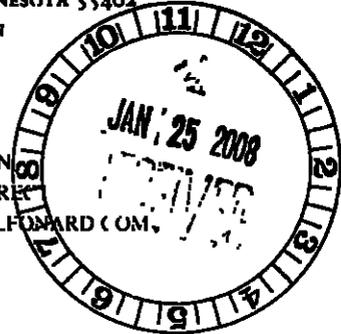


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January 24, 2008

The Honorable Vernon Williams
Secretary, Surface Transportation Board
1925 K Street NW, Room 711
Washington D.C. 20423-00001

VIA EXPRESS MAIL

Re: **STB Docket No. AB-33 (Sub. No. 255)**
*Union Pacific Railroad Company – Abandonment – In Carver and Scott Counties,
Minnesota (Chaska Industrial Lead)*

Dear Secretary Williams

Enclosed for filing please find the original and ten copies of United Sugar Corporation's Protest in the above-entitled matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the enclosed self-addressed stamped envelope.

Very truly yours,

LEONARD STREET AND DEINARD

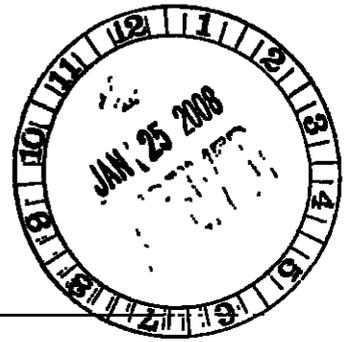
W Karl Hansen

Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



UNION PACIFIC RAILROAD COMPANY -)
ABANDONMENT - IN CARVER AND)
SCOTT COUNTIES, MINNESOTA)
(CHASKA INDUSTRIAL LEAD))

DOCKET NO AB-33
(SUB-NO 255)

PROTEST

UNITED SUGARS CORPORATION
524 Center Avenue
Moorhead, MN 56560

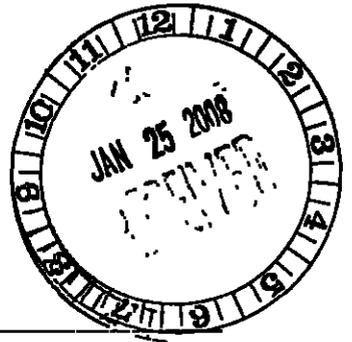
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Attorneys for Protestant
United Sugars Corporation

Dated January 24, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



UNION PACIFIC RAILROAD COMPANY -)	
ABANDONMENT - IN CARVER AND)	DOCKET NO AB-33
SCOTT COUNTIES, MINNESOTA)	(SUB-NO. 255)
(CHASKA INDUSTRIAL LEAD))	

PROTEST

INTRODUCTION

Pursuant to 49 C.F.R. § 1152.25(a)(1) and the Board's decision served January 2, 2008, United Sugars Corporation ("United Sugars") protests the application for authority to abandon a 5.6 mile rail line in Carver and Scott Counties, Minnesota, filed by Union Pacific Railroad Company ("Union Pacific") on December 13, 2007. The Board should deny the application because Union Pacific has failed to demonstrate that the public convenience and necessity require or permit the proposed abandonment.

REQUIRED INFORMATION

Pursuant to the requirements of 49 C.F.R. § 1152.25(a)(1), United Sugars submits the following information:

- (i) Protestant is United Sugars Corporation, whose address is 524 Center Avenue, Moorhead, Minnesota 56560.
- (ii) United Sugars operates a sugar processing plant in Chaska, Minnesota and has depended on rail transportation since 1994 to receive sugar from production facilities in the Red River Valley and Montana.

(iii) United Sugars opposes Union Pacific's application because abandonment of the Chaska Industrial Lead will adversely affect United Sugars' Chaska operations. Since March 2007, when Union Pacific embargoed the rail line, United Sugars has been forced to supply its Chaska facility by truck at greatly increased cost. Continued dependence on truck shipments will increase United Sugars' transportation expenses by more than \$1.6 million per year.

FACTUAL BACKGROUND¹

Since 1994, United Sugars has operated its sugar processing plant in Chaska, Minnesota that has been in operation for 102 years. United Sugars transports sugar from its Minnesota, North Dakota, and Montana production facilities to Chaska for further processing. The majority of this sugar is made into liquid sugar and then delivered via truck to customers in Minnesota, Iowa, and Wisconsin. Rail shipments to the Chaska facility have been an essential component of United Sugars' overall distribution network. Prior to the embargo Union Pacific imposed on the Chaska Industrial Lead in March 2007, United Sugars obtained sugar from production facilities in Sidney, Montana; Drayton, Hillsboro, and Wahpeton in North Dakota, and East Grand Forks, Crookston, and Moorhead in Minnesota.

Union Pacific's elimination of rail service to the Chaska plant has greatly increased United Sugars' cost of transporting sugar from its production facilities. United Sugars has been forced to move sugar by truck at a significantly higher cost, which has had the ancillary effect of limiting the origin production facilities that United Sugars can source from. Due to the greater distances from Chaska to the production facilities in Sidney, Drayton, Hillsboro, and East Grand Forks, United Sugars no longer receives sugar from these facilities for its Chaska operations.

¹ The background set forth herein is based on the Verified Statement of Lee Glass, United Sugars' Director of Transportation, attached as Appendix I.

In 2005, United Sugars shipped 1,165,701 cwt of sugar in 593 railcars to the Chaska plant. In 2006, United Sugars shipped 1,506,455 cwt in 777 railcars to Chaska. United Sugars anticipates that it will continue to ship this volume of sugar to Chaska in the foreseeable future. If United Sugars were forced to ship the same volume of sugar from the same origins by truck as it did by rail in 2006, United Sugars' annual transportation costs would increase by \$1.6 million or approximately \$1.07 cwt.

After Union Pacific imposed its embargo in March 2007, United Sugars evaluated the option of continuing to ship sugar by rail into the Twin Cities area and conducting transloading operations to complete delivery to the Chaska facility by truck. United Sugars determined that the actual cost of transloading from either the Union Pacific's tracks in Merriam, MN or the Twin Cities & Western Railroad ("TC&W") north of Chaska would exceed the cost of relying on trucks for the entire movement from the Red River Valley to Chaska.

United Sugars' Director of Transportation estimates that it would take approximately 3,001 truck shipments, traveling 2,073,092 miles and consuming 345,515 gallons of fuel to move same volume of sugar to the Chaska plant as United Sugars received by rail in 2006. Moreover, because the Chaska facility is located next to a residential area, this significant increase in truck traffic will contribute to increased highway congestion and create noise issues for the neighborhood.

ARGUMENT

I. LEGAL STANDARDS FOR ABANDONMENT PROCEEDINGS.

Pursuant to 49 U.S.C. § 10903(d)(1), a rail carrier may abandon any part of its rail lines only if the Board finds that the present or future public convenience and necessity require or permit the abandonment. In making this finding, the Board shall also consider whether the

abandonment "will have a serious, adverse impact on rural and community development." *Id* In applying this standard, the Board must balance the harm to shippers and communities that would result from the abandonment against the burden that continued operation would impose on the rail carrier *Colorado v United States*, 271 U S 153, 169 (1926).

As the proponent of Board action, Union Pacific has the burden of producing evidence to establish that the public convenience and necessity permit abandonment of rail service *Illinois Cent Gulf R Co - Abandonment*, 363 I.C.C. 93, 101 (1980) Accordingly, Union Pacific must demonstrate that the Chaska Industrial Lead is a burden on interstate commerce *CSX Transp. Inc - Abandonment Exemption - (Between Memphis and Cordova) in Shelby County, TN*, STB Docket No AB-55 (Sub-No. 590X). (STB served December 12, 2001)

II. THE BOARD SHOULD DENY UNION PACIFIC'S ABANDONMENT APPLICATION.

In this case, the Board should deny the application to abandon the Chaska Industrial Lead because Union Pacific has failed to demonstrate that this line is a burden on interstate commerce and that the harm to United Sugars and the community is outweighed by the claimed burden to Union Pacific of repairing the bridge and restoring service on the line

A. Adverse Effect of Abandonment on United Sugars' Chaska Operations.

As demonstrated by the verified statement of United Sugars' Director of Transportation, Union Pacific's proposed abandonment of the Chaska Industrial Lead would have a serious adverse effect on United Sugars For more than a decade United Sugars has relied on rail transportation to receive sugar at its Chaska processing plant from production facilities in the Red River Valley and Montana In 2006, United Sugars received 777 railcar loads of sugar via the Chaska Industrial Lead, a volume that would continue in the foreseeable future After Union Pacific embargoed the line in March 2007, United Sugars was forced to depend solely on truck

transportation at greatly increased cost. Contrary to Union Pacific's assertions in its application, transloading sugar from either Merriam, Minnesota or the TC&W is not a viable alternative to the direct rail service that United Sugars enjoyed until the embargo. Transloading at either location would, in fact, be more costly than the already increased expense United Sugars has borne after it was forced to depend on truck shipments for the entire haul since March 2007.

Union Pacific's claim that United Sugars can adequately rely on costly alternate transportation by truck is factually and legally incorrect. "If the phrase 'alternative' is to have any meaning it must be interpreted to include transportation both logistically and *economically feasible*." *Ga. Pub. Serv. Comm'n v. United States*, 704 F.2d 538, 545 (11th Cir. 1983) (emphasis added). Shipping the same volume of sugar by truck as United Sugars received by rail would increase its transportation costs by approximately \$1.6 million each year, increased costs that will become permanent if Union Pacific's application for abandonment of the Chaska Industrial Lead were to be approved. Unquestionably, increased costs of such magnitude would have serious adverse effects on United Sugars' Chaska operations, effects which weigh heavily against allowing the abandonment. *See Indiana Sugars, Inc. v. ICC*, 694 F.2d 1098, 1100-01 (7th Cir. 1982). In *Indiana Sugars*, the court reversed the ICC's granting an application for abandonment, finding that the Commission had failed to properly consider the serious need for rail service by the shipper using the service to be discontinued. The court emphasized that:

The long-haul movement of bulk sugar in carload quantities is a vital component of the business operations of Indiana Sugars. To lose rail service for so substantial a segment of its inbound traffic would inflict serious hardships upon the company. This is the type of traffic which normally should move by rail rather than other forms of carriage. There has been demonstrated a genuine and substantial need for long haul, carload rail service for this commodity, of which Indiana Sugars uses a large quantity regularly in its business operations.

Id Here, United Sugars has similarly demonstrated its need for long haul, carload rail service for the effective operation of its Chaska facility, and the Board should deny Union Pacific's application for abandonment.

The Board should also consider whether shippers like United Sugars who have been relegated to truck transportation can remain competitive with rail-served shippers. *See Illinois v United States*, 666 F.2d 1066, 1080 (7th Cir. 1981). Abandonment of the Chaska Industrial Lead would significantly increase United Sugars' cost of transportation with an undeniably negative effect on its ability to effectively compete with other sugar producers. United Sugars would either have to increase prices to offset the expense or absorb the loss in the plant's operating budget. Raising prices could negatively affect United Sugars' market share and swallowing the loss would reduce the plant's operating funds that could otherwise be available for expansion, renovation, or maintenance. Either option would harm United Sugars' competitive position with other sugar producers. This factor also weighs heavily against the proposed abandonment.

B. Adverse Effect of Abandonment on The Community.

In 49 U.S.C. § 10903(d), Congress directed the Board to consider whether the abandonment "will have a serious, adverse impact on rural and community development" and it is reasonable to conclude that by specifying the criterion in the statute Congress "attached more than a passing importance to this factor." *Ga. Pub. Serv.*, 704 F.2d at 542. A carrier's claimed economic loss alone will not justify an abandonment when there is evidence, as here, of serious harm to local interests by the loss of rail service. *See, e.g., S. Pac. Transp. Co. v ICC*, 871 F.2d 838, 843 (9th Cir. 1989). "In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would

impose a relatively light burden upon a prosperous carrier.” *Colorado v United States*, 271 U.S at 168-69.

The burden created by abandonment of the Chaska Industrial Lead would fall not only on United Sugars’ shoulders, but on the surrounding community and neighborhoods as well. Highway traffic and congestion of city streets has been substantially increased by the more than 3,000 trucks that now deliver sugar to the Chaska plant. The increased noise, the hundreds of thousands of additional gallons of fuel consumed (and resulting increased emissions), and the additional costs for upkeep and repair of roads and bridges are damages that the community at large will continue to suffer should the Board approve the application. The adverse impact of abandonment on the total community may also be seen through its effect on individual shippers, such as United Sugars, who serve the community. *Nebraska v United States*, 255 F Supp 718, 722 (D Neb 1966); *Ga Pub Serv*, 704 F 2d at 542 (noting that even if rail-dependent businesses were able to survive by relocating, they would be lost to the community). Weighing the relatively light burden that rehabilitation of the bridge would impose on a prosperous Class I railroad, as the Board must, against the severe adverse impact that abandonment would inflict upon United Sugars and the community served by the line leads to but one conclusion. The Board should deny Union Pacific’s application to abandon the Chaska Industrial Lead.

CONCLUSION

For the foregoing reasons, United Sugars Corporation respectfully requests that the Board deny Union Pacific's application to abandon the Chaska Industrial Lead.

Dated: January 24, 2008

Respectfully submitted,

UNITED SUGARS CORPORATION
524 Center Avenue
Moorhead, MN 56560

Protestant



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APPENDIX 1

VERIFIED STATEMENT OF LEE GLASS

My name is Lee Glass. I am the Director of Transportation for United Sugars Corporation ("United Sugars") and have been in charge of transportation operations for the Chaska plant since 1994. This verified statement is based on my personal knowledge and review of records kept in the ordinary course of business by United Sugars.

Since 1994, United Sugars has operated a sugar processing plant in Chaska, Minnesota that has been in operation for 102 years. United Sugars transports sugar from its Minnesota, North Dakota, and Montana production facilities to Chaska for further processing. The majority of this sugar is made into liquid sugar and delivered via truck to customers in Minnesota, Iowa, and Wisconsin. Rail shipments to the Chaska facility have been a vital link in the overall United Sugars distribution network. Prior to the embargo Union Pacific imposed on the Chaska Industrial Lead in March 2007, United Sugars obtained sugar from production facilities in Drayton, Hillsboro, and Wahpeton in North Dakota and East Grand Forks, Crookston, and Moorhead in Minnesota and Sidney, Montana.

Elimination of rail service into Chaska has increased the cost of transporting sugar from our production facilities. United Sugars has been forced to transport sugar in trucks at a significantly higher cost and has also been limited in which origin production facilities that can be sourced from. Due to the greater distances to the facilities in Drayton, Hillsboro, and East Grand Forks, Sidney, United Sugars no longer receives sugar from these facilities at the Chaska plant.

In 2005, United Sugars shipped 1,165,701 cwt of sugar in 593 railcars to the Chaska plant. In 2006, United Sugars shipped 1,506,455 cwt in 777 railcars to Chaska. United Sugars anticipates that it will continue to ship this volume of sugar to Chaska in the foreseeable future. If United Sugars is forced to move the same volume of sugar via truck from the same origins as

CERTIFICATE OF SERVICE

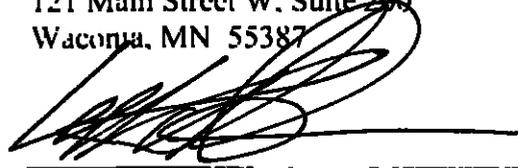
I hereby certify that a copy of the foregoing Protest was served upon the following entities by overnight mail on January 24, 2008

Gabriel Meyer
Union Pacific Railroad Company
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Omaha, NE 68179

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City Administrator
City of Carver
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Cindy Olness
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W. Karl Hansen