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208966

September 22, 2003



VIA UPS NEXT DAY AIR

Surface Transportation Board
Section of Environmental Analysis
1925 "K" Street, N.W., Room 504
Washington, DC 20423-0001

FILED

SEP 23 2003

**SURFACE
TRANSPORTATION BOARD**

Attention: Victoria Rutson

RE: Proposed Abandonment AB-33(Sub-No. 203X) from Milepost 0.64 near Walker and Palmer Streets to Milepost 1.54 near Trulley and Velasco Streets in Houston, Texas, a distance of 0.9 miles (4,752 feet), over the remaining portion of the Columbia Tap Industrial Lead in Harris County, Texas

Dear Ms. Rutson:

Pursuant to 49 U.S.C. §10502, Union Pacific Company submits the original and ten (10) copies of a Petition for Exemption, with Verification, to abandon the above-referenced rail line. The Certificate of Service and Publication pursuant to 49 C.F.R. §1152.60(d) and 49 C.F.R. §1105.12 is attached to the petition.

Also enclosed is a draft Federal Register notice pursuant to 49 C.F.R. §1152.60(c). Three computer diskettes containing the draft Federal Register notice, as well as the Petition for Exemption and Certificate of Service and Publication is also enclosed.

Please file the Petition for Exemption in Docket No. AB-33 (Sub-No. 203X). Enclosed is a voucher for \$4,700 for the filing fee.

FEE RECEIVED
SEP 23 2003
**SURFACE
TRANSPORTATION BOARD**

Sincerely yours,

Enclosures

O:\Abandonments\33-203\STB-2.wpd

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

UNION PACIFIC RAILROAD
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718
ph. (312) 777-2055 fx. (312) 777-2065

01

cc: w/Encls.

MTMCTEA
Attn: Railroads for National Defense
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

U. S. Department of the Interior
National Park Service
Recreation Resources Assistance Div.
P.O. Box 37127
Washington, D.C. 20013-7127

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor NW, Auditors Building
14th Street & Independence Ave., S.W.
Washington, D.C. 20250

Public Utilities Commission of Texas
1701 N. Congress Avenue
O. O. Box 13326
Austin, TX 78711-3326

Railroad Commission of Texas
1701 N. Congress Avenue
P. O. Box 12967
Austin, TX 78711-2967

Denise Francis
Governor's Office of
Budget & Planning
PO Box 12428
Austin, TX 78711

Harris County Commissioners
1001 Preston Street, Suite 9
Houston, TX 77002-1839

Porter Warner Industries
3202 McKinney Street
Houston, TX 77003

208966

BEFORE THE
SURFACE TRANSPORTATION BOARD



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Docket No. AB-33 (Sub-No. 203X)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN HARRIS COUNTY, TEXAS
(COLUMBIA TAP INDUSTRIAL LEAD AT HOUSTON, TEXAS)

PETITION FOR EXEMPTION

FILED

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TRANSPORTATION BOARD

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SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive
Room 1920
Chicago, IL 60606
Tel: 312/777-2055
Fax: 312/777-2065

Dated: September 22, 2003
Filed: September 23, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 203X)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN HARRIS COUNTY, TEXAS
(COLUMBIA TAP INDUSTRIAL LEAD AT HOUSTON, TEXAS)



PETITION FOR EXEMPTION

I.

INTRODUCTION

Union Pacific Railroad Company ("UP") hereby petitions the Board, pursuant to 49 U.S.C. §10502, to grant an exemption from 49 U.S.C. §§10903 in order to permit abandonment of operations over the remaining portion of the Columbia Tap Industrial Lead, at Milepost 0.64 near Walker and Palmer Streets to Milepost 1.54 near Trulley and Velasco Streets in Houston, Texas, a distance of .90 miles in Harris County, Texas. The sole customer on the Line is Porter Warner Industries located at 3202 McKinney Street, Houston, TX 77003. Porter Warner shipped two (2) cars of Bentonite Clay, STCC 3295232, tons unknown (reciprocal switch) in the year 2001, and two (2) cars of Bentonite Clay totaling 140 tons in the year 2002.

UP seeks exemption of this proposed abandonment from regulation under 49 U.S.C. §10903 in accordance with 49 U.S.C. §10502 and the Rules applicable thereto at 49 C.F.R. §1121 and 49 C.F.R. §1152 and the Special Rules at 49 C.F.R. §1152.60.

II.

PETITIONER'S BACKGROUND AND REPRESENTATIVE

UP has rail operations in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. UP owns and operates the Line proposed for abandonment which is located in the City of Houston, Harris County, Texas.

The name, address and telephone number of UP's representative is listed below:

Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive
Room 1920
Chicago, IL 60606
Tel: 312/777-2055
Fax: 312/777-2065

III.

LINE DESCRIPTIONS, ZIP CODE INFORMATION AND MAP

The proposed action involves the abandonment of the remaining portion of the Columbia Tap Industrial Lead, from M.P. 0.64 near Walker and Palmer Streets to M.P. 1.54 near Trulley and Velasco Streets, a distance of 0.9 miles all in the City of Houston, Harris County, Texas. The portion of the Columbia Tap Industrial Lead to be abandoned was constructed in 1860 by the Houston Tap & Brazoria Railway Company. The Line is constructed with 90-pound track material. The Line connects at milepost 0.64 with the

HB&T Walker Street Line, which is operated by BNSF except for UP's passage over it to reach the Line.

The property is not suitable for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreational uses, as this area is adequately served by existing roads and utility lines at the present time. However, UP has been contacted by the City of Houston's Bicycle Pedestrian Coordinator requesting the right to purchase the right-of-way for a proposed bicycle and hiking trail. The UP's plan for disposition is to work with the City of Houston to sell the right-of-way. The land proposed for abandonment is a mixture of both non-reversionary and reversionary property. Based on information in UP's possession, the Line does not contain federally granted right-of-way.

The Line traverses U.S. Postal Service Zip Code 77003.

A map of the Line is attached as **Attachment 1**.

IV.

SHIPPER INFORMATION

The sole active customer on the Line in the time period 2001 - 2002 was Porter Warner Industries located at 3202 McKinney Street, Houston, TX 77003. Porter Warner shipped two (2) cars of Bentonite Clay, STCC 3295232, tons unknown (reciprocal switch) in the year 2001 and two (2) cars of Bentonite Clay totaling 140 tons in the year 2002. The effect of the abandonment on Porter Warner Industries should be limited. The traffic is negligible in volume. The material moves in large sacks in box cars, and could be handled at an alternate site for transloading. The industry location is in the heart of central

Houston, and rail lines of UP and BNSF, as well as numerous major highways such as Interstate 45 and U.S. 59, lie within three (3) miles of Porter Warner. Given the location of the Line in central Houston and shifting land use, it is unlikely that a major new rail oriented industry would locate on the Line. The Line stub ends and cannot be used for overhead traffic. Train service is provided as needed by a train crew based within the Houston Terminal.

V.

REASONS FOR THE ABANDONMENT

UP is not aware of any other industry planning a location along the Line and there is no overhead traffic. There appears to be no reasonable alternative to the abandonment. There will be no adverse effect on the sole shipper, and present development trends in central Houston, Texas make it unlikely that a new rail user would locate in the area of the proposed abandonment. The two (2) carloads of bentonite clay that moved over the Line in 2002 originated at Mason City, Iowa and terminated on the Line. The total gross revenue earned by UP for this movement was \$4,263.00. However, the estimated annual maintenance to merely maintain the three (3) at-grade crossings on this Line that the UP must cross in order to serve Porter Warner Industries amounts to \$6,471.00 annually. Moreover, the off branch line costs for these same two railcar car loads from Mason City, Iowa to Houston, Texas is an additional \$2,697.00. Therefore, not even considering on and off branch line maintenance costs, the Line does not earn enough revenue to cover the costs to maintain the three (3) at-grade crossings. If all maintenance costs, both on the branch line and off the branch line for movements using the Line were

included in UP's total costs, UP incurs a substantial loss in relationship to the gross revenue earned.

Significant potential harm to the affected shipper and communities is virtually non-existent in this matter. UP is of the opinion that the proposed abandonment would be beneficial to both the UP, area shippers and interstate commerce.

VI.

REASONABLE ALTERNATIVE: VIABILITY

There appears to be no reasonable alternative to this abandonment. Shipments over the Line by the only shipper on the Line, Porter Warner Industries', do not economically justify retention of the Line and there are no known expected future shippers interested in using the Line.

VII.

THE EXEMPTION STANDARDS HAVE BEEN MET

A. The abandonment requires an exemption from 49 U.S.C. §10903.

Abandonment of rail lines requires authorization and approval of the Board pursuant to 49 U.S.C. §10903. However, 49 U.S.C. §10502 requires the Board to exempt a transaction when it finds: (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. §10101; and (2) either the transaction is of limited scope or Board regulation is not necessary to protect shippers from an abuse of market power.

UP's proposal for abandonment and discontinuance of operations clearly satisfies the standards for exemption under 49 U.S.C. §10502.

Detailed scrutiny by the Board under 49 U.S.C. §10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. §10101. An exemption will minimize UP's administrative expense and the cost, preparation and review associated with progressing the proposed abandonment in a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to exit from the Line consistent with Sections 10101(2) and (7). An exemption will permit UP to enhance its service to Houston, Texas resulting in cost savings to UP and thereby enhancing UP's ability to compete with other Texas rail carriers consistent with Sections 10101(4) and (5). An exemption will foster sound economic conditions in the transportation industry consistent with Section 10101(5), by permitting UP's abandonment of the Line and avoiding the need to retain and operate a rail line that is not only virtually unused by any shipper, but has no prospects of additional shippers seeking to use the Line.

The proposed abandonment is clearly a transaction of "limited scope." The Line is only .90 miles long and will have no recurring local traffic. In addition, regulation of this abandonment is not needed to protect shippers from an abuse of market power, since the only local shipper does not provide sufficient traffic to justify retention of the Line especially in light of the alternative shipping opportunities that exist in the immediate vicinity.

VIII.

LAND AREA, FEDERAL GRANT INFORMATION, AND PUBLIC USE

The right-of-way varies in width from 20 feet to 100 feet and is level. The property is urban and mostly industrial in nature. South of Interstate 45, the property becomes residential. The Harris County Commissioner's Office has been contacted but no response has been received. The plan for disposition will be to work with the Bicycle Pedestrian Coordinator for the City of Houston, Texas to purchase the right-of-way for a proposed bicycle and hiking trail. Otherwise, sale of the non-reversionary property will be to the adjoining landowners.

Based on information in UP's possession, the Line does not contain federally granted rights of way. UP is unaware of any adverse effect on local and existing land use plans. Any documentation in Petitioner's possession will be made available promptly to those requesting it.

IX.

LABOR

UP is agreeable to the labor protection conditions imposed in abandonment proceedings as prescribed in Oregon Short Line R. Co. - Abandonment - Goshen, 360 ICC 91 (1979).

X.

ENVIRONMENTAL AND HISTORIC REPORT.

The required environmental and historic information is contained in the Combined Environmental and Historic Report which was served on July 11, 2003. A copy

of the Report is attached hereto as **Attachment 2**. The original and ten (10) copies were sent to Ms. Victoria Rutson, Section of Environmental Analysis, on July 10, 2003 for filing.

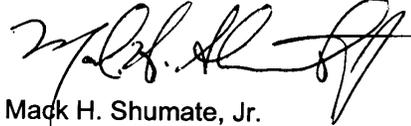
Subsequent to the filing of the Combined Environmental and Historic Report, one additional comment letter was received from the Office of the Governor of the State of Texas dated July 21, 2003, a copy of which is attached hereto as **Attachment 3** and hereby made a part hereof. In summary the various governmental agencies that responded have no comment or state that no action is needed.

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Board issue a decision exempting the proposed abandonment from the provisions of 49 U.S.C. §10903 and direct that the exemption be effective on the date of the Board's decision.

Dated this 22nd day of September, 2003.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



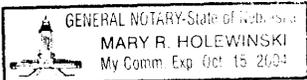
Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive
Room 1920
Chicago, IL 60606
Tel: 312/777-2055
Fax: 312/777-2065

VERIFICATION

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

I, RAYMOND E. ALLAMONG, JR., Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, I know that these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Omaha, Nebraska, this twelfth day of September, 2003.



Raymond E. Allamong, Jr.
Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO
before me this twelfth day of
September, 2003.

Mary R. Holewinski

Notary Public

My Commission expires: *October 15, 2004*

CERTIFICATE OF SERVICE AND PUBLICATION

The undersigned hereby certifies that a copy of the foregoing Petition for Exemption in Docket No. AB-33 (Sub-No. 203X) by Union Pacific Railroad Company was served on the date indicated below by mailing a copy, first class mail postage prepaid to the following:

MTMCTEA
Attn: Railroads for National Defense
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

Public Utilities Commission of Texas
1701 N. Congress Avenue
O. O. Box 13326
Austin, TX 78711-3326

U. S. Department of the Interior
National Park Service
Recreation Resources Assistance Div.
P.O. Box 37127
Washington, D.C. 20013-7127

Railroad Commission of Texas
1701 N. Congress Avenue
P. O. Box 12967
Austin, TX 78711-2967

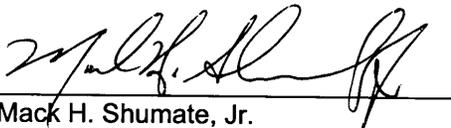
U.S. Department of Agriculture
Chief of the Forest Service
4th Floor NW, Auditors Building
14th Street & Independence Ave., S.W.
Washington, D.C. 20250

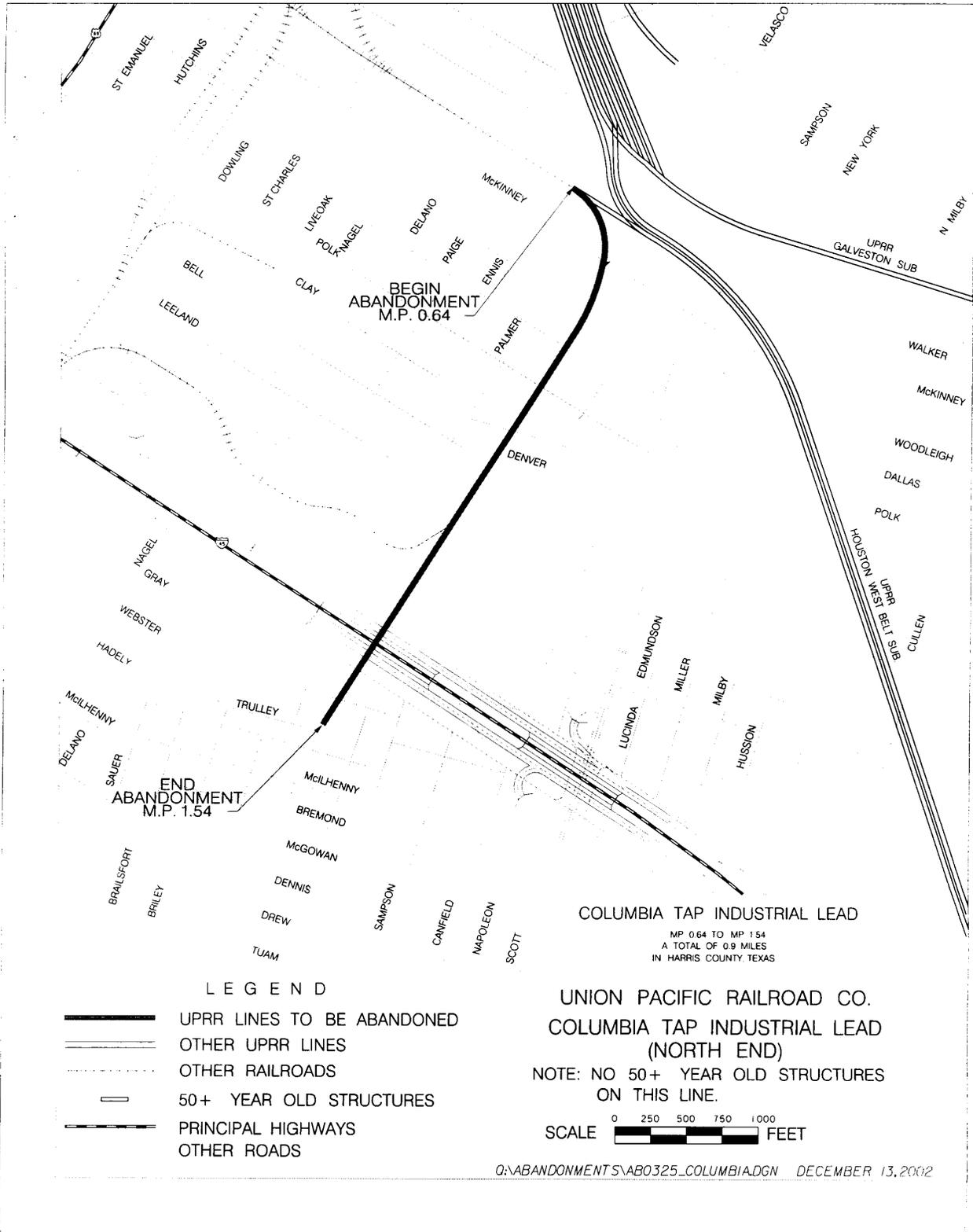
The undersigned further certifies that a notice of the abandonment was published one time in the County where the rail line is located as follows:

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Harris	<i>Houston Chronicle</i>	August 14, 2003

The above newspaper is generally circulated in the county where the rail line is located. The Notice as published was in the form prescribed by the Board for a Petition for Exemption at 49 CFR 1105.12.

Dated this 22nd day of September, 2003.


Mack H. Shumate, Jr.





July 10, 2003
~~June 10, 2003~~

VIA U.P.S. OVERNIGHT

Surface Transportation Board
Section of Environmental Analysis
1925 "K" St., N.W., Room 504
Washington, DC 20423-0001

Attention: Victoria Rutson

RE: Proposed Abandonment AB-33 (Sub-No. 203X) from Milepost 0.64 near Walker and Palmer Streets to Milepost 1.54 near Leeland and Velasco Streets in Houston, Texas, a distance of 0.9 miles (4,752 feet), over the Columbia Tap Industrial Lead in Harris County, Texas

Dear Ms. Rutson:

Enclosed for filing in the above-referenced docket is the original and ten (10) copies of a Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

Union Pacific anticipates filing a Petition for Exemption in this matter on or after July 31, 2003.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", with a stylized flourish at the end.

Enclosures

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

UNION PACIFIC RAILROAD
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718
ph. (312) 777-2055 fx. (312) 777-2065



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

Monday, July 21, 2003

Mr. Chuck Saylor
Union Pacific Railroad
1416 Dodge Street, Room 830
Omaha, NE 68179

RE: TX-R-20030414-0003-50

Union Pacific Railroad - PROPOSED ABANDONMENT, Harris County

Dear Mr. Saylor:

Your application for assistance referenced above has been reviewed. The comments received are summarized below.

This application was submitted for comment to the Texas Attorney General's Office, the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, the Texas Department of Agriculture, and the Houston Galveston Area Council. The Texas Attorney General's Office, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality have not reviewed the application. The Texas Department of Agriculture has no comment and the Houston Galveston Area Council has inputted the comment "No Action." No other substantive comments were received.

We appreciate the opportunity to review your proposal. Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Francis".

Denise S. Francis, State Single Point of Contact
DSF/dsi

cc: Surface Transportation Board

DRAFT FEDERAL REGISTER NOTICE
[49 C.F.R. § 1152.60(c)]

STB No. AB-33 (Sub-No. 203X)
Notice of Petition for Exemption to Abandon or
to Discontinue Service

On September 23, 2003, Union Pacific Railroad Company filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a line of railroad known as the Columbia Tap Industrial Lead from M.P. 0.64 near Walker and Palmer Streets to M.P. 1.54 near Trulley and Velasco Streets, a distance of 0.9 miles in Houston, Harris County, Texas (the "Line"). The Line traverses U. S. Postal Service Zip Code 77003. The proceeding has been docketed as No. AB-33 (Sub-No.203X). There are no agency stations on the Line.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected as required by 49 U.S.C. 10903(b)(2).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis, telephone (202) 565-1545.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.