

BARNES & THORNBURG

2/6012

750 17th Street, N.W.  
Suite 900  
Washington, D.C. 20006 U.S.A.  
(202) 289-1313  
(202) 289-1330 - Fax

www.htlaw.com

March 17, 2006



ENTERED  
Office of Proceedings

MAR 17 2006

Part of  
Public Record

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

RE: Docket No. AB-33 (Sub-No. 229X) Union Pacific Railroad Company  
Abandonment Exemption in Ellis County, Texas (Waxahachie  
Industrial Lead)

Dear Secretary Williams:

Enclosed herewith please find the original and ten copies of the Late-Filed Petition for Issuance of a Public Use Condition filed on behalf of the Texas Department of Transportation, which is a state government entity. As such, it appears to be subject to the provisions of 49 C.F.R. § 1002.2(e)(1), whereby the Board has waived filing fees for an application or other proceeding which is filed by a state government entity.

Also enclosed is a copy of this letter and an additional copy of the Petition, which are to be date-stamped and returned to the undersigned. Thank you for your consideration in this matter.

Very truly yours,

Richard H. Streeter

RHS:rs  
Enclosures  
cc: All parties of record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY ABANDONMENT EXEMPTION IN  
ELLIS COUNTY, TEXAS (WAXAHACHIE INDUSTRIAL LEAD)

---

LATE-FILED PETITION FOR ISSUANCE OF A  
PUBLIC USE CONDITION

Pursuant to 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28, the Texas Department of Transportation (TxDOT), by and through its counsel of record, hereby requests the Board find that the involved rail properties are appropriate for use for other public purposes.<sup>1</sup> If allowed to acquire the subject rail line, which is adjacent to an existing Interstate Highway, TxDOT intends to preserve the right-of-way for the purpose of restoring rail freight service, mass transportation, or potential expansion of the existing highway system.

The Board is requested to authorize TxDOT to negotiate with the Union Pacific Railroad Company (UP) during the existing 180-day period that the Board has established to allow the City of Waxahachie, Texas to negotiate for rail banking and interim recreational trail use of the right-of-way involved in this proceeding, as well as the potential acquisition of the property in fee. As reflected by the Board's decision served February 1, 2006, the City of Waxahachie, Texas (the City), on January 11, 2006, late-filed a request for the issuance of a NITU for the subject line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Although late-filed, the Board found that there is no indication that the City's late-filed request will prejudice any party and accepted it.

---

<sup>1</sup> In order not to waive any contention, TxDOT notes that UP did not comply with the governing regulations when it failed to notify TxDOT, which is the regulatory agency charged with jurisdiction over the railroads that operate in Texas, in writing of its intent to abandon.

The City has agreed to permit TxDOT to be substituted in its place. Furthermore, UP has no objection to negotiating with TxDOT instead of the City. Given the privately negotiated solution, substitution of TxDOT for the City and the acceptance at this time of TxDOT's Petition will not prejudice any party.

The following is submitted in support of TxDOT's Petition.

**The Subject Rail Properties Are Appropriate For Other Public Uses**

The subject lines are no longer required for continued rail operations. However, TxDOT, in planning for the transportation needs of the 21<sup>st</sup> Century, has determined that it is essential that the current rail right-of-way be preserved. No decision has yet been made regarding the final use of the right-of-way. However, given its strategic location in terms of the adjacent Interstate Highway, there are various options, including expansion of the highway, or preservation of the right-of-way for future rail service. Given the potential for future rail use, the Board is requested to impose a condition that would require the seller to leave the line intact. In any event, it would be consistent with the public interest to preserve the rail corridor even if UP has no continuing need for this particular segment of the line.

The property extends between Milepost 798.03 near Waxahachie to Milepost 802.60 near Nena, a distance of 4.57 miles in Ellis County, Texas (the "Line"). The right-of-way extends from Milepost 798.03 near Waxahachie to Milepost 802.60 near Nena, a distance of 4.57 miles in Ellis County, Texas (the "Line").

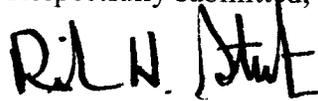
A map of the involved right-of-way is attached as Exhibit A.

A copy of this statement is being served on the railroad on the same date it is being served on the Board. I am authorized to state that UP has no objection to the request.

**Conclusion and Requested Relief**

WHEREFORE, the Board should issue an order finding that (i) the line is not required for continued rail operations; (2) the rail properties are appropriate for other public purposes; (3) TxDOT and UP are authorized to negotiate regarding the potential acquisition in fee of the right-of-way involved in this proceeding; and (4) that UP should not dismantle or dispose of the existing rail assets pending termination of the negotiations with TxDOT.

Respectfully submitted,



Richard H. Streeter  
BARNES & THORNBURG LLP  
Suite 900  
750 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20006  
(202) 408-6933  
(202) 289-1330 (fax)  
Attorneys for Texas Department of  
Transportation

Date: March 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of March, 2006, served a true copy of the foregoing Late-Filed Petition for Public Use Condition by first class mail, postage prepaid:

Mack H. Shumate, Jr.  
Senior General Attorney  
Union Pacific Railroad  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606

James S. Chapman  
Chapman & Chapman LLP  
P.O. Box 641  
Waxahachie, Texas 75168

City of Waxahachie, Texas  
401 S. Rogers  
Waxahachie, Texas 75165



---

Richard H. Streeter