid-America takes issue with Union Pacific's estimated market value of \$1,500,000 for the underlying real estate for several reasons. Union Pacific's estimate is based upon a purported average square foot price calculated from sales of what Union Pacific represents are similarly situated properties. (Application Appendix H). Among other problems, Union Pacific has not estimated the "liquidation" value of the underlying real estate but rather appraised the value of an existing and operational railroad right-of-way. Exhibit C (Letter from Appraiser Mr. William Carlson, MAI). In truth, upon abandonment of the Line, the only viable potential purchasers of the underlying real estate would be the adjacent property owners. Therefore, any fair per unit sales price must be discounted to reflect this finite number of potential buyers. Further, what Union Pacific represents are "comparable sales" of similarly situated properties are actually sales of parcels — in many cases non-comparable improved parcels — which are far smaller and much better proportioned for non-corridor use than the Line's underlying real estate. *Id.* The Line encompasses more than 1,500,000 square feet of real estate. (Application Appendix H). The "comparable parcels" analyzed by Union Pacific range in size from only 3,564 square feet to 43,744 square feet. (*Id.*, Exhibit 1). The per unit

sales price of commercial real estate in this part of the country invariably decreases as the parcel size increases. Exhibit C (Letter from Appraiser Mr. William Carlson, MAI). Based upon these and other points of dispute — though Mid-America has not yet completed a formal appraisal — Mid-America estimates the value of the underlying real estate to be significantly less than Union Pacific's alleged net liquidation value.

Mid-America also disputes Union Pacific's failure to factor the cost of removing the Des Moines River bridge, which Union Pacific asserts is in need of \$1,500,000 worth of repairs, into its net liquidation value. (Application Appendix D). Apparently, Union Pacific claims that it would not be obligated to bear the cost of removing this presently non-operational bridge upon abandonment because the City of Des Moines may want to acquire the bridge under the Rails to Trails Program of the National Trail System Act. Such a claim considerably overstates the City's position. The City has executed no agreement to acquire the Des Moines River bridge. Exhibit D (Letter from City Manager Mr. Eric A. Anderson). The Des Moines City Council has never even contemplated such an acquisition, nor has any City representative engaged in any actual negotiation for incorporation of the bridge into the City's municipal trails system. *Id.* Without an agreement for an allowable alternate use, Union Pacific admits that the bridge would have to be removed at a cost of \$750,000. (Abandonment Application Appendix D). Therefore, Mid-America's estimated net liquidation value of the Line calculates the bridge as a \$750,000 liability.

Mid-America believes that Union Pacific's estimated net liquidation value of the actual railroad track and other salvageable equipment, \$182,894, is also too optimistic given the present condition of the scrap iron market. Although Mid-America is still

evaluating Union Pacific's specific estimations with scrap industry experts, it is common knowledge in the industry that the market for scrap iron has depressed since Union Pacific calculated its estimates in September 2001.

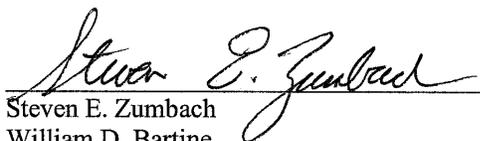
Despite Mid-America's significant disagreement with Union Pacific's quoted price, Mid-America is genuinely interested in negotiating with Union Pacific for purchase of the Line, and Union Pacific has already agreed to such negotiations. The Board has indicated that the reasonableness of an offer of financial assistance can be based in part upon the abandoning railroad's expressed willingness to negotiate with the offeror.

Consolidated Rail Corporation Abandonment Exemption — In Erie County, NY, Docket No. AB-167 (Sub-No. 1164X) (STB served August 22, 1996). Mid-America's offer is bona fide and reasonable based upon Union Pacific's expressed willingness to enter into negotiations with Mid-America and Mid-America's logical points of dispute as to Union Pacific's quoted net liquidation value of the Line. Mid-America's offer is at the very least sufficient to allow initiation of negotiations.

A verification in support of this offer of financial assistance is attached.

WHEREFORE, Mid-America respectfully requests that the Board find that Mid-America is a financially responsible party and further find that Mid-America's offer of financial assistance to purchase Union Pacific's Bell Avenue Industrial Lead is bona fide and sufficient to postpone the effective date of the abandonment and to allow negotiations to be initiated.

Respectfully submitted,



A handwritten signature in cursive script, reading "Steven E. Zumbach", is written over a horizontal line.

Steven E. Zumbach
William D. Bartine
Holly M. Logan
Christopher M. Miller
BELIN LAMSON McCORMICK
ZUMBACH FLYNN, P.C.

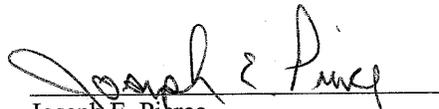
ATTORNEYS FOR MID-AMERICA

VERIFICATION

STATE OF IOWA)
)
COUNTY OF POLK)

ss

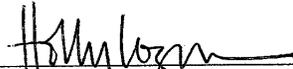
I, Joseph E. Pierce, being duly sworn, depose and state that I am the President of Mid-America Development Company and the Manager of Mid-America Railroad, L.L.C., that I have read the foregoing Offer of Financial Assistance, and that I know the facts asserted therein to be true.



Joseph E. Pierce

Subscribed and sworn to before me this 24th day of January, 2002.





Notary Public for the State of Iowa

A

VERIFIED STATEMENT

OF

JOSEPH E. PIERCE

I, Joseph E. Pierce, being duly sworn upon my oath, do hereby depose and state as follows:

1. Mid-America Railroad, L.L.C. is a wholly owned subsidiary of Mid-America Development Company (collectively and individually referenced as "Mid-America").
2. I currently serve as President of Mid-America Development Company and as Manager of Mid-America Railroad, L.L.C.
3. Mid-America is a full service real estate company located in West Des Moines, Iowa, which plans, develops, owns, and manages Class A office and industrial real estate.
4. Mid-America has owned and developed properties in the Des Moines area since 1975.
5. Mid-America has more than sufficient financial resources to meet its obligations under this offer of financial assistance.

Exhibit A

VERIFICATION

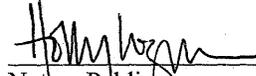
STATE OF IOWA)
) ss
COUNTY OF POLK)

JOSEPH E. PIERCE, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated.

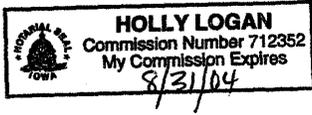


JOSEPH E. PIERCE

SUBSCRIBED and sworn to before me this 24th day of January, 2001.



Notary Public



B

VERIFIED STATEMENT

OF

TERRY D. BAILEY

I, Terry D. Bailey, being duly sworn upon my oath, do hereby depose and state as follows:

1. I currently serve as business development manager of Iowa Interstate Railroad, Ltd. ("IAIS"). In this capacity, I research, among other things, IAIS's possible acquisition of new rail lines. I also pursue potential new commercial rail shippers and serve as their contact at IAIS.
2. IAIS is a Class II regional railroad headquartered in Iowa City, Iowa. Created in 1984, IAIS operates more than 500 miles of rail track between Omaha, Nebraska and Chicago, Illinois. IAIS primarily transports grain, agricultural products, steel, scrap, appliances, intermodal containers and trailers, chemicals and forest products.
3. I am familiar with Union Pacific's proposed abandonment of the Bell Avenue Industrial Lead in Des Moines, Iowa. I have reviewed Union Pacific's abandonment application and have spoken with Iowa Department of Transportation officials, as well as officials of Mid-America Development Company and Smurfit-Stone Container Corporation regarding the proposed abandonment.
4. IAIS is interested in seeing rail service continue on the Bell Avenue Industrial Lead. IAIS may be interested in operating this line itself and would consider the opportunity to participate in the Offer of Financial

Assistance ("OFA") procedures if it chooses to do so. IAIS is also interested in pursuing discussions with all pertinent parties regarding rehabilitating what Union Pacific refers to as the "Raccoon River bridge."

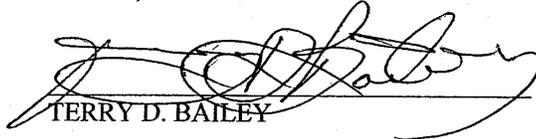
5. IAIS believes the Bell Avenue Industrial Lead is currently, and will remain in the future, a profitable rail venture. IAIS has talked with four or five commercial entities potentially interested in relocating to the Bell Avenue area if continuing rail service can be secured. The commercial entities IAIS has talked with would not be interested in relocating to this area without rail access. For that reason, it is fair to say that rail service adds a good deal of property value to the Bell Avenue area.
6. The Bell Avenue area served by the Bell Avenue Industrial Lead is a largely open parcel of between 25 and 30 acres, about half of which after accounting for the land needed for track would be available for commercial and/or industrial development.
7. This a highly desirable location for commercial enterprises who could benefit from rail service. Iowa itself is a desirable rail location, served by all the major transcontinental railroads including Union Pacific, Burlington Northern Santa Fe, Norfolk Southern and the major Canadian railroads. Des Moines is Iowa's largest city and centrally located within the state.
8. IAIS has access to all of the major east-west and north-south national and international railroads and would be in a position to provide such access to shippers from the Bell Avenue location.

9. Losing rail service at the Bell Avenue area served by the Bell Avenue Industrial Lead would be a mistake. This is a prime commercial location with good possibilities for even further development, especially if the interested parties can work out an arrangement for continued rail service through the OFA process. Further, the Bell Avenue Industrial Lead is downtown Des Moines' major rail line. To see it abandoned without giving the OFA process an opportunity to work would be truly short-sighted.

VERIFICATION

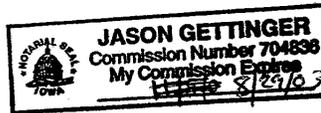
STATE OF IOWA)
) ss.
COUNTY OF FOLK)

TERRY D. BAILEY, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated.


TERRY D. BAILEY

SUBSCRIBED and sworn to before me this 11 day of November, 2001.


Notary Public



c

**Carlson, McClure
& Associates, Inc.**

William S. Carlson, MAI
Clifford T. McClure, MAI SRA

Appraisers & Consultants of Real Estate

Douglas A. Bremer
Bruce R. Gunderson
Don R. Vaske

January 23, 2002

Mr. William D. Bartine
Belin Lamson McCormick Zumbach Flynn
Attorneys at Law
666 Walnut, Suite 2000
Des Moines, Iowa 50309-3989

Subject: Review of the Bell Avenue Industrial Lead Appraisal prepared by Union Pacific Railroad Company

Dear Bill:

At your request, I have on January 22, 2002 reviewed the appraisal of the above referenced property completed by Lorne F. Lukins, an employee of the Union Pacific Railroad Company. This appraiser has developed an estimated market value for the operating right-of-way on the Rail Line between Mile Post 217.38 and Mile Post 221.1. This individual has estimated an "across the fence" market value of \$1,500,000 for the operating right-of-way described above. The verification accompanying this document is dated September 25, 2001.

Within this document, the total value of corridor is equal to the value of the East Portion plus the Yard Portion. The East Portion, containing 1,005,670 square feet has been valued at \$1.01 per square foot or \$1,018,000. The Yard Portion, containing 536,000 square feet has been valued at \$1.00 per square foot or \$536,000. The sum of these two portions of \$1,554,000 has been rounded to \$1,500,000.

The first thing I would point out is that this is an appraisal of the operating right-of-way and not an appraisal of the land as if the right-of-way has been abandoned. The appraisal of the abandoned right-of-way would involve a discount that would reflect the holding and sales costs that would be incurred by a potential purchaser during the time that the right-of-way would be marketed to individual adjacent property owners. The appraisal as written reflects the market value of the operating right-of-way as if it were purchased by an individual who would be intending to operate the property as a transportation corridor into the future.

January 23, 2002
William D. Bartine
Page 2

I have briefly reviewed the 18 comparable sales that were used to value the eastern portion of this property at \$1.01 per square foot. Most of these sales contained 10,000 square feet of land area or less and the sales ranged from \$0.70 per square foot to \$2.29 per square foot. Many of the transactions over \$1.00 per square foot actually involved the sale of not only land but also existing improvements. The allocation process that is necessary to derive a value for the land only can become an exercise in mathematics unless a more sophisticated analysis is used to determine the true value of the improvements on site.

I have also compared this sales information to information in our files and have found some inconsistencies. For example, Comparable Sale 10 is actually the sale of a 72,994 square foot site indicating a sales price of \$0.41 per square foot instead of \$0.96 per square foot.

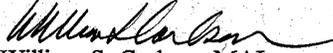
The size adjustment in appraisal practice is based upon the principal that typically, the larger the area, the lower the sales price per unit in comparison. When examining the parcels of land that are adjacent to the right-of-way being appraised, it appears that most of the ownership parcels are considerably larger than the parcels identified in this report as comparable sales. For this reason, it appears that the unit value for the property being appraised is overstated.

The memorandum from Lornes Lukins to John Herdzina, dated December 15, 2000, stated that the estimated unit value range of the Bell Avenue Yard was between \$0.75 and \$1.00 per square foot. The Comparable Sales Map indicates a combination of residential and commercial land sales within the western suburbs ranging from \$0.74 to \$1.17 per square foot, a listing of land on the northeast side of Des Moines at \$0.80 per square foot, sales west of Fleur Drive ranging from \$0.95 to \$1.25 per square foot, and a sale from the railroad to the city of Des Moines under threat of condemnation at \$4.16 per square foot just south of the Central Business District. The analysis of these sales appear to overstate the actual value of the land of the corridor through the yard. My recent appraisal of the Bell Avenue Yard for the city of Des Moines would not support this appraisal.

I appreciate the opportunity to provide this consulting service for you.

Respectfully,

CARLSON, McCLURE & ASSOCIATES, INC.


William S. Carlson, MAI
020009/pk

D

January 24, 2002

Mr. Joseph E. Pierce
The Mid-America Group
Regency West 4
4700 Westown Parkway
Suite 303
West Des Moines, IA 50266-6728

Re: Des Moines River Railroad Bridge

Dear Mr. Pierce:

The City of Des Moines has recently learned that the Union Pacific Railroad ("UP") has been granted authority by the Surface Transportation Board to abandon the Bell Avenue Industrial Lead (the "Line"). We understand that the Mid-America Group is interested in negotiating with the UP concerning a potential purchase of the Line.

In a teleconference this week between the City Attorney and your legal counsel, William Bartine of the Belin Law Firm, Mr. Bartine requested an update on the status of the City's interest in acquiring rights in the railroad bridge over the Des Moines River.

As of the date of this letter, the City has not filed an application to use the bridge for trails use under the "Rails to Trails Program," Section 8(d) of the National Trails Systems Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29. Also, as of the date of this letter, the City has not entered into an express, written agreement or obtained City Council approval of any plan to acquire the railroad bridge over the Des Moines River.

Please contact me if you have any questions about this letter.

Very truly yours,



Eric A. Anderson
City Manager

EAA/jmw



OFFICE OF THE CITY MANAGER
CITY HALL
400 EAST FIRST STREET
DES MOINES, IOWA 50309 - 1891
(515) 281-4141

ALL-AMERICA CITY 1949, 1976, 1981

Exhibit D