

UNION PACIFIC RAILROAD COMPANY

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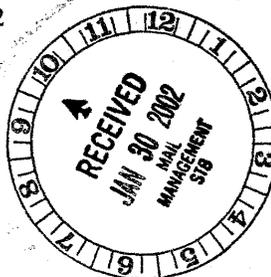
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January 29, 2002

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VIA FACSIMILE <202/565-9004>

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 "K" Street, N.W.
Washington, D.C. 20423-0001

**RE: Docket No. AB33- (Sub-No. 170), Union Pacific Railroad Company
--Abandonment and Discontinuance of Operation--in Polk County, IA
(Bell Avenue Industrial Lead in Des Moines, IA)**

Dear Mr. Williams:

Attached for filing in the above proceeding is Union Pacific Railroad Company's ("Union Pacific"), "Reply to Offer of Financial Assistance of Mid-America Railroad, L.L.C." This filing is being made pursuant to the former Interstate Commerce Commission's procedures for receiving submissions in emergency/rush situations by facsimile, Acceptance of Mail by Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice").

As required by the 1989 Notice, an original and 10 copies of the attached filing will be provided to the Board under separate cover.

Sincerely yours,

Mack H. Shumate, Jr.,
Senior General Attorney

ENTERED
Office of the Secretary

JAN 30 2002

Part of
Public Record

cc: Joseph Dettmar (STB) <202/565-9002>
Persons shown on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

UNION PACIFIC RAILROAD COMPANY'S **REPLY** TO
OFFER OF FINANCIAL ASSISTANCE OF
MID-AMERICA RAILROAD, L.L.C.

UNION PACIFIC RAILROAD COMPANY
Mack H. Shumate, Jr.
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Dated: January 29, 2002
Filed: January 29, 2002 (via facsimile)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

UNION PACIFIC RAILROAD COMPANY'S **REPLY**
TO OFFER OF FINANCIAL ASSISTANCE OF
MID-AMERICA RAILROAD, L.L.C.

This Reply of Union Pacific Railroad Company ("UP") is in response to the attempted Offer of Financial Assistance ("Attempted OFA") of Mid-America Railroad, L.L.C. ("Mid-America Railroad"), dated January 25, 2002, filed with the Surface Transportation Board ("STB") January 25, 2002 and received by UP on January 28, 2002.

Mid-America Railroad has totally failed to (i) demonstrate that it is financially responsible as required by 49 CFR 1152.27(c) and (ii) that its offer is reasonable. See 49 U.S.C. 10905(d). The Attempted OFA asserts that the corporate parent company of Mid-America Railroad, namely Mid-America Development Company and not Mid-America Railroad itself has, more than sufficient assets to meet its financial obligations under the

Attempted OFA. In order to show financial responsibility, the offeror, in this case Mid-America Railroad, must demonstrate that it has (or will have) not only the resources to fund the purchase price but also the resources to provide rail service for the statutory two (2) years. See 49 U.S.C. 10904(d)(4)(A).

Specifically, Mid-America Railroad, not its corporate parent Mid-America Development Company, must demonstrate that it has not only the purchase price to purchase the Rail Line as that term is defined in the abandonment application but must also show that it has the resources to fix the Des Moines River Bridge and operate the Rail Line. Chicago and North Western Railway Company Abandonment Exemption - Between Norfolk and Merrimac, NE, Docket No. AB-1(Sub-No. 249X) (STB served August 31, 1994) 1994 WL 467237 (I.C.C.).

Both Mid-America Development Company and Mid-America Railroad have failed to provide any past, current or proforma income statements, balance sheets, cash flow statements, financial statements, letters of credit, authorizing board resolutions or any other concrete financial evidence or information to support Mid-America Development Company's assertions as to its financial position or Mid-America Railroad's ability to cover its obligation to fund the Attempted OFA. This failure is not unlike that which occurred in Chicago and North Western Railway Company - Abandonment Exemption - Between Norfolk and Merrimac, NE, Docket No. AB-1(Sub-No. 249X) (STB served

August 31, 1994) 1994 WL 467237 (I.C.C.). See also, Chelsea Property Owners - Abandonment - Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, N.Y. Docket No. AB-167 (Sub-No. 1094) (STB served December 9, 1992_) (1992 WL 367491 (ICC) in which it was specifically held that, offerors must demonstrate that they are financially responsible by showing both that they have or can obtain sufficient funding to finance the purchase and to support two (2) years continued rail operations. Mid-America Railroad has already failed to meet their fundamental burden in its Attempted OFA.¹

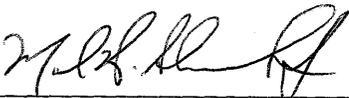
UP consistently expresses willingness to negotiate with qualified offerors of financial assistance for abandoned lines of railroad. However, the reasonableness of any offer of financial assistance must first be viewed with an eye toward ability and authorization to fund the transaction. It would be a waste of the UP's resources and assets to analyze supposed offers of financial assistance by persons that do not meet the very fundamental requirements of demonstrated financial responsibility. Mid-America Railroad's titled filing of, "Offer of Financial Assistance" is merely an Attempted OFA lacking the fundamental component of demonstrated ability to pay.

¹There is no need to address the disparity between the UP's Net Liquidation Value for the Rail Line and the ridiculously low \$5,000 Attempted OFA of Mid-America Railroad, because Mid-America Railroad has failed to demonstrate financial responsibility. See, Burlington Northern Railroad Company - Abandonment Exemption - Inking County, WA, Docket No. AB-6 (Sub-No. 357X) (STB served April 25, 1994) 1994 WL 145779 (ICC).

Therefore, UP respectfully requests that the STB find Mid-America Railroad's Offer of Financial Assistance to be fundamentally lacking for the reasons outlined above and reject same in its entirety.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 
Mack H. Shumate, Jr.,
Senior General Attorney