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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. AB-33 (SUB-NO. 255)

**UNION PACIFIC RAILROAD COMPANY
- ABANDONMENT -
IN CARVER AND SCOTT COUNTIES, MN**

**UNITED TRANSPORTATION UNION'S
COMMENTS IN PROTEST**

United Transportation Union ("UTU") respectfully submits its comments in protest of the above-captioned abandonment proceeding and asks the Surface Transportation Board to deny the application. The factors the Board considers on whether to approve an abandonment clearly do not warrant the granting of this application

On December 13, 2007, Union Pacific Railroad Company ("UP") filed with the Board an application for permission to abandon its Chaska Industrial Lead, extending from milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, a distance of 5.6 miles, in Carver and Scott Counties, MN (the Line). The line includes no stations and traverses United States Postal Service Zip Codes 55315, 55318, and 55379. The line does not contain federally granted rights-of-way. Also, this line of railroad has appeared on UP's system diagram map in Category 1 since July 16, 2007.

The Line was originally constructed in 1870 by the Minneapolis and St. Louis Railroad, and subsequently became part of the Chicago and North Western Transportation Company ("CNW") system until CNW's merger into UP in 1995. After the merger of CNW into UP in 1995, UP

provided rail freight service on the Line until a bridge at MP 37 ("Destroyed Bridge") was destroyed on March 23, 2007, as a result of UP's failing to maintain the bridge. The line was formally embargoed after the destruction of the Destroyed Bridge on March 26, 2007. Additionally, the Minnesota River Bridge at MP 36.17, that carries the Line across the Minnesota River, is apparently in an advanced state of deterioration also because of deferred maintenance. UP claims there is no overhead traffic on the Line and prior to the destruction of the Destroyed Bridge, one shipper, United Sugars Corp ("United Sugars") received freight shipments moved via the Line. United Sugars is currently using truck service to meet its shipping needs. The only other potential shipper on the Line, Chaska Building Center, received construction materials until early 2006, when it began transporting all shipments via truck. Railroad employees adversely affected by this abandonment will be protected by the conditions set forth in *Oregon Short Line R. Co., – Abandonment – Goshen*, 360 I C C. 91 (1979).

The applicant's entire case for abandonment (case-in-chief) was filed with the application. The Board held that any interested person may file written comments concerning the proposed abandonment, or protests (including the protestant's entire opposition case), by January 27, 2008.

ABANDONMENT STANDARD

_____The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 49 U.S.C. § 10903(d). In implementing this standard, the Board balances the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. *Colorado v United*

State v., 271 U.S. 153 (1926)

The Board must determine whether the burden on the railroad from continued operations is outweighed by the burden on the shippers and public parties from the loss of rail service. This involves a question of whether, and to what degree, shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur harm and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operations of uneconomic and excess facilities. Protestants must show that the harm to shippers and communities outweighs the demonstrated harm to the railroad and interstate commerce resulting from continued operations. See *Chicago and North Western Transp. Co. – Abandonment*, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment or discontinuance application, the Board considers a number of factors, including operating profit or loss, other costs the carrier may experience (including rehabilitation and economic costs), and the effects on shippers and communities. No one factor is conclusive. See *Cartersville Elevator, Inc. v. ICC*, 724 F.2d 668, *aff'd on reh'g, en banc*, 735 F.2d 1059 (8th Cir. 1984). Here, the factors weigh against granting the abandonment.

UNION PACIFIC'S CASE FOR ABANDONMENT

_____ The Line is currently embargoed and cannot now be operated due to the March 23, 2007 destruction of the Destroyed Bridge at MP 37.14, which will need to be rebuilt in order for UP to restore service. Another bridge on the Line apparently will also require rehabilitation or replacement, while the remainder of the Line will require a lesser degree of rehabilitation.

According to UP, exclusive of the Destroyed Bridge at MP 37.14 and the Minnesota River

Bridge at MP 36.17, the Line does not require extensive rehabilitation to meet FRA Class I standards. However, UP claims that these two bridges must be replaced and repaired at a combined approximate cost of \$4.3 million to \$8.8 million, in order to restore the Line to FRA Class I standards.

UP asserts that the Net Liquidation Value of the Line is \$2,828,978. This amount includes track, other materials, and real estate associated with the Line.

UP apparently most recently provided service on the Chaska Industrial Lead, with a single local train (designated as LTU23) that originated in New Prague, MN, approximately three times per week. During the Base Year, extending from March, 2006 through February, 2007 (the last full 12-month period before the Line was embargoed due to the destruction of the Destroyed Bridge at MP 37.14), 764 railcars were spotted and pulled over the course of 154 round-trip operations over the Line. In the forecast Year (December 2007 through November 2008), if the Destroyed Bridge is replaced, 764 railcars would be spotted and pulled over the course of 154 round trips by a local train operating from New Prague, MN.

Traffic using the Line in recent years has been as follows:

<u>Commodity</u>	<u>Year</u>	<u>Tons</u>	<u>Carloads</u>
Boards	2005	96	1
Gypsum Wallboard	2005	303	3
Lumber	2005	523	6
Sugar	2005	60,210	630
Lumber	2006	297	3

Sugar	2006	77,070	816
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Based on normalized maintenance costs, the Line shows a small operating gain of \$23,823 per year. Expenses for normalized maintenance in the Base Year are \$7,038 per track mile, or a total of \$39,413 for the entire Line. Additionally, normalized maintenance expenses also include \$5,000 for annual bridge maintenance, for a grand total of \$44,413

These normalized maintenance costs and expenses do not factor in any expenses for replacement of the Destroyed Bridge at MP 37.14, nor for the rehabilitation or replacement of the Minnesota River Bridge at MP 36.17. Replacing the Destroyed Bridge would cost \$816,000, while the Minnesota River Bridge would require rehabilitation at an alleged estimated cost of \$3.5 million, or replacement at an estimated cost of \$8 million.

UP's calculations are based on the assumption that total Forecast Year rail traffic on the Line would be limited to 764 carloads for United Sugars. Rail traffic in the Forecast Year is based upon rail service to the Line's only shipper – United Sugars. UP does not expect any other shippers to seek rail service on the Line during the Forecast Year, or within the foreseeable future.

UP asserts that reopening and rehabilitating this 5.6 mile Line to FRA Class I standards will require anywhere from \$5.9 million to more than \$10 million in capital investments.

UP states that the Chaska Industrial Lead operations are projected to result in a \$136,413 operating gain during the Forecast Year with a current annual operating cost of \$764,800. This amount includes \$44,413 in normalized maintenance expense as factored into UP's calculations

UP claims these figures do not take into account the substantial costs required to rehabilitate

and reopen the Line. These costs would include rebuilding the Destroyed Bridge at MP 34 17, repairing or replacing the Minnesota River Bridge at MP 36 17, and expenditures for track repairs. UP estimates that these costs will total approximately \$5.9 million if UP repairs the Minnesota River Bridge, and approximately \$10.5 million if UP builds a replacement.

UTU'S PROTEST

UTU wants to point out that it is apparent that the bridge problems on the Line are of UP's own making. UP deferred maintenance on the Destroyed Bridge and the Minnesota River Bridge until one of them collapsed. If UP had not deferred maintenance in such a manner, this Line's operations would result in an operating gain as demonstrated in UP's case. This gain would probably have only continued to increase since the growth in traffic significantly increased from 2005 to 2006. There is no evidence that UP has ever made any attempt to effectively market new business on the line. The carrier's current projections are based on assumptions rather than any effort to market the line service. The existing line has the market potential for a multi-modal freight transportation terminal at Chaska, Minnesota.

UTU also believes that there is overhead traffic on this Line. The Mankato Subdivision, MP 34, Merriam Junction is a critical track segment with a wye track that is part of the Twin Cities, Mankato, North Platte, and western ports of United States corridor. UP has regularly used the line for manifest and unit train meets and the holding of the same trains for extended periods of time. Moreover, UTU believes this Line is being considered to be a part of a seven county metropolitan area commuter rail system by the pertinent commuter authority. The proposed line abandonment will eliminate potential for interstate passenger, intrastate passenger, or commuter rail access to

Class I Mainline at Merriam Junction, thereby closing a gateway to the Hennepin County and City of Minneapolis.

Moreover, UTU believes that this line is an integral part of the rest of the UP system and should not be lopped off when further possibilities remain for this line.

While UP cries that the two bridges will require too much capital to warrant repairing them based on the revenue produced when the Line is operational, UTU believes this excuse is unworthy of consideration since UP's own deferred maintenance has created this problem. The public and shippers are entitled to still have this line in operation since it holds many possibilities for further development. UP's negligence in not maintaining the Line should not be given any weight in light of these circumstances.

The carrier has issued statements as to the cause of the Destroyed Bridge's collapse. The carrier's statement is not consistent with the on-site evidence and witness statements. A thorough investigation as to the cause of the bridge collapse is necessary so as to ascertain the facts and avoid another bridge collapse on the UP system.

As a result, UP should be required to fulfill its common carrier obligation and rehabilitate this line

Respectfully submitted,

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CERTIFICATE OF SERVICE

_____ This is to certify that a copy of the foregoing United Transportation Union's Comments in Protest have been served this ____ day of January 2008, via first-class, postage pre-paid mail upon the following:

Gabriel S. Meyer
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Daniel R. Elliott, III