



Gabe S. Meyer  
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224996

April 24, 2009

**Via Electronic Filing**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

**RE: STB Docket No. AB-33 (Sub-No. 261), Union Pacific Railroad Company -  
Abandonment - In New Madrid, Scott, and Stoddard Counties, Missouri  
(Essex to Miner Line)**

Dear Secretary Quinlan:

Attached is Union Pacific Railroad Company's Reply to the protests and comments submitted in response to the abandonment application, filed on February 27, 2009 in the above-referenced matter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Gabriel S. Meyer".

Gabriel S. Meyer

Attachments

**Before the  
SURFACE TRANSPORTATION BOARD**

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**Docket No. AB-33 (Sub-No. 261)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT --  
NEW MADRID, SCOTT, AND STODDARD COUNTIES, MISSOURI  
(ESSEX TO MINER LINE)**

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**REPLY TO COMMENTS AND PROTESTS**

(Contains Color Image)

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**Dated and Filed: April 24, 2009**

**Before the  
SURFACE TRANSPORTATION BOARD**

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**Docket No. AB-33 (Sub-No. 261)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT --  
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(ESSEX TO MINER LINE)**

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**REPLY TO COMMENTS AND PROTESTS**

**I. INTRODUCTION**

Union Pacific Railroad Company ("UP") files this Reply in response to the comments and protests submitted by Tetra Pak, Inc. ("Tetra Pak") and other parties regarding UP's proposed abandonment of its Essex to Miner Line (the "Line"). Because continued operation of the Line would impose a significant burden upon UP, UP respectfully requests that the Board find the public convenience and necessity permits UP to abandon the Line. UP, however, is actively working with Tetra Pak to explore other options for preserving rail service to Tetra Pak's facility following abandonment authorization.

**II. BACKGROUND**

UP filed its Application in this matter on February 27, 2009, seeking authority to abandon the Line, which extends from Milepost 196.7 near Essex, to Milepost 216.27 near Miner, a distance of 19.57 miles in New Madrid, Scott, and Stoddard Counties,

Missouri.<sup>1</sup> In its Application, UP demonstrated that the Line is a burden upon interstate commerce and to UP. The Line incurs an annual operating loss of \$153,233. This loss will be greater if Steward Steel—the only active customer on the Line other than Tetra Pak—decreases its traffic volume as expected. Given the Line's limited traffic base and the low likelihood of additional traffic, there is no reasonable prospect that the Line will generate an operating profit for UP. At the same time, UP does not believe that the abandonment will unduly burden either of the Line's two active shippers, or the communities it serves.

Additionally, as UP explained in its abandonment Application, if required to continue operating the Line, it would incur grade crossing rehabilitation costs totaling \$215,508. There is no possibility that UP would recover this amount, given its ongoing operating losses and the Line's limited prospects for traffic growth.

The Board published a Federal Register notice in this proceeding on March 19, 2009, and served an Environmental Assessment on April 1, 2009. Tetra Pak filed its protest on April 13, 2009. Additionally, Steward Steel filed comments on March 27, 2009, while the Brotherhood of Locomotive Engineers filed a protest on April 21, 2009. UP responds to them below.

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<sup>1</sup> The Essex to Miner Line consists of a segment of UP's Sikeston Subdivision and the entire Miner Industrial Lead. The segment of the Line from Milepost 196.7 to Milepost 211.1 is part of the Sikeston Subdivision, while the portion of the Line from Milepost 211.1 to Milepost 216.27 includes the entire Miner Industrial Lead.

### III. ARGUMENT

In considering rail line abandonments, the Board weighs the railroad's burden of continued operations against the burden to shippers and affected communities resulting from the loss of rail service. If the railroad's burden is greater, then the Board must grant abandonment authority.<sup>2</sup> As explained below, the protestants do not demonstrate that they would incur a significant burden as a result of abandonment.

#### A. Tetra Pak

In its protest, Tetra Pak does not dispute UP's evidence showing that continued operation of the Line will impose a substantial burden upon UP and interstate commerce. At the same time, it provides no evidence to support its claims that its annual transportation costs will increase "by as much as several hundred thousand dollars" or that it will incur significant costs to reconstruct its facilities to handle additional inbound truck traffic.

It does not appear that a switch from rail to motor carrier service will impose a significant burden upon Tetra Pak. As UP's Todd A. Whitham explains in his attached verified statement, all Tetra Pak rail traffic travels from Pine Bluff, AR, to Sikeston, MO, a distance of 280 miles. Motor carriers generally provide a competitive alternative to rail transport in short-haul markets like this. As Mr. Whitham also notes, the presence of truck competition in the Pine Bluff-Sikeston market has limited UP's ability to raise prices to a level required to operate the Miner to Sikeston Line profitably.

Furthermore, all of Tetra Pak's traffic is exempt and moves via manifest boxcar

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<sup>2</sup> E.g., *Colorado v. United Sugars States*, 271 U.S. 153 (1926). *Union Pacific Railroad Company—Discontinuance in Utah County, Utah*, STB Docket No. AB-33 (Sub. No. 209) (STB served Jan. 2, 2008), at 6.

service. As the Board has recognized, motor carriers normally provide a competitive alternative for boxcar traffic, and numerous other shippers across the U.S. have successfully switched from boxcar to motor carrier transport. There is no reason to believe that Tetra Pak could not.

Tetra Pak also states that it will incur additional costs associated with modifying its facilities to receive additional inbound truck traffic. UP questions the extent to which Tetra Pak will need to modify its facilities, as Tetra Pak already receives inbound truck traffic from other locations and there is no reason to believe that it will need to substantially modify its unloading facilities to accommodate additional truck traffic. UP also notes that Tetra Pak does not quantify or provide any evidence of the costs it would incur.

#### **B. Steward Steel**

In its comments, Steward Steel states that if approved, the abandonment "could result in the loss of an entire contract," but it does not provide any supporting evidence. Furthermore, Steward Steel states that it does not dispute UP's evidence. UP believes the abandonment will have little if any impact on Steward Steel. As UP explained in previous filings in this matter, Steward Steel's Forecast Year rail traffic volume is approximately one fifth the level generated by Tetra Pak, and UP believes that this level is likely to decline. All Steward Steel rail traffic is exempt.

#### **C. The Brotherhood of Locomotive Engineers and Trainmen**

In its late-filed protest, the Brotherhood of Locomotive Engineers and Trainmen ("BLET") states that it supports the positions of Tetra Pak and Steward Steel. While the BLET does not dispute UP's evidence, it states that the abandonment would "have a significant impact" upon BLET members and could adversely impact business

development in the region. It offers no evidence in support of these claims, however, and as UP has demonstrated in its previous filings, other rail and motor carrier operators in the area will provide suitable transportation alternatives.

Additionally, the BLET argues that by abandoning the Essex to Miner Line, UP would eliminate an alternate route that would allow trains to bypass UP's Chester Subdivision. In fact, UP cannot use the Essex to Miner Line as a detour route, as it is not a through route. To bypass the Chester Subdivision, UP trains would have to use the Miner to Essex Line in conjunction with a line operated by BNSF Railway Company ("BNSF") between Sikeston and Rockview, MO. As UP's John Rebensdorf explained in his verified statement submitted with UP's abandonment Application, UP faced strong opposition from the local community when attempted to acquire the Sikeston-Rockview portion of the BNSF line for this purpose in the mid 2000s.

The BLET does not raise any concerns with respect to labor protective conditions. In the event of abandonment, UP will provide appropriate labor protective conditions for any workers impacted by the abandonment.

#### **D. Public Use and Trail Use Conditions**

In a letter filed with the Board on April 13, 2009, counsel for the City of Sikeston asked the Board to issue a Public Use Condition and an Interim Trail Use Condition, for a period of 180 days following abandonment authorization.<sup>3</sup> The fact that the City did not protest the proposed abandonment indicates that it does not believe it will be harmed by it:

Because there is no evidence that the harm to shippers and the community

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<sup>3</sup> In its April 17 response to the City of Sikeston, UP stated that it has no objection to the request, to the extent the Line is not sold or otherwise used for continued rail service.

resulting from proposed abandonment will exceed the harm UP would incur by continuing to operate the Line, the Board must authorize UP to abandon the Line.

#### **IV. ALTERNATIVES TO ABANDONMENT**

UP is actively working with Tetra Pak to explore options for preserving rail service to Tetra Pak's facility following abandonment authorization. Counsel for Tetra Pak first contacted UP in February 2009 to request estimates of the Net Liquidated Value ("NLV") for various portions of the Line, and indicated an interest in submitting an Offer of Financial Assistance ("OFA"). In response to the request, UP has provided Tetra Pak with NLV estimates for the following segments of the Line: (1) from Milepost 197.7 near Essex to Milepost 213.8 at Tetra Pak; (2) from Milepost 210.56 near Sikeston to Milepost 213.8 at Tetra Pak; and (3) from Milepost 211.26 near Sikeston to Milepost 213.8 at Tetra Pak.

If Tetra Pak were to acquire the portion of the Line from Milepost 197.7 to Milepost 213.8, traffic would move via UP to Essex before traveling over the Line for the remainder of the distance to Tetra Pak. If Tetra Pak were to acquire the Line from either Milepost 210.56 or 211.26 (Sikeston) to Milepost 213.8 (Tetra Pak), traffic would move via BNSF's line to Sikeston, MO, before traveling approximately three miles over the Essex to Miner Line to reach Tetra Pak's facility. As indicated on the map attached as Exhibit 1, BNSF's line crosses UP's Miner to Sikeston Line at grade in Sikeston. There is an existing connecting track between the two lines to the northwest of the crossing diamond. This track connects with the Miner to Sikeston Line at Milepost 210.56. A second connecting track candidate, which connects with the Miner to Sikeston Line at Milepost 211.26, is located to the northeast of the crossing diamond.

In order to use this track as a connection between BNSF's line and the Miner to Sikeston Line, the customer who owns the track would need to agree to installation of a new switch at the point of connection with BNSF's line.

In a letter filed with the Board on April 21, 2009, the Missouri Department of Transportation voiced its support for preserving operation of the Line by establishing a BNSF connection at Sikeston. If Tetra Pak or any other party files a formal OFA, UP will work actively and in good faith to reach an agreement that would permit continued rail service on the Line.

## V. CONCLUSION

The burden upon UP and interstate commerce from continued operation of the Essex to Miner Line substantially outweighs the burden of abandonment upon shippers and the community. While the public convenience and necessity permits abandonment of the Line, UP will consider any OFA that Tetra Pak or any other party files in this matter, and negotiate in good faith to reach an agreement that would permit continued rail service on the Line.

Dated this 24th day of April, 2009.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



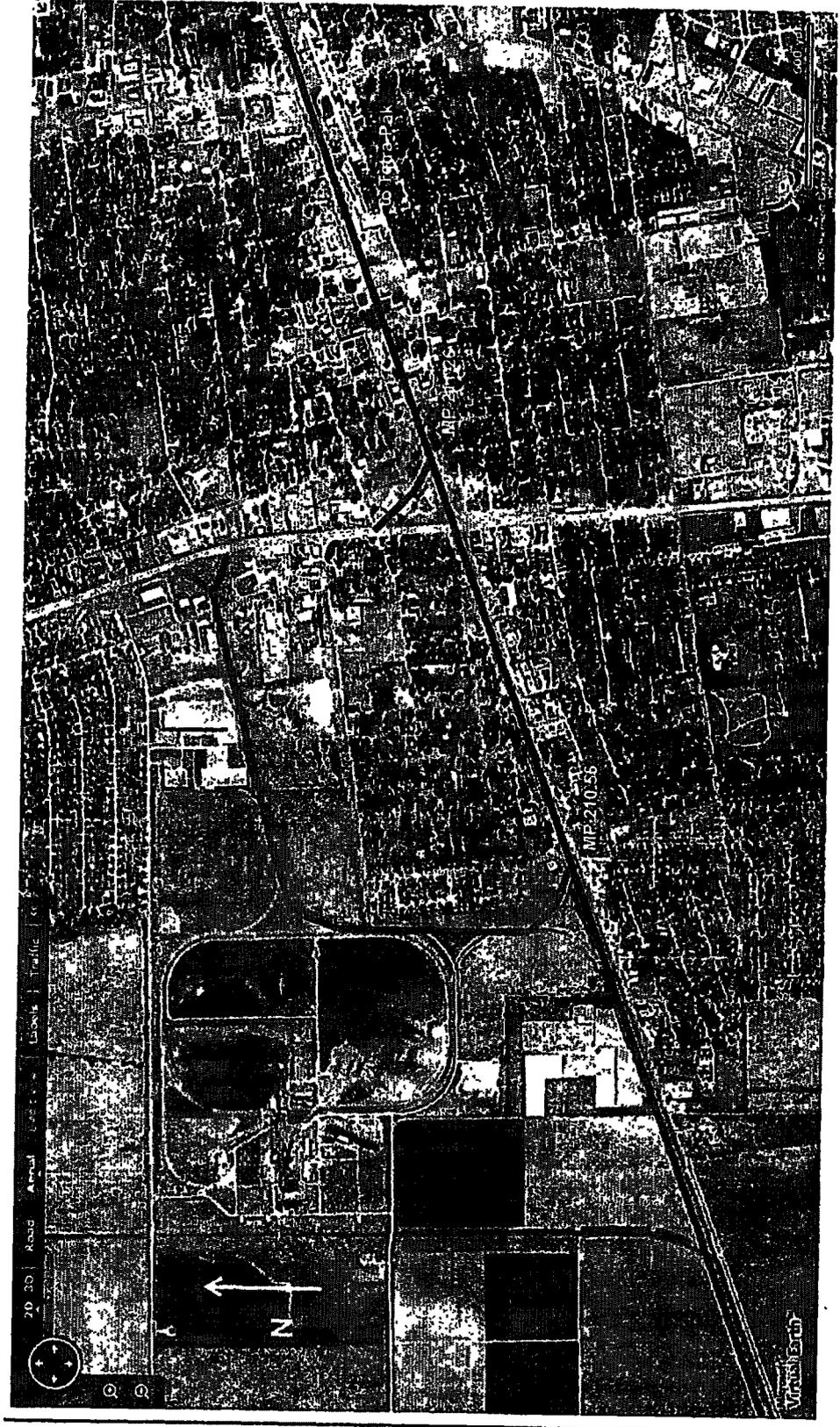
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**Exhibit 1**

-  BNSF Line
-  UP's Essex to Miner Line
-  Connecting Tracks

**BNSF Line**  
**UP's Essex to Miner Line**  
**Connecting Tracks**

**Sikeston, MO**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via first class mail, postage prepaid, upon all parties of record in STB Docket No. AB-33 (Sub-No. 261), on the 24th day of April, 2009.



Gabriel S. Meyer

## **VERIFIED STATEMENT OF TODD A. WHITHAM**

### **I. Introduction and Background**

My name is Todd A. Whitham. I previously submitted a Verified Statement as part of Union Pacific Railroad Company's ("UP's") Application for authority to abandon its Essex to Miner Line (the "Line"), filed on February 27, 2009. In this Verified Statement, I respond to the protest filed by Tetra Pak.

### **II. Motor Carrier Transport Provides a Viable Alternative to Rail**

In the verified statement attached to its protest, Tetra Pak's James E. McClain states that its shipping costs could rise by "several hundred thousand dollars" as a result of UP's proposed abandonment. Based upon my experience managing Tetra Pak's account and my familiarity with trucking alternatives that are widely used by similarly situated customers, I believe that any increase in transportation costs that Tetra Pak incurs will be much less. All of Tetra Pak's rail shipments are short-haul boxcar movements. They travel over a 280-mile route, from Pine Bluff, AR, where Tetra Pak's supplier Evergreen Packaging is located, to Sikeston, MO, where Tetra Pak is located. Truck transportation is generally competitive with rail in markets of 500 miles or less, particularly where the rail traffic moves in boxcars.

The rates and terms governing the movement of Tetra Pak's traffic are contained in a public circular. Evergreen, which originates all of Tetra Pak's rail traffic, pays UP the freight charges associated with the movement. While UP does not know the details of Evergreen's arrangements with Tetra Pak, Evergreen presumably passes the cost of the freight charges on to Tetra Pak.

Evergreen discusses its rail rates with UP prior to publication. In recent rate discussions, Evergreen advised UP that if we raised our rates significantly, it would begin shipping Tetra Pak's traffic via truck. As a result, UP limited its 2009 rate increase for Tetra Pak traffic to 3 percent. Given the ready availability of motor carrier service and the competitive rates that are typically available for boxcar traffic in this type of market, I do not believe that Tetra Pak would suffer significant hardship if it shipped its rail traffic via truck.

### **III. Motor Carriage Rates are Similar to Rail Rates**

The availability and cost-competitive nature of motor carrier services is further supported by information available at Truckloadrate.com, a web-based subscription service that compiles motor carriage rates for shipments between various locations in the United States. Truckloadrate.com surveys approximately 5 million individual truck rates annually and updates its information monthly. Attached as Exhibit 1 is Truckloadrate.com's estimate of average truckload shipping rates between Pine Bluff, AR and Sikeston, MO, as of April 17, 2009.

As Exhibit 1 indicates, the average rate for a truckload shipment between Pine Bluff and Sikeston is \$679.78 (linehaul revenue of \$624.06 plus a \$55.72 fuel surcharge). Each railcar that UP delivers to Tetra Pak carries approximate 85 tons of lading. Each truck would be able to carry approximately 22 tons of lading. As a result, 3.86 trucks would be required to carry the materials now moved in a single railcar, making the cost of moving a single railcar-worth of materials via truck \$2,623.95 ( $\$679.78 \times 3.86$ ). Assuming that Tetra Pak will continue to receive 202 railcars of

inbound shipments annually, the total cost of shipping the traffic that now moves by rail via truck would be \$530,037.90 ( $\$2,623.95 \times 202$ ). In comparison, UP charges \$2,464.00 per railcar, for a total annual rail transportation cost of \$497,728.00 (202 cars x \$2,464.00). As a result, if Tetra Pak switched to truck and the published truck rates shown by Truckloadrate.com applied, it would pay \$32,309.90 more than it currently pays to ship via rail.

These calculations may overstate the true difference, however, as they are based upon average public motor carriage rates identified by Truckloadrate.com. As Exhibit 1 notes, the lowest published motor carriage rates are more than 3 percent lower than the average rates I used in my calculations. Furthermore, in my experience, active, repetitive shippers like Evergreen or Tetra Pak can enter into contracts with motor carriers that provide significant volume discounts. If Evergreen or Tetra Pak were to enter into such an agreement, they would likely obtain rates lower than those identified by Truckloadrate.com.

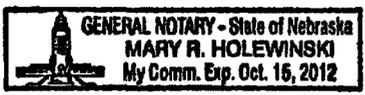
STATE OF NEBRASKA )  
)  
)  
)  
COUNTY OF DOUGLAS )

ss.

Todd A. Whitham, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Todd A. Whitham

SUBSCRIBED and SWORN to before me this 24th day of April, 2009.



  
\_\_\_\_\_  
Notary Public

Exhibit 1



Customer Information  
 User ippaper  
 Union Pacific Railroad  
 bradthraher@up.com

Rate Search    Charts    Help

# Rate Search >

Rate Search	Saved Lanes
Origin: <input type="text" value="example: Richardson, TX 75081"/>	Destination: <input type="text" value="example: Chicago, IL 60652"/>
<input type="text" value="pine bluff, ar"/>	<input type="text" value="sikeston, mo"/>
<input type="button" value="Get Rate"/>	
Equipment Type: <input type="text" value="Dry Van"/>	Save as: <input type="text" value="PINE-SIKE"/>

Market Rates	Cheap Fuel	Find Loads	Revenue Calculator
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Market Rate		Rate Calculator - Cost Sheet	
Average Rate	2.24	per mile	total
Max-Min = Spread	2.27-2.16 =	Miles (Practical)*	278.6
	0.11	Linehaul Rev.	2.24    624.06
Average Fuel Surch	0.20	Fuel Sur.	0.20    55.72
Total Rate	2.44	Fuel Sur. %:	0
		# Stops	0    0
		Load <input type="checkbox"/> yes	0
		Unload <input type="checkbox"/> yes	0
		Apply Other \$ <input type="checkbox"/> yes	0
		Apply Other % <input type="checkbox"/> yes	0
		Total Rate Per Mile	2.44
		Total Revenue	679.78
		Market Rate Per Mile	2.44
		Market Revenue	679.78
		\$ above (below) market	0.00
		<input type="button" value="Reset"/> <input type="button" value="Calculate"/>	