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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-33 (Sub- No. 265X)

**UNION PACIFIC RAILROAD COMPANY
ABANDONMENT EXEMPTION
IN LOS ANGELES COUNTY, CALIFORNIA
(SANTA MONICA INDUSTRIAL LEAD)**

**ENTERED
Office of Proceedings**

JUN 9 - 2008

**Part of
Public Record**

**RESPONSE TO
UP'S REPLY TO
RIFFIN'S PETITION TO REVOKE NOTICE OF EXEMPTION**

James Riffin, ("**Riffin**"), a Class III carrier, herewith files this Response to Union Pacific's Reply to Riffin's Petition to Revoke Notice of Exemption ("**NOE**") ("**Response**") filed in the above entitled case, on the grounds that the NOE contains false and misleading statements, and thus is void *ab initio*, and would create an unlawful stranded segment.

1. On March 17, 2008, the Union Pacific Railroad Company ("**UP**") filed a NOE to abandon approximately 0.08 miles of the Santa Monica Industrial Lead from milepost 485.61 to milepost 485.69, and to discontinue trackage rights on the Santa Monica Industrial Lead from milepost 485.69 to milepost 486.00, a total distance of 0.39 miles, in the City of Los Angeles, Los Angeles County, CA ("**Line**").

2. In the NOE, UP failed to apprise the Board that the Santa Monica Industrial Lead was a stub-ended line. If UP were to abandon the first 400 feet of the Line, then the remaining 2.03 miles of the Line would become a stranded segment.

3. On May 28, 2008, Riffin filed a Petition to Revoke UP's NOE, on the grounds that the NOE contained false and misleading information, and that granting the NOE would create a

stranded segment.

4. On June 2, 2008, UP filed its Reply to Riffin's Petition to Revoke. In its Reply, UP argued the line was not stub-ended. UP correctly stated that one end of the Line connected to the national rail system via UP's Wilmington Subdivision at MP 485.61, which is the beginning point of the proposed abandonment. UP then argued the ending point connected to trackage owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA") at MP 486.00, which is the ending point of the proposed abandonment. What UP failed to address is the fact that **LACMTA's trackage does not connect to the national rail system**. LACMTA's trackage ends at MP 487.72, near Grand Avenue, which is two blocks east of I-110.

5. Abandoning UP's portion of the Line, between MP 485.61 and MP 486.00, would disconnect LACMTA's trackage from the national rail system, thus leaving a stranded segment between MP 486.00 and MP 487.72.

6. Since a Reply to a Reply is not permitted by the Board's rules, Riffin would ask that the Board accept this Response in order to provide the Board with a more complete record. In the alternative, the Board could study the record presently before the Board, and could ascertain that UP's argument that the Line is not stub-ended, has no basis in reality.

7. In its Reply, UP cited *Southern Pacific Transp. Co. – Discontinuance of Service Exemption – In Los Angeles county, CA*, AB-12 (Sub-No. 154X) ICC served Sept. 28, 1993, to support UP's argument that UP's predecessor in title, Southern Pacific, was granted authority to discontinue its trackage rights over the portion of the Line that lies between MP 486.00 and 487.72. Riffin has not had an opportunity to obtain this decision, so cannot comment on the veracity of UP's argument. Presumably, the Board will review its records to ascertain whether this cited case did in fact grant SP authority to discontinue service over that portion of the Line that lies between MP 486.00 and 487.72. If SP was granted authority to discontinue service over this portion of the Line, then Riffin will withdraw his argument that granting UP's abandonment exemption would leave a stranded trackage rights segment.

8. UP mentioned Riffin did not attempt to rebut the Board's decision rejecting his proposed OFA. If UP's NOE is void *ab initio*, or is rejected by the Board because granting the NOE would leave a stranded segment, then the Board's rejection of Riffin's Notice of Intent to File an OFA becomes mooted.

9. Recently, LACMTA filed a Notice of Exemption to abandon that portion of the Line that lies between MP 485.69 and MP 486.00, and filed a motion to exempt its NOE from 49 U.S.C. 10904. Riffin has communicated with Charles Spitulnik, counsel for the LACMTA, and has suggested he amend his filing to include the remainder of the Line (between MP 486.00 and MP 487.72), to preclude creating a stranded segment. To date, Mr. Spitulnik has not amended his filing. Shortly, Riffin will file comments regarding LACMTA's NOE, will file a Notice of Intent to File an Offer of Financial Assistance to purchase LACMTA's portion of the Line, and will file under seal marketing information which describes in detail why the entire line is needed for continued rail service.

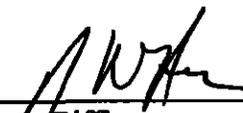
10. Given the order in which UP and LACMTA filed their NOE's, it would appear the Board must revoke UP's NOE, then may grant UP permission to refile an amended NOE.

Respectfully submitted,


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2008, a copy of the foregoing Response to UP's Reply to Petition to Revoke Notice of Exemption, was served by first class mail, postage prepaid, upon Gabriel S. Meyer, Asst. General Attorney for Union Pacific, STOP 1580, 1400 Douglas Street, Omaha, NE 68179, and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for Metro.



James Riffin