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Senior General Attorney, Law Department

225417

July 27, 2009

VIA E-FILING

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: Abandonment of the Henderson Industrial Lead from M.P. 0.59
near Overton to M.P. 16.28 near Henderson, a distance of
15.69 miles in Rusk County, Texas (the "Line");
STB Docket No. AB-33 (Sub-No. 275)**

Dear Secretary Quinlan:

Hereby transmitted is Union Pacific Railroad Company's
("Union Pacific") Reply Statement of Facts and Arguments to
Protestants' Protest of the Abandonment Application filed by
Union Pacific on May 26, 2009 concerning the above-captioned
matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", written over a horizontal line.

Enclosure

cc: All Concerned Parties

O:\ABANDONMENTS\33-275\STB-ResponseToProtest.doc

cc: w/ Enclosure

(Via Certified Mail)

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Governor
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Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 275)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT --
IN RUSK COUNTY, TEXAS
(HENDERSON INDUSTRIAL LEAD)

**UNION PACIFIC RAILROAD COMPANY'S
REPLY STATEMENT OF FACTS AND ARGUMENTS**

UNION PACIFIC RAILROAD COMPANY

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Dated: July 27, 2009
Filed: July 27, 2009

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EXHIBITS :

- Exhibit A - Reply Verified Statement of Raymond E. Allamong, Jr.**
- Exhibit B - Reply Verified Statement of Michael N. Drelicharz**
- Exhibit C - Reply Verified Statement of Robert Castagna**
- Exhibit D - Verified Statement of Darin J. Bair**
- Exhibit E - Verified Statement of Wesley W. Holloway**

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 275)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT --
IN RUSK COUNTY, TEXAS
(HENDERSON INDUSTRIAL LEAD)

**UNION PACIFIC RAILROAD COMPANY'S
REPLY STATEMENT OF FACTS AND ARGUMENTS**

I. Introduction

Union Pacific Railroad Company ("Union Pacific") files this Reply Statement of Facts and Argument (the "Reply") in reply to the Protest (the "Protest") filed on July 10, 2009 by West Fraser Timber Co., Ltd. ("West Fraser" or the "Henderson Sawmill"), Rusk County Rural Rail District ("RCRRD") and Henderson Economic Development Corporation, ("HEDCO"), collectively ("Protestants") in opposition to Union Pacific's Application to abandon the Henderson Industrial Lead in Rusk County, Texas extending from Milepost 0.59 near Overton to Milepost 16.28 near Henderson, a distance of 15.69 miles (the "Line", "Rail Line" or "Henderson Industrial Lead").

In the Application filed May 26, 2009, (the "Application"), Union Pacific submitted required information for the abandonment of the Henderson Industrial Lead and discontinuance of service over the Henderson Industrial Lead.

It is Union Pacific's position as stated in the Application and this Reply, as supported by the Union Pacific's Verified Statements and Reply Verified Statements, that the proposed abandonment under 49 U.S.C. §10903(d) should be authorized by

the Board in that the harm to the Union Pacific from continued operation of the Line outweighs the alleged harm to the sole shipper and other local interests with regard to the Line. Colorado v. United States, 271 U.S. 153 (1926), at 168-169. The necessity to **rehabilitate the entire Line** is not minimal harm to Union Pacific and such cost and expense, in addition to operating losses from continued operations, clearly outweigh the alleged adverse effect of the loss of rail service to the Henderson Sawmill and to local rural and community development in Henderson and the surrounding rural Rusk County, Texas.

The Union Pacific in support and explanation of its position respectfully submits, files, and hereby makes a part hereof, the attached Reply Verified Statements of Raymond E. Allamong, Jr., Senior Manager Rail Line Planning (Exhibit A), Michael N. Drelicharz, Senior Project Manager - Economic Research and Analysis (Exhibit B), and Robert Castagna, Senior Business Manager - Marketing and Sales (Exhibit C) and the Verified Statements of Darin J. Bair, Manager of Special Projects/Assets, (Exhibit D), and Wesley W. Holloway, Manager Terminal Operations (Exhibit E).

Union Pacific acknowledges West Fraser as the party controlling the Henderson Sawmill facility, located on the Line proposed for abandonment and has no objection to their status as a proper party to this matter. Union Pacific also acknowledges the RCRRD as a quasi-governmental entity with which the Union Pacific has had economic discussions concerning the future of the Line and has no objection to their status as a proper party to this matter. Union Pacific is unfamiliar with HEDCO and lacks sufficient knowledge based on the Protest and the Verified Statement to Protest of Sue Henderson to make a determination as to whether or not HEDCO is a proper party with sufficient interest to be recognized by the Board as an appropriate

Protestant but has no objection to inclusion of HEDCO as a proper party to this matter.

Union Pacific specifically rejects the economic statements attributed to Mr. Raymond Mitchell concerning the reasons for the decline in Henderson Sawmill's 2008 rail traffic and the projections of rail traffic for the Henderson Sawmill in the future.

Union Pacific also rejects the proposed economic business prospects referenced by Ms. Henderson on behalf of HEDCO. Union Pacific acknowledges the RCRRD's objective to secure future commercial and industrial rail service in Rusk County, Texas and has worked closely with the RCRRD during the last year to help achieve that goal.

(See Reply Verified Statement of Raymond Allamong at pp. 3-4.)

II. Union Pacific's Reply

Protestants have failed to introduce any significant credible evidence in opposition to Union Pacific's Application and the several verified statements attached to Union Pacific's Application. While Protestants concur that Union Pacific's stated economic loss for the Forecast Year is \$152,426.00, they rely on economically flawed and unsupported statements in their Protest that such costs would be reduced because in their opinion, Union Pacific is charging the cost for one extra switch locomotive to the service on the Henderson Industrial Lead and that income to Union Pacific from operations on the Line will increase if and when the economy recovers. (See Protest at pp. 14-15.) The Protest does not credibly challenge the significant annual economic losses being incurred by Union Pacific of nearly \$196,471.00 for the Rail Line in the Base Year or in the Forecast Year. (See Exhibits 1 and 2 to Verified Statement of Michael N. Drelicharz to the Application.) Although Protestants argue for additional traffic during future years, Protestants do not even attempt to show that any such traffic -- even should it ever develop, which Union Pacific considers unlikely, would be

adequate to offset this significant economic loss. In fact, Protestants state that such, "...operating profits would significantly reduce the economic loss associated with continued operation of the Line, and there soon would be an economic gain at a normalized traffic level." (See Protest at p. 15.) There is no evidentiary support by Protestants for the position that Union Pacific's "profits" from the Henderson Line would increase with improvement in market conditions in the forest products industry. In fact, in Robert Castagna's Reply Verified Statement at p. 2 he demonstrates that additional railcar moves from the Henderson Sawmill in the future may not result based on the Henderson Sawmill's past practices.

Even though the Rail Line shows an operating loss of \$38,787.00 annually based on a normalized maintenance in the Base Year and a loss of \$43,165.00 for the Forecast Year, (see the Verified Statement of Michael N. Drelicharz at Exhibit 1 to Appendix D to the Application), the fact remains that the normalized maintenance costs and expenses do not factor in any expenses for the required **rehabilitation of the Rail Line** with an estimated rehabilitation cost for only that portion needed to serve the Henderson Sawmill (the "Active Rail Line") being \$1,005,245.00. (See Verified Statement of Abdollah Ghazai, Exhibit C at p., 47.) These necessary rehabilitation costs for the Active Rail Line, do not justify the Line's continued existence from a common carrier perspective.

Protestants have shown no credible error in Union Pacific's Forecast Year traffic projections. Protestants will not suffer any substantial adverse effect as a result of the abandonment of the Henderson Industrial Lead. The annual opportunity cost being incurred by Union Pacific confirms the burden of the Henderson Industrial Lead on both Interstate Commerce and the Union Pacific. Contrary to Protestants'

statement that transloading the shipments that would move by rail at the transload facility at Longview, Texas would be more costly to West Fraser, the fact remains that such transportation alternative does exist. In any event, over 90% of the Henderson Sawmill's shipping needs have been and are being handled by truck. It is Union Pacific's position that the costs to rehabilitate the Active Rail Line has rendered rail transportation over the Active Rail Line the least economically feasible means of shipping by the only remaining customer on the Active Rail Line, the Henderson Sawmill.

The verified statements attached to Protestants' Protest neither show nor provide credible evidence to support Protestants' arguments: (1) that the Henderson Industrial Lead will be profitable in the Forecast Year and in the future; (2) that Avoidable Operating Profit will be greater in years following the Forecast Year; (3) that Union Pacific will not be burdened by unavoidable operating loss if it continues to operate the Line; (4) that there is no requirement for track rehabilitation; (5) that Union Pacific's temporary economic loss is outweighed by serious harm to the Henderson Sawmill; and (6) that the abandonment of the Henderson Industrial Lead will cause serious harm to the Henderson Sawmill and to local rural and community development.

III. Argument Outline

Protestants have the burden of establishing that retention of service on the Henderson Industrial Lead is in the public interest. See, State of Maine Department of Transportation v. I.C.C., 587 F.2d 541, 543)1st Cir. 1978) (while the railroad bore the burden of justifying abandonment, the State of Maine bore the burden of establishing the viability of suggested alternatives such as partial abandonment); Village of Candor v. U.S., 151 F.Supp.889, 892 (S.D.N.Y. 1957) (it would seem that the burden of

establishing the effectiveness of a proposed new or alternative plan to abandonment rests upon the proponent, in this matter the Protestants).

The Union Pacific is of the opinion that the evidence it has presented in the form of Verified Statements and Reply Verified Statements clearly satisfies the primary factors raised by Protestants in their Protest that the Surface Transportation Board ("STB") should consider when reviewing an abandonment application. See, Service Comm'n v. United States, 704 F.2d 538, 541 (11th Cir. 1983). As the evidence shows, (1) the Rail Line is not profitable in the Forecast Year at the 124-car traffic level. (2) There is no demonstrated likelihood that the Rail Line will be profitable in the years following the Forecast Year, in fact the opposite is true. (3) Union Pacific will be burdened by an avoidable operating loss if it continues to operate the Line. (4) The Rail Line requires complete rehabilitation, not merely continued maintenance. (5) It is clear that continued operation of the Line will cause Union Pacific economic loss, but lack of operation of the Line will have no significant harm on Protestants. (6) There is no evidence submitted that demonstrates that the rural and local community would in fact be harmed if the Rail Line was abandoned.

IV. Argument - Verified Replies

1. The Rail Line is not profitable in the Forecast Year at the 124-car traffic level.

Union Pacific specifically rejects the proposition that there would be a Forecast Year operating profit. Union Pacific concurs with the Protestants' statement that there is a serious element of harm to a rail carrier such as Union Pacific from denial of abandonment on a Line with a substantial Forecast Year avoidable operating loss that is likely to continue in the foreseeable future. This, coupled with the unavoidable fact that the subject Line requires complete rehabilitation, makes the potential harm

of continued rail service on the Line even more harmful to Union Pacific.

Protestants allege that the principal reason for Union Pacific showing a Forecast Year avoidable operating loss at the current traffic level is that Union Pacific erroneously charged the Rail Line with costs associated with use of a second locomotive on the Rail Line. In addition, the Protestants indicated that round trip operation time on the Line should be three (3) hours rather than five (5) hours. As stated in the Verified Statement of Wesley W. Holloway, Manager Terminal Operations for the Henderson Industrial Lead, the local train that serves the Henderson Sawmill is the weekly Tuesday movement of train consist LHA43B, provided Tuesday train orders indicate the need for service to the Henderson Sawmill. The LHA43B consist has a two-man crew which includes a Conductor and an Engineer. The LHA43B consist has two (2) low horsepower switch type locomotive units. Mr. Holloway concurs with Protestants that only one locomotive unit would technically be needed to serve the Henderson Sawmill; however, the LHA43B consist has two locomotive units assigned to accommodate the higher tonnage of other customers served by the LHA43B train on other days of the week not located on the Henderson Industrial Lead. As stated by Mr. Holloway, for obvious reasons of safety, efficiency, economy and labor costs, the two locomotive unit LHA43B consist is not taken apart for the Tuesday move to the Henderson Sawmill and then reconnected for the rest of the week's work. The additional costs in time and labor that Union Pacific would necessarily incur if it were to switch to a siding, unhook the additional locomotive at Overton before entering the Rail Line and then again switch to the siding and reconnect it at Overton when exiting the Line would add appreciably to the costs associated with serving the Henderson Line and the Henderson Sawmill and is clearly not a practical means of serving the Henderson Sawmill.

The Protestants go so far as to say that it is provided at 49 C.F.R.

§1152.32 that:

....The avoidable costs of providing freight service on a branch shall be just and reasonable, and shall not exceed those necessary for an honest and efficient operation...

The adverse effect on safety, efficiency, economy and labor costs for service on the Henderson Line that would result if Union Pacific unhooked one of the switch engines every week as Protestants suggest is clearly unnecessary, inefficient relative to the current operation and contrary to a reasonable operation on the Line. To do so would be unnecessary make work would delay operations unnecessarily, increase labor costs and in effect be economically dishonest. The clear question from the Protestants' testimony is that where there is an average of only 2.38 loaded cars per train trip each week in a particular year, and that is the only traffic on the 16.28-mile Line, is there justification for rail service?

Mr. Holloway's Verified Statement gives a detailed outline of the operation required to serve the Line. Because of the nature of the track, the lack of run around trackage and the configuration of the Henderson Sawmill industrial tracks, the last 3.2 miles of the approximately 14-mile move on the Active Rail Line requires Union Pacific to shove the railcars for said 3.2 miles onto the Henderson Sawmill's industrial tracks, which requires the Conductor to ride the leading end of the cars. The important point of the description of the move to the Henderson Sawmill facility is that it is complicated and time consuming. The suggestion by the Protestants that this particular move can be performed within three (3) hours is clearly incorrect. As stated in Mr. Holloway's Verified Statement at p. 3, it takes at least five (5) to six (6) hours to complete round-trip service to the Henderson Sawmill. Therefore, Union Pacific specifically rejects the Protestants' calculations of Forecast Year operating profit based on anything less than

five (5) hours for round-trip service to West Fraser." As stated in Section 1, On Branch Operating Costs of the Reply Verified Statement of Michael N. Drelicharz at p. 1, Wesley Holloway's Verified Statement supports and reaffirms Mr. Drelicharz's calculations regarding branch operating cost for the Line as presented in his Verified Statement included with the Abandonment Application.

Protestants allege that Union Pacific's on branch costs that are calculated through the use of five (5) hours per train should be disallowed because Union Pacific did not sustain its burden of proof as to such costs in accordance with Board regulations for Branch Line Accounting System Collection of Data as provided by 49 C.F.R. 1201, Subpart B, Section 920(a)(1) and (b). Union Pacific's computerized accounting systems are designed to comply with the Uniform Systems of Accounts under 49 C.F.R. Parts 1200-1219. The costing information required to establish the costs incurred by Union Pacific for the Henderson Industrial Lead are established and maintained in the normal business practice of the Union Pacific and are reflected in the Verified Statements and Reply Verified Statements to the Application and this Reply, and attachments thereto, of both Abdollah Ghazai and Michael Drelicharz and satisfy in Union Pacific's reasonable judgment the requirements for Branch Line Accounting System of Data.

2. There is no demonstrated likelihood that the Rail Line will be profitable in years following the Forecast Year.

Union Pacific concurs that there is a depressed housing market in the United States. Union Pacific does not agree, and sees no evidence in the Protest, "...that before long the housing market will improve, as it always has following downturns". (See Protest at p. 9.) There is no guarantee that the housing market will appreciably improve in the United States of America under current economic

conditions, and Protestants' provide no evidence to support their contention.

Protestants' witness Raymond Mitchell of West Fraser indicates that 300 to 360 carloads per year could occur in the foreseeable future. But it is clear from his Verified Statement that 2007, well before the current economic crisis in the housing industry, only yielded 167 carloads, not 300 to 360 railcar loads. (See Verified Statement of Raymond Mitchell at pp. 1-2.) Moreover, as stated in the Reply Verified Statement of Robert Castagna, Senior Business Manager in the Industrial Products Marketing and Sales Department of the Union Pacific (attached hereto as Exhibit C), according to West Fraser's 2008 Annual Report, for the nine (9) months West Fraser owned the facility (before the current economic downturn) the Henderson Sawmill produced 91 million board feet of lumber in 2007; in 2008 the Henderson Sawmill produced 120 million board feet of product. For both 2007 and 2008, the facility produced an average of approximately 30 million board feet of lumber per quarter. Based on West Fraser's Annual Report, production volumes at the Henderson Sawmill have not changed since West Fraser took over ownership of the Henderson Sawmill in April, 2007. It is apparent that production volumes did not change from 2007 to 2008 despite the downturn in U.S. housing market. This clearly draws into question whether the Protestants claim that the Henderson Sawmill will ship more product by rail if there is a significant upturn in the U.S. housing market in 2008. Moreover, in spite of the fact that the amount of lumber produced at the Henderson Sawmill did not change, transportation by rail from the Henderson Sawmill actually decreased by 25.6% for the same period of time. (See Reply Verified Statement of Robert Castagna at p. 2.) As stated in Mr. Castagna's Reply Verified Statement at pp. 2-3, in 2007 West Fraser's Henderson Sawmill shipped 167 railcar loads of lumber. This was approximately 12.7% of the annual production of the Henderson Sawmill. In 2008, the Henderson Sawmill

shipped a total of 124 railcars of lumber. This represented only 9.7% of the total amount of lumber produced at the Henderson Sawmill. Jumping ahead to 2009, for the period January 2, 2009 through June 2, 2009, the Henderson Sawmill has only shipped 48 railcar loads. This would yield an annualized volume of approximately 115 railcar loads per year. This is barely 9% of the Henderson Sawmill annual production. Based on this real history, it appears that the decline in rail traffic from the Henderson Sawmill has less to do with the housing market and more to do with an apparent transportation mode shift from rail to truck. For these reasons Union Pacific specifically rejects the Protestants' position that avoidable operating profit would be greater in years following the Forecast Year. Protestants' assertions that there would be increased rail traffic levels on the Line are not supported by the evidence provided.

3. Union Pacific's reply to the summary regarding operating results.

Union Pacific would clearly be burdened by an avoidable operating loss if it were to continue to operate the subject Rail Line. This position is supported by the evidence filed with the Application.

4. The Rail Line requires complete rehabilitation, not merely continued maintenance.

The need for rehabilitation of the Line is based on the personal inspection of the entire Line performed by Abdollah Ghazai, Track Planning Engineer for the Union Pacific, performed on March 25, 2009. (See Verified Statement of Abdollah Ghazai at p. 1.) In order to upgrade the Line to FRA Class I standard, a major tie renewal along with surfacing and lining is required. The rehabilitation cost of the Active Rail Line which is only 13.71 miles of the 15.69 miles of the entire Line would be \$1,005,245. (See Abdollah Ghazai Verified Statement at p. 3.) This determination is verified by Darin J. Bair, Manager of Special Projects/Assets, the successor to Abdollah Ghazai, in

his Verified Statement attached hereto as Exhibit D. According to Mr. Bair, the Line is beyond mere maintenance and in order to continue operations, and service on the Line must be curtailed on or about September 1, 2009 until the Line is rehabilitated. (See Verified Statement Darin J. Bair at pp. 1-2.) In Mr. Bair's Verified Statement he presents a comprehensive analysis that refutes Protestants argument that Landscape Ties may be used to avoid rehabilitation of the Line. Mr. Bair's analysis is based on the FRA Compliance Manual regarding Track Safety Standards and includes an analysis on effective load distribution. (See Verified Statement Darin J. Bair at pp. 2-3.) Based on Mr. Bair's experience, in order to bring the track structure back to Class I standards, such rehabilitation will also require surfacing and ballast to ensure proper drainage of the Line and surface and track alignment to provide further stability. (See Verified Statement Darin J. Bair at p. 4.)

In addition, as verified by Raymond E. Allamong, Jr., Senior Manager Rail Line Planning, the condition of the Line is FRA Excepted track. This determination is supported by Appendix 1 to Mr. Allamong's statement, the Union Pacific Houston Area Timetable No. 4 for the Palestine Subdivision which shows the Line as being FRA Excepted since July 30, 2007. (See Reply Verified Statement Raymond E. Allamong at p. 2.) Mr. Allamong also verifies that the Rusk County Rural Rail District is clearly aware that the Line needs complete rehabilitation. (See Reply Verified Statement Raymond E. Allamong at p. 4.)

Neither West Fraser nor any other potential customer has committed to shipping specified levels of traffic on the Line required to fund rehabilitation of the Line. If West Fraser were to discontinue shipment of lumber traffic, Union Pacific would be left with no means to even partially recover its \$1 million rehabilitation costs needed to restore operations over the Line. See, Boston and Maine Corporation-Abandonment-In
O:\ABANDONMENTS\33-275\ReplyStatement.doc 12

Essex County, MA and Rockingham County, NH, STB Docket No. AB-32 (Sub-No. 90)

(STB served Oct. 3, 2001), at 6 ("There is no evidence to refute the fact that rehabilitation of the line....would require an expenditure that cannot be justified by the limited and speculative future profitability of the line.")

- o **5. There is in fact rail service available to the Henderson Sawmill and other potential shippers in the area at the transload facility within twenty-seven (27) miles of West Fraser's Henderson Sawmill in Rusk County, Texas.**

There is in fact rail service available to the Henderson Sawmill and other potential shippers in the area at the transload facility within twenty-seven (27) miles of West Fraser's Henderson Sawmill in Rusk County, Texas. From this location lumber can be successfully delivered to Union Pacific for shipment by railroad. In addition, various truck routes which currently handle more than ninety percent (90%) of the Henderson Sawmill output exist to move the lumber from the Henderson Sawmill.

- 6. There is no evidence submitted that demonstrates that the rural and local community would in fact be harmed if the Rail Line was abandoned; in fact there have been no new rail served shippers on the Rail Line in at least the last five (5) years.**

As to the Rail Line being essential to the rural area and commercial development in the community, the Verified Statements of John Cloutier of the Rusk County Rural Rail District and Sue Henderson of the Henderson Economic Development Corporation contain several personal statements as to rail service being essential for economic development for the rural and community development in the area. (See Verified Statements of John Cloutier at p. 1 and Sue Henderson at p. 1.) Sue Henderson's Verified Statement includes a letter from "Knife River", self represented to be an operator of potential rail facilities and rail spurs in Henderson, Texas. But the letter only speaks in terms of "**Opportunity**" to set up a rail terminal.

There is no commitment or business plan for the Union Pacific to bank on. There is no concrete evidence in either Verified Statement to support demonstrated need for rail service on the Line. Rather, as indicated in the Verified Statement to the Application and Reply Verified Statement to the Protest of Robert Castagna, on behalf of the Union Pacific, the entire Rail Line has for all practical purposes only one shipper -- that being Henderson Sawmill (See, Verified Statement to the Application and Reply Verified Statement to Protest of Robert Castagna.) In fact there have been no new rail served shippers on the Rail Line in at least the last five (5) years.

In addition, the position of Protestants as to business on the Rail Line and its expected future as propounded by Raymond Mitchell, Manager of the Henderson Sawmill, in his verified statement to the Protest is based on future assumptions which are not supported by any evidence such as contracts, shipping agreements, orders or loss of alternative transportation facilities.

Protestants reference to precedent that harm to the rural and community development in Henderson, the shippers and the property owners must be considered (Protest, at pp. 14-17), is not controlling in this case because the Protestants will experience no such serious adverse effect because there is undisputed availability of (i) rail service for the Henderson Sawmill at the transload point within twenty-seven (27) miles of the Henderson Sawmill facility and (ii) motor carrier service to and from the Henderson Sawmill facility which currently moves over 90% of the facilities production.

Protestants have not shown that the Henderson Sawmill will be forced to operate at a loss or go out of business as a result of transload costs. There is no evidence that the Henderson Sawmill will not pass these costs to its customers thereby eliminating any claimed losses as a result of transloading.

V. Argument - Legal Replies

1. Protestants Have Failed to Sustain Its Burden of Proving Its Allegations

Protestants' burden with regard to profitability of the Line of its claimed viable alternatives, including the subtraction of one of the switch locomotives and the expectation of additional railroad moves on the Line when the economy gets better, is also made clear by the Administrative Procedure Act and controlling circuit courts of appeals decisions. See, 5 U.S.C. 556(d). (Except as otherwise provided by statute, the proponent of a rule order has the burden of proof.) See also, People of the State of Illinois v. ICC, 722 F.2d 1341, 1349 (7th Cir. 1983) (Protestants did not put enough evidence into the record to create a genuine issue of the railroad's profitability, and the Commission's estimate must stand on judicial review); Illinois Commerce Commission v. ICC, 848 F.2d 1246, 1250 (D.C. Cir. 1988) (The shippers submitted nothing regarding fuel costs and their criticism of the railroad's submission was not enough.) As found in Busboom Grain Co. v. ICC, 856 F.2d 790 (7th Cir. 1988) ("Busboom"):

"... This case involves the proposed abandonment of a single, small, marginal line. In support of its proposal the railroad submitted 1,400 pages of reasonably lucid documentation. The protesting shippers were not entitled just to snipe. They could have submitted future prices for fuel; those would have been a better estimate of the relevant fuel costs over the predicted life of the Brothers Branch Line (if not abandoned). They submitted nothing. Carping at the carrier's submission was not enough." Emphasis added. p. 793.

Protestants have failed to provide the proof necessary to support their argument that the Rail Line is profitable now or will be profitable in the future. Union Pacific's evidence supports the proposition that the Henderson Industrial Lead is in fact not profitable and has no expectation to become profitable in the future.

With regard to the availability of alternative transportation to Protestants, it is clear that such alternatives not only exist but are currently available and used by

industries in the vicinity of the Line.

As to the Rail Line being essential to the rural area and commercial development in the community, the Verified Statements of John Cloutier of the Rusk County Rural Rail District and Sue Henderson of the Henderson Economic Development Corporation contain several personal statements as to rail service being essential for economic development for the rural and community development in the area. (See Verified Statements of John Cloutier at p. 1 and Sue Henderson at p. 1.) Sue Henderson's Verified Statement includes a letter from "Knife River", self represented to be an operator of potential rail facilities and rail spurs in Henderson, Texas. But the letter only speaks in terms of "Opportunity" to set up a rail terminal. There is no commitment or business plan for the Union Pacific to bank on. There is no concrete evidence in either Verified Statement to support demonstrated need for rail service on the Line. Rather, as indicated in the Verified Statement to the Application and Reply Verified Statement to the Protest of Robert Castagna, on behalf of the Union Pacific, the entire Rail Line has for all practical purposes only one shipper -- that being Henderson Sawmill (See, Verified Statement to the Application and Reply Verified Statement to Protest of Robert Castagna.)

In addition, the position of Protestants as to business on the Rail Line and its expected future as propounded by Raymond Mitchell, Manager of the Henderson Sawmill, in his verified statement to the Protest is based on future assumptions which are not supported by any evidence such as contracts, shipping agreements, orders or loss of alternative transportation facilities.

2. There is No Error in Union Pacific's Forecast Year Traffic Projections

The rail operation has not been and is not now profitable when taking into

account opportunity cost and certainly not profitable when taking into account the need to rehabilitate the entire Line. There is no expectancy of increased railcar volume supported by any tangible evidence in the Protest. On the contrary, based on the analysis performed by Robert Castagna in his Reply Verified Statement attached hereto as Exhibit C and hereby made a part hereof, even though production at the Henderson Sawmill remained constant in both 2007 and 2008 rail shipments decreased by 25.6% while truck shipments increased. (See Reply Verified Statement of Robert Castagna, Exhibit C at pp. 2 and 3.) From the Union Pacific's perspective, the Henderson Industrial Lead is a losing operation on the decline.

The verified statement to the Protest by Sue Henderson, Director of HEDCO, provides no evidence to counter this conclusion. Ms. Henderson's statements at page 2 of her verified statement that her organization, HEDCO, has contacted more than a dozen businesses that expressed sincere and tangible interest in locating in the Henderson area and that all require rail service is not supported by Affidavits, letter agreements, contracts, names or product lines. The nature and extent of the "tangible interest" is not included. These are merely speculative views, not business evidence of real interest supported by any economic commitment by any of the dozen commercial entities she refers to as a group.

In AB-12 (Sub-No. 137X), Southern Pacific Transportation Company -- Abandonment and Discontinuance of Trackage Rights Exemption - in San Francisco County, CA, served November 12, 1991, the entire ICC affirmed that it would not require a railroad to continue a losing operation because of speculative future traffic:

"... The Heizers' assertion that they may do business with a new vendor that would require rail service is speculative and insufficient to justify a denial. The Commission has consistently declared that it will not require retention of a low volume line on the basis of speculation about future traffic.

See e.g. AB-55 (Sub-No. 513X), CSX Transportation, Inc. -- In Fayette County, W.V., (not printed), served February 14, 1990" (Sheet 4).

As found in Wellsville A & G Corp -- Abandonment, 342 ICC 622, 627 (1973):

"We would also be unwarranted in requiring the branch line continued in service for the limited traffic it now generates. Moreover, when weighing assertions of the Uses Committee regarding potential great increases in future traffic over the branch line against a record, as shown at further hearing, of actual, light, deficit-producing traffic in the past, and at present, we must view such assertions with at least a certain degree of skepticism. Even the best intentions of shippers to increase their patronage of a line can fail for reasons beyond their control. Meanwhile, the carrier would be required to continue its deficit operations while waiting for traffic which may never develop." Emphasis added.

In Abandonment Regulations - Costing, 5 I.C.C. 2d 123., 133 (1988), aff'd Commonwealth of Massachusetts v. I.C.C., et al., 893 F.2d 1368 (D.C.Cir 1990), the ICC adopted the "Forecast Year" requirement and was unequivocal in requiring specificity and substantial support for projections, i.e., "In order to minimize the potential controversy, our rules will require that the parties in abandonment and subsidy proceedings fully support and substantiate all forecasts of revenues, costs, and asset values." (Emphasis original).

Notwithstanding this clear requirement and the controlling precedent, the Protestants' rail traffic projection beyond the Forecast Year is nothing more than the amount which West Fraser expects to ship if market conditions improve. This expectation -- when compared with the minimal 124 cars which West Fraser shipped via Union Pacific over the Henderson Industrial Lead during the base year and the minimal 124 cars projected for the Forecast Year -- confirms at best, an estimate of 124 railcars of outbound traffic for the entire Rail Line annually. The shipments for the period January 2, 2009 to June 2, 2009, if annualized for all of 2009 work out to only

115 carloads annually. The 124 carloads is the highest annual traffic volume level that could be accepted by the Board and is incapable of supporting the Rail Line.

The cost for a transload operation to serve the rail needs of the Henderson Sawmill are presented in the verified statement of Mr. Raymond Mitchell, Manager for the Henderson Sawmill and the summarization in the Protest. (See Verified Statement to Protest of Raymond Mitchell at p. 2.) However, Robert Castagna challenges one major assumption in that according to his calculations, the distance to the transload facility in Longview, Texas from the Henderson Sawmill is only 27 miles by road, not the 40 miles as stated in Raymond Mitchell's Verified Statement to Protest.

It is clear that the need for and cost of rehabilitation of the Active Rail Line alone (this is the smaller segment of the entire Rail Line to avoid rehabilitation costs beyond the Henderson Sawmill), is supported by the evidence. (See the Verified Statement of Abdollah Ghazai at p. 47 of Appendix C to the Application.)

However, the cost to rehabilitate the Active Rail Line (\$1,005,245) is not warranted based on the low revenues generated on the Active Rail Line. See, Reply Verified Statement of Michael Drelicharz at p. 3.

3. Protestants and the Rural and Commercial Community Will Not Suffer Any Substantial Adverse Effect as a Result of Abandonment of the Henderson Industrial Lead

Protestants argue generally that they would be harmed by abandonment of the Henderson Industrial Lead, but disregard the fact that (1) they will continue to have substantial rail service at the transload facility in the area of the City of Longview, Texas area; (See Reply Verified Statement of Robert Castagna at p. 3.) and (2) motor carriers currently provide transportation service for over ninety percent (90%) of the Henderson Sawmill production.

Protestants do not contend that abandonment of the Line would cause closure of the Henderson Sawmill. See, Union Pacific Railroad Company -- Abandonment -- In Fremont and Teton Counties, Idaho, 6 I.C.C. 2d 641, 646 (1990) Pet. for Rev. dismissed sub.nom. State of Idaho v. I.C.C., 939 F.2d 784, 789-90 (9th Cir. 1991), (on appeal UP contends and IPUC does not dispute that farm failures as a result of abandonment are unsupported on the record); State Corporation Commission v. U.S., 894 F.2d 1141, 1143 (10th Cir. 1989). (None of the elevators contended that abandonment would result in their closure.); No. AB-33 (Sub-No. 62) Union Pacific Railroad Company -- Abandonment -- Between Tekoa and Fairfield in Whitman and Spokane Counties, Washington, et al., served October 29, 1990, sheet 7 (Protestants have not shown that a single business will close or that their community would be unable to absorb the increased costs, if any, resulting from abandonment).

Even should the Henderson Sawmill incur some increased costs or inconvenience, that fact does not justify denial of the requested abandonment authorization. Continued operation of an unprofitable line will not be required solely to ensure lower rates or other competitive advantage. See, Texas & N.O.R. -- Abandonment, 282 I.C.C. 1, 12 (1951) and the cases cited therein.

Moreover, in an early decision of the Surface Transportation Board it was held that,

We recognize, and applicants concede, that the shippers will experience increased costs. Both the ICC and the Board have held, however, that the fact that shippers are likely to incur some inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities.

The situation in this proceeding is unusual because the loss to shippers is approximately twice as great as the avoidable loss of \$33,189. As noted, however, when opportunity costs are included, their economic loss is over \$575,000.

Moreover, in considering that fact that only 47 cars are

projected for the forecast year, applicants' avoidable loss amounts to over \$700 a car, a significant subsidy by the carrier. Union Pacific/Southern Pacific Merger, (Decision No. 44) 1STB 233, 504 (August 6, 1996).

This case is not that dissimilar to the current matter. The annual transload cost to the Henderson Sawmill may be slightly higher than Union Pacific's annual opportunity cost of \$157,697 for the Forecast Year. However, the cost to rehabilitate the Active Rail Line is \$1,005,245. Further, as found in Grand Trunk Western Railroad - Abandonment, 1990 WL 2887387 (I.C.C.) at p. 6 (decided February 27, 1990), "...increased transportation costs do not in and of themselves, establish the amount of the burden shippers will actually experience". Protestants have not shown that the Henderson Sawmill will be forced to operate at a loss or go out of business as a result of these transload costs. In the above case, the evidence showed that the Protestant would pass the increased costs to its customers. There is no evidence that the Henderson Sawmill would not do the same in this case thereby eliminating all of the claimed loss.

Protestants reference to precedent that harm to the rural and community development in Henderson, the shippers and the property owners must be considered (Protest, at pp. 14-17), is not controlling in this case because the Protestants will experience no such serious adverse effect because there is undisputed availability of (i) rail service for the Henderson Sawmill at the transload point within twenty-seven (27) miles of the Henderson Sawmill facility and (ii) motor carrier service to and from the Henderson Sawmill facility which currently moves over 90% of the facilities production.

4. The Annual Opportunity Cost Being Incurred by Union Pacific Confirms the Burden on Interstate Commerce and Union Pacific.

There are clear decisions that confirm the importance of considering

opportunity costs in weighing the respective burdens on interstate commerce and the railroad.

As referenced in the introduction to this Argument, the Union Pacific must bear the burden of justifying the requested abandonment. Protestants do not dispute the annual Forecast Year loss of \$152,426, which Union Pacific is incurring for the Henderson Industrial Lead. In addition, the Verified Statement of Abdollah Ghazai at p.11 shows that Union Pacific must necessarily incur a substantial rehabilitation cost of approximately \$1,005,245 if the Henderson Sawmill traffic projection of 124 railcar loads during the forecast year ever should move.

The economic loss computed by Mr. Ghazai includes the opportunity cost for the Henderson Industrial Lead and this opportunity cost must be a critical and controlling factor, particularly in a case such as this involving the clear absence of significant effect on a protesting shipper because of the presence of rail services to the Henderson Sawmill from the transload point within twenty-seven (27) miles of the Henderson Sawmill's facility and of alternate heavily utilized motor carrier service to and from the facility.

Abandonment authorization should be granted even if the Board should find any merit to the Protestants' Forecast Year traffic projection. Cartersville Elevator, Inc. v. ICC, 724 F.2d 668 (8th Cir. 1984), aff'd 735 F.2d 1059 (8th Cir. 1984), confirms the importance of the significant opportunity cost being incurred by Union Pacific. In Cartersville, the Court focused on congressional intent as confirmation of the importance of opportunity costs in determining the burden on railroads. As relevant, the Court found:

"The ICC's conclusion that a railroad's inability to achieve an adequate rate of return burdens interstate commerce was echoed by congressional analysis which accompanied

passage of the Staggers Rail Act of 1980, Pub.L. No. 960448, 94 Stat. 1895 (codified as amended in scattered sections of 49 U.S.C. §§10101-11917):

30 per cent of 'rail business' is being handled by financially weak rail carriers. This adversely affects all rail carriers because about 70 per cent of all rail traffic is interchanged between two or more railroads.

... This interdependence will mean that service will be no better than the quality of service offered by the weakest carrier in the interchange.

H.R. Rep. No. 1035, 96th cong., 2d Sess. 112-13, reprinted in 1980(4) U.S. Code Cong. & Ad. News 3978, 4056-57. Congress also indicated that the railroads are facing a serious capital shortfall, find that [r]ailroad industry earnings are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvement. By 1985, there will be a capital shortfall between \$16 billion and \$20 billion. Id. at 3998. While the Staggers Act did not alter the public convenience and necessity standard, the ICC's conclusion that opportunity cost losses burden interstate commerce is in harmony with current congressional rail policy. As such, we cannot say that the ICC's actions reflect an unreasonable interpretation of that standard. The shipper's second claim must therefore be rejected." Emphasis added. p.675.

Even if Protestants projections for minimal profitability on the Line was to be realized, which Union Pacific considers to be highly unlikely, abandonment of profitable lines has been authorized several times when the opportunity cost offsets operating gain. See, Simmons v. United States, 698 F.2d 888, 895 (7th Cir. 1983) (Abandonment justified when opportunity cost of \$138,681 offset profit of \$2,454 and \$23,835/\$72,000); No. AB-18 (Sub-No. 97), The Chesapeake & Ohio Railway Company -- Abandonment, served April 1, 1988 (Abandonment authorized when opportunity cost of nearly \$67,000 outweighed the minimal past years' operating profits of \$6,572 and \$6,123); No. AB-55 (Sub-No. 62), Seaboard Coastline Railroad Company -- Abandonment, served August 16, 1982 (Abandonment authorized when

opportunity cost of approximately \$500,000 offset past and projected operating profits of \$73,425, \$124,395 and \$78,274); No. AB-6 (Sub-No. 258), Burlington Northern Railroad Company – Abandonment, served April 17, 1986 (Abandonment authorized based on an opportunity cost of \$34,677 which was "...nearly 10 times greater than the 1984 profit of \$3,978." Even viewed in terms of current interest levels, BN is not obtaining anything near a reasonable return on its investment.) (Sheet 2); No. AB-12 (Sub-No. 109), Southern Pacific Transportation Company – Abandonment, served January 12, 1987 (Abandonment authorized when substantial opportunity costs offset operating profits of \$191,219, \$138,994 and \$124,291); No. AB-10 (Sub-No. 46); Chicago & North Western Transportation Company – Abandonment, 366 ICC 373 (1987) (Abandonment authorized when opportunity cost of \$202,743 offset operating profits of \$3,293, \$106,443, \$65,113 and \$170,792).

The opportunity cost exceeding \$152,426 for the Henderson Industrial Lead which will be incurred annually by UP is a very significant factor in determining whether abandonment authority should be granted. See, Commonwealth of Pennsylvania v. United States, 361 F.Supp. 208, 219 (1973), aff'd 414 U.S. 1017; People of the State of Illinois v. ICC, 698 F.2d 868, 875 (7th Cir. 1983); Missouri Pacific Railroad Company v. United States, 625 F.2d 178 (8th Cir. 1980); reh. den. 625 F.2d 184; Texas & Pacific Railway Co – Abandonment, 363 ICC 571, 577 (1981), aff'd sub. nom. Farmland Industries, Inc. v. United States, 642 F.2d 208 (7th Cir. 11981).

The annual avoidable loss of approximately \$43,165 when utilizing the Protestants' best case scenario Forecast Year traffic still supports abandonment of the Henderson Industrial Lead.

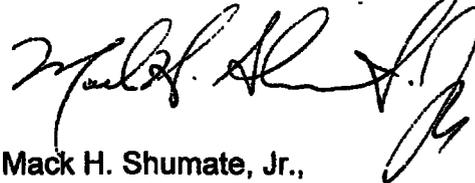
VI. Conclusion

The Board should authorize abandonment of the Henderson Industrial Lead. Protestants' Protest is barren of the evidence required to sustain its burden of proof regarding abandonment, and its "expectation" of Forecast Year traffic is destroyed by the minimal volume of traffic which is has shipped over the Rail Line during the calendar year 2009. The continued existence of transload motor carrier service in the vicinity of Henderson will result in minimal adverse effect on Protestants after abandonment. The Rail Line requires complete rehabilitation at a cost of \$1,005,245 just to maintain service to the only shipper on the Line, the Henderson Sawmill.

Union Pacific Railroad Company respectfully requests that the Board authorize abandonment of Henderson Industrial Lead.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

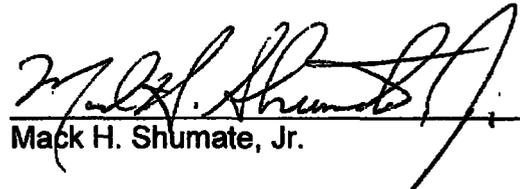


Mack H. Shumate, Jr.,
Senior General Attorney
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
312/777-2055

Certificate of Service

I hereby certify that I have this date mailed a copy of the foregoing Reply Statement of Facts and Arguments by first class mail, postage prepaid to attached service list.

DATED at Chicago, Illinois, this 27th day of July, 2009.


Mack H. Shumate, Jr.

**REPLY VERIFIED STATEMENT
OF RAYMOND E. ALLAMONG, JR.**

My name is Raymond E. Allamong, Jr. I am Senior Manager Rail Line Planning in the Interline Group of the Union Pacific Railroad Company's ("Union Pacific") Marketing & Sales Department. I have held this position since 2004, and have been employed by Union Pacific since 1982. Since 1987, I have participated in the evaluation of Union Pacific's light density railroad lines to determine if they are candidates for sale, lease, or abandonment. For lines considered abandonment candidates, I have been responsible for scheduling appropriate filings with the Surface Transportation Board (the "Board") and other appropriate governmental entities and coordinating the testimony of representatives of Union Pacific's Marketing and Sales Department when needed. If there has been purchase interest in a line prior to filing with the Board, I have been responsible for exploring the sale potential and engaging in negotiations in an attempt to forestall abandonment of said line. I am also responsible for carrying out Offer of Financial Assistance transactions after abandonment approval by the Board. I have been involved in approximately 200 abandonment filings over the course of my career.

I am familiar with Union Pacific's application to abandon the Henderson Industrial Lead ("the Line"). In this statement, I verify that the condition designation of the Line is FRA Excepted. I also show that the protestants' position, that there is no requirement for track rehabilitation, is contradicted by their statements and correspondence

spanning almost a year of discussions and negotiations to sell the Line in lieu of abandonment.

This Reply Verified Statement is in response to items raised in the protest filing submitted to the Board on July 10, 2009 in AB-33 (Sub-No. 275).

I. The Line is Designated FRA Excepted, not FRA Class I.

I confirmed with Union Pacific witness Abe Ghazai, author of the Engineering Department Reply Verified Statement filed as part of the subject Application, that his statement that the Line is designated FRA Class I track was based on the fact that a 10 mile per hour speed limit is shown on the "track profile" diagram for the segment. However, while a speed limit is a satisfactory indicator of FRA class in most circumstances, it alone does not serve to differentiate between FRA Class I and FRA Excepted track. Both classes have a ten mile per hour limit; the difference is restrictions on train handling, and those are dealt with by Union Pacific in its Houston Area Timetable No. 4.

Attached as Appendix I is the current Union Pacific Houston Area Timetable No. 4 page for the Palestine Subdivision that covers the Line. The condition of the Line has been designated FRA Excepted track at least since the July 30, 2007 publication date; this designation stands without revision by any subsequent general order. Mr. Ghazai's conclusion from his inspection that the Line is in FRA Excepted condition clearly conforms with the Line's official timetable designation referenced in the Union Pacific's Houston Area Timetable No. 4.

II. Protestant parties themselves have acknowledged the need for rehabilitation.

Protestants' assertion that there is no requirement for track rehabilitation is contrary to eleven months of communications with the Protestants. In August 2008, after Union Pacific was approached by the newly formed Rusk County Rural Rail District ("RCRRD") concerning possible acquisition of the Line, I was authorized by the Union Pacific Business Review Team formed to address the Line's poor economics and need for major rehabilitation to engage in sale negotiations with the RCRRD while Union Pacific prepared for an abandonment filing as a last resort. Line information and viewpoints were exchanged and discussions gained impetus in December, 2008 when the significant decline in steel prices made Union Pacific's updated and now reduced net liquidation value a more tenable basis for purchase of the Line by RCRRD. The RCRRD spoke of the need for rehabilitation in its comments to the local press and to me, and told the press and me that that RCRRD would be pursuing federal grants to accomplish same. An example of a press report in which the RCRRD discusses rehabilitation is attached as Appendix 2. While the RCRRD told me it was using an area short line operator as a consultant, I also worked to have Texas DOT and the RCRRD discuss DOT's possible services as a source of technical expertise and as a guide toward funding.

In March 2009, the Texas DOT asked to hi-rail the Line in an advisory capacity to RCRRD. Union Pacific agreed, and the inspection was conducted in early April, 2009. After completion of the inspection, Texas DOT's representative informed me that he was providing a report to RCRRD. The Texas DOT's representative offered no contradictory view of the Line's condition, and noted that his own calculated net

liquidation value of the track structure (the "NLV") was within a few thousand dollars of Union Pacific's calculation.

To my knowledge, the Line condition data received by RCRRD from Texas DOT and any of its other consultant(s) produced no apparent change in RCRRD's view that rehabilitation of the Line was necessary. RCRRD never informed me, nor did the press articles I read indicate, that RCRRD now viewed rehabilitation of the Line as being unnecessary. Indeed, in a purchase proposal from RCRRD to Union Pacific dated June 3, 2009, the RCRRD offered only a small fraction of the Line's NLV, justifying same by saying that "RCRRD's expenses will only begin with the purchase." In my opinion, RCRRD clearly realized that if they purchased the Line it would need to be rehabilitated at substantial cost.

VERIFICATION

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss:
)

Raymond E. Allamong, Jr., 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.

Raymond E. Allamong, Jr.
Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO
before me this 22nd day of
July, 2009.

Donna M. Coltrane
Notary Public

My Commission expires: _____



PALESTINE SUBDIVISION (0520)

SI-06 RCL OPERATIONS

Designated Remote Control Areas:
 Longview Yard - and all tracks between MP 87.0 and CP R089 on the Little Rock Subdivision;
 All tracks between CP R089 and CP R096 on the Dallas Subdivision;
 All tracks between CP H001 and CP R089 on Palestine Subdivision;
 All tracks on the Le Tourneau Industrial Lead, Lloyd Yard Area
 All tracks within Lloyd Yard.
 Signs will be posted at all entrances to the yard on the north and south ends.

Designated Remote Control Zones:

Zone 1:
 East End Longview Yard:
 Between No. 2 Switch and up to but not including New Drill Switch (MP 88.6).
Zone 2:
 East End Longview Yard:
 Between SIT Yard Switch (MP 88.5) and CP R088.
Zone 3:
 West End Longview Yard:
 Between No. 4 Switch and CP R091.
Zone 4:
 Beer Lead to Sam Dunn's:
 Off Dallas Subdivision Main Track at MP 92.24.

LOCATION	RESTRICTIVE TONNAGE	ENTRY SPEED
Zone 1	7000	10
Zone 2	800	10
Zone 3	550	10
Zone 4	350	7

Restricted tonnage's are based on (1) 4-axle locomotive.
 Note: RCL Zone Signs will be posted at all entry points to the zones.

SI-07 ITEM 13 TRAIN DEFECT DETECTORS

(#) 4.9	(#) 73.7	(#) 162.7
(#) 19.2	(#) 91.4	(#) 174.2
(#) 31.4	(#) 99.4	(#) 186.4
(#) 40.3	(#) 115.9	(#) 198.0
(#) 51.4	(#) 131.7	(#) 207.5
(#) 64.0	(#) 150.0	(#) 217.5

SI-08 RULES ITEMS

Rule 9.13.1: When necessary to use dual-control switch CP H214 at Lloyd Yard in hand operation and movement is to be made to or from south end of 86 Lead, crew member must obtain permission to hand operate power deraill on south end of 86 Lead for movement to be made.

Rule 6.32.2: All movements in the Wells Creek business track must approach public crossing at MP 76.31 (CR-370) prepared to stop and a crew member at the crossing provide warning unless known the crossing warning devices have been activated long enough to provide warning.

SI-09 FRA EXCEPTED TRACKS

Palestine Yard: Tracks 501, 502, 503, 504, 505, 506, 507, 508, and 509.

SI-10 BUSINESS TRACKS

Track Name	MP	STA #S
Bodie N.....	2.9	AX004
Anthony Chip Mill	32.6	...
Jacksonville N.....	53.9	AX054
Alcoa Spur	73.9	AX073
Wells Creek	76.6	AX077
Salmon N.....	101.0	A 100
Vulcraft S.....	105.7	...
Grapeland	107.4	A 106
Alloy Polymers	116.2	A 114
Lovelady	134.0	...
Riverside	154.4	A 153
La Pacific	176.1	A 175
New Waverly	178.2	A 177
Willis	186.7	A 185
Hope S.....	200.3	...
Bison S.....	200.4	A 198
Woodlands	201.6	...
Tamina	203.4	A 202
Track No. 114	211.0	...
Westfield Team (Trk.2).....	214.6	A 213
Westfield Auto (Trk.1).....	214.8	...
Candle Ridge (Trk.2)	215.4	A 214
Gator Hawk (Trk.2) N	216.7	...
Jetero (Trk.1) W.....	219.3	A 218
Drillco (Trk.1) N.....	219.4	A 218
Aldine Team (Trk.1).....	221.7	...

SI-11 INDUSTRIAL LEADS

Huntsville Industrial Lead: (0524)
 Phelps off Main Track at MP 166.7.
 MP 0.1 to Huntsville MP 6.7, 6.6 miles.
 Entire lead is FRA excepted track.

Business Tracks	MP	Sta.#s
Townley	4.0	AD004
Huntsville	6.7	AD007

LeTourneau Industrial Lead: (0521)
 Off Main Track at CP H001. MP 0.0 to MP 5.1.

Henderson Industrial Lead: (0525)
 Off main track at Overton (MP 22.5).
 Extends from MP 0.0 to MP 16.3 at Henderson (AX022)
 Use Radio Display 9090.
 FRA Excepted Track between MP 0.3 and MP 16.3.

SI-12 TONNAGE RESTRICTIONS/TPOB

Max. Gross Weight: Longview to Spring Jct., -143 tons; Spring Jct. To Belt Jct. -158 tons

SI-13 TRAIN MAKE-UP RESTRICTIONS

Spring Jct. to Longview: total trailing tons not to exceed 12,500 tons.

APPENDIX 2

This is a printer friendly version of an article from www.tylerpaper.com

Article published Jan 4, 2009

Posted on

Sunday, January 04, 2009



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Rusk Rail District Officials To Make Offer On Union Pacific Track

By BETTY WATERS

Staff Writer

HENDERSON – Negotiators hoping to acquire a railroad track between Henderson and Overton for community use will make an offer early in the new year to Union Pacific Railroad, according to John Cloutier, president of Rusk County Rural Rail Transportation District board of directors.

District officials reached out to Union Pacific last September expressing an interest in the future of the 15.1-mile track, which the company intends to abandon.



Union Pacific maintained upfront that the track is worth \$3.1 million if the company either tore up the tracks and salvaged the steel or used it somewhere else. The land would revert to adjacent landowners and the public railroad right of way would be gone. But the corridor remains intact as long as the rail is there.

Rail district representatives went back to Union Pacific asking the company to consider making the line a donation since the district is a fledgling organization with zero dedicated funding. They further stressed that they could help the company because the line would still feed into Union Pacific's main trunk if the district revitalized it.

"For us to succeed, we have to help you succeed," Cloutier said they told the company.

"We laid out our position and reached for the stars. They gave (the donation proposal) a good deal of consideration because they took a few weeks to get back to us," Cloutier said. "I feel like they are dealing with us in good faith, so we're proceeding."

Union Pacific replied it was not in the position to make that large a donation, but lowered its value of the steel to \$1.6 million.

Cloutier believes not only the negotiations, but a drop in the cost of scrap the last few months with the price of oil influenced Union Pacific to change its value of the track.

"We responded that after the holidays, we're going to come back to them and make an offer," Cloutier said. "We're going to do as much as we can (in the negotiations) to drive the price down. If we do acquire it, they would retain the first mile where it comes off the main line because they have to have control of

the intersection. The amount we would acquire would be 14.1 miles."

Prior to start of the talks, Union Pacific notified local officials, users of the line and authorities such as the surface transportation board and different administrations that manage railroads in Texas and other states, that the company was going to start a lengthy process to abandon the line, which connects with a main track running from Longview to Palestine.

Henderson and Rusk County leaders want to maintain rail service to benefit the local economy.

"Once we get a price that both sides agree on," Cloutier said, "our intent is to spend a small amount of time developing our business model to make sure that should we decide to acquire this line on behalf of taxpayers of Rusk County that we have a positive cash flow at the end of the deal that not only do we save the line, but we can do it at break-even (basis)."

The rail district president sees the possibility of funding assistance since talk is increasing in Washington and Austin about investments by federal and state governments in infrastructure renewal as one way to address the ailing economy. The district will be ready to apply for grants that become available to help fund the project of acquiring and revitalizing the Henderson-Overton railroad track to keep it available for local business use, according to Cloutier.

"I think it's prudent to be upfront and prepared with all your projects written up come February and all the paperwork in telling what you need," Cloutier said.

The rural administration through the U.S. Department of Agriculture already has programs for small communities, such as the rural business enterprise grant, which provided more than \$150,000 that helped with acquisition and start of operations of a short line in another part of Texas.

The district is asking Rusk County and the cities of Henderson and Overton to pitch in \$29,000 to fund legal and secretarial needs to continue the acquisition process for the rail and to pay for a private appraisal. Currently, the only appraisals of the line are from Union Pacific.

The county has agreed to help, conditioned on the city of Henderson splitting the \$29,000 cost. "We're waiting to hear back from the city. We anticipate it is going to do everything it can to fund our effort," Cloutier said. "There are 150 jobs at West Fraser Timber Co. right now that depend on saving that rail line we know there are many businesses in town that will get back on that line as soon as we invigorate its business potential."

The rail district estimates the line needs a little over a million dollars in maintenance if acquired and expects to enter a financial agreement with a short line operator for the line. More than a dozen interested short line operators have contacted the district.

The state Legislature empowered communities by passing legislation allowing for creation of rail districts. The Rusk County Rail District, Cloutier said, "is local people appointed by the commissioners on the board, so we are really making a community-based decision. By solving some of our problems upfront, it has more value to the community and we have more control over it and it's a better long-term solution that way for us."

**REPLY VERIFIED STATEMENT OF
MICHAEL N. DRELICHARZ**

My name is Michael N. Drelicharz. I am a Senior Project Manager of Economic Research and Analysis for Union Pacific Railroad Company ("Union Pacific"). My office address is 1400 Douglas Street, Omaha, Nebraska 68179. I hold a Bachelor of Science degree in Business Administration from the University of Nebraska at Omaha. I began my employment with Union Pacific in 1987. Throughout my career at Union Pacific, I have worked in various finance-related positions, including internal audit, tax, and planning and analysis. I am the same Michael Drelicharz who provided a Reply Verified Statement in Union Pacific's Abandonment Application dated May 22, 2009.

This Reply Verified Statement is in response to items raised in the Protest filing submitted to the Board on July 10, 2009 in AB-33 (Sub-No. 275).

I. On Branch Operating Costs

The Protestants contend that on-branch operating costs were overstated in the Abandonment Application due to the inclusion of two (2) locomotives instead of one (1) as well as the inclusion of five (5) hours of operating time on the Line instead of three (3). The Verified Statement of Wesley Holloway – Manager of Terminal Operations for that portion of the Union Pacific Railroad which includes the Line, refutes Protestants' incorrect contentions and explains in detail the operational need for two (2) locomotives and the circumstances as to why operations on the Line average five hours per trip. Wesley Holloway's Verified Statement supports and reaffirms my calculations regarding Branch Operating Costs for the Line as presented in my Reply Verified Statement

included with the Abandonment Application.

II. Henderson Sawmill Volumes

The Reply Verified Statement of Robert Castagna –Senior Business Manager in Industrial Products for Union Pacific refutes the Protestants' contention that the 124 carloads shipped by West Fraser in 2008 on the Line are a reflection of the bottom or near-bottom of market conditions in the forest products industry. In fact, shipments by West Fraser on the Line fell to 48 cars in the first six months of 2009, which compare to 78 cars in the first six months of 2008. The decline in traffic appears to be accelerating and there is no timeline or guarantee as to when or if traffic levels will improve for the market served by the West Fraser's Henderson sawmill.

III. Track Rehabilitation

The Reply Verified Statement of Ray Allamong, Union Pacific's Senior Manager Rail Line Planning, and Verified Statement of Darin Bair, Union Pacific's Manager of Special Projects, clearly refute the Protestants' contention that there is no requirement for track rehabilitation. If abandonment authority for the Line is not authorized by the Board, complete rehabilitation of the Line, not mere maintenance, needs to be made immediately in order for the Line to remain operational. Required rehabilitation of the Line is not a project that can be spread out over time while waiting for traffic to materialize. It is a necessary capital cost that the Union Pacific would have to incur now with no business plan that would justify the expenditure of over \$1. million for such track rehabilitation.

IV. Return on Investment

The above referenced Reply Verified Statements and Verified Statement refute the contentions of the Protestants concerning UP's overstatement of costs and understatement of revenue on the Line. However, if we assume for the sake of analysis that these contentions are correct, the annual minimal avoidable gain (operating gain) of \$75,204 cannot economically support the \$1,005,245 cost for the track rehabilitation project. Excluding the effects of income taxes, depreciation, inflation, and the cost of capital, it would take UP over 13 years to recoup the Line's rehabilitation cost of more than \$1 million. If proper allowances are made for the impact of taxes, depreciation, inflation, and cost of capital, the recoupment period becomes too long for quantifiable calculation. In fact, in order for UP to recoup its \$1 million investment on the Line over a 15 year project life, including the impact of taxes, depreciation, inflation, and cost of capital, the operating gain would have to increase to nearly \$205,000 per year. This assumes the operating gain would increase to \$205,000 immediately, and remain at that level for 15 years, which is clearly unrealistic under the most optimistic of scenarios.

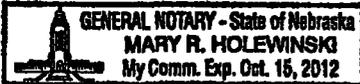
STATE OF NEBRASKA

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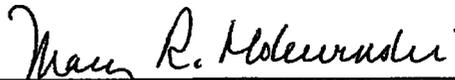
COUNTY OF DOUGLAS

Michael N. Drelicharz, 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.




Michael N. Drelicharz

SUBSCRIBED and SWORN to before me this 21ST day of July 2009.


Notary Public

**REPLY VERIFIED STATEMENT
OF ROBERT CASTAGNA**

I. Introduction and Background

My name is Robert Castagna. I am employed by Union Pacific Railroad Company ("Union Pacific") as a Senior Business Manager in the Industrial Products, Marketing and Sales Department. My office address is 3898 Brockton Place, North Vancouver, BC, Canada, V7G2L7. I am the same Robert Castagna that provided a Reply Verified Statement in Union Pacific's original Abandonment Application in AB-33 (Sub-No. 275) dated May 22, 2009.

This Reply Verified Statement is in response to items raised in the protest filing submitted to the Board on July 10, 2009 in AB-33 (Sub-No. 275).

II. Henderson Sawmill Volumes

According to West Fraser's 2008 annual report, the "Henderson Sawmill" was purchased by West Fraser effective March 31, 2007. The Annual Report states that the Henderson Sawmill produced 91 million board feet of lumber in 2007 from the time the mill was purchased. In 2008, the Henderson Sawmill produced 120 million board feet of product. From the time of purchase through 2008 the mill produced an average of 30 million board feet of lumber per quarter. Based on West Fraser's annual report, production volumes at the Henderson Sawmill have not changed since West Fraser took over ownership of the Henderson Sawmill. It is apparent that production volumes did not change from 2007 to 2008 despite the downturn in the US housing

market. This draws into question Protestants' claim that the Henderson Sawmill will ship more product by rail if there is a significant upturn in the U.S. housing market.

III. Shipment Volumes

In 2007 West Fraser's Henderson Sawmill shipped 167 railcar loads of lumber. Using an average of 91,000 board feet of lumber per railcar this equals 12.7% of the Henderson Sawmill production based on the assumption that production in the first quarter was the same as the rest of the year.

In 2008 West Fraser's Henderson Sawmill shipped a total of 124 railcar loads of lumber from the Henderson Sawmill. This represents 9.7% of total lumber produced at the Henderson Sawmill.

For the period January 2, 2009 thru June 2, 2009, West Fraser's Henderson Sawmill has shipped 48 railcar loads which is approximately equal to nine (9) railcars per month, for an annualized volume of approximately 115 railcar loads per year. Assuming that production volume has remained constant rail now handles only 9% of the Henderson Sawmill production.

In 2007 Union Pacific handled 167 railcar loads of lumber from the Henderson Sawmill. In 2008 that volume dropped to 124 railcar loads. In spite of the fact that the amount of lumber produced at the Henderson Sawmill did not change, rail volumes decreased by 25.6%. Based on this real history, it appears that the decline in rail traffic from the Henderson Sawmill has less to do with the housing market and more to do with an apparent transportation mode shift from rail to truck.

IV. Transload Facilities

There exists an available transload facility located on the Union Pacific in Longview, Texas and, according to my investigation, is approximately 27 miles by road to the Henderson Sawmill, not 40 miles as stated in the Protest.

V. Pricing

West Fraser's 2008 Annual Report shows that in 2008 the average Benchmark price for SYP ("Southern Yellow Pine") was \$297/mfbm ("one thousand board feet") while in 2007 it was \$279/mfbm ("one thousand board feet").

V. Conclusion

Production at the Henderson Sawmill has remained constant from 2007 through 2008. During this time, rail shipments decreased by 25.6%. As production at the Henderson Sawmill did not change and the benchmark pricing in 2008 was actually higher than 2007, it is reasonable to conclude that the decline in rail shipments on the Line is a result of a continuing shift by Henderson Sawmill to alternative truck transportation, which currently handles over 90% of the Henderson Sawmill production, and not necessarily due to the depressed housing market.

PROVINCE OF BRITISH COLUMBIA)
)
DISTRICT OF NORTH VANCOUVER) ss.

Robert Castagna, 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.


Robert Castagna

SUBSCRIBED and SWORN to before me this 23 day of July, 2009.


Notary Public *in and for the Province*
of B.C.

KEITH A. CAMERON
LAW OFFICE
Barrister & Solicitor
518 Beachview Drive
North Vancouver, B.C. V7G 1G9

VERIFIED STATEMENT OF DARIN J. BAIR

I. Qualifications

My name is Darin J. Bair. I have been employed by Union Pacific Railroad Company ("Union Pacific") since April, 1991. I currently hold the position of Manager of Special Projects/Assets in the Engineering Services Department. My office address is 1400 Douglas Street, Omaha, Nebraska 68179. During my 18 years, I have worked as a Track Laborer, Track Equipment Operator, Track Foreman, Engineering Project Coordinator, Track Planning Engineer-New Construction and my current position of Manager of Special Projects/Assets. My current duties include those formally handled by Abdollah Ghazai, my predecessor in this position.

This Verified Statement is in response to items raised in the protest filing submitted to the Board on July 10, 2009 in AB-33 (Sub-No. 275).

II. Summary

In response to Protestants' argument "D. There Is No Requirement For Track Rehabilitation", I concur with the analysis of Abdollah Ghazai, former Track Planning Engineer in the Engineering Services Department of Union Pacific, my predecessor, with regard to his summary of the condition of the Line, the costs for Ordinary or Normalized Maintenance of the Line, the Net Liquidation Value ("NLV") of the track structure on the Line and most importantly, his analysis that in order to upgrade this Line from its current Excepted Condition to FRA Class I, a major tie renewal, along with track surfacing and lining is required. The Line is beyond mere maintenance in order to

continue operations. Service on the Line must be curtailed on or about September 1, 2009 and should not be resumed until the Line is rehabilitated.

In my opinion, the term Landscape Tie ("Landscape Tie") as being interpreted by Union Pacific and tie retailers, is a tie that is for resale for landscape or construction use. I use the "Crosstie Grading Specification" from Tie Yard of Omaha which wholesales used ties for resale. The Landscape Tie is directly related to a scrap tie rather than a good tie in relationship to railroad track structure. Tie wholesalers/retailers can sell a Landscape Tie as a tie for landscape or construction use but not as a tie to be used for railroad track structure in that there is no market for a Landscape Tie to be used in a railroad track due to the inferior condition of the Landscape Tie. As stated in Mr. Ghazai's Verified Statement, his evaluation after personal inspection is that the Line has 25% Landscape Ties, 68% scrap ties and 6% good ties. This means that a 39 foot section of track on the Line would be expected to have one (1) good tie (relay quality), five (5) Landscape Ties, and 15 scrap ties. In my opinion, load distribution must also be reviewed and taken into consideration when determining the extent of rehabilitation required within each 39 foot length of track on the Line. For example, FRA Class I condition on a 39 foot track segment may be possible with 21% relay quality crossties; however, such relay quality crossties cannot all be at one end of the 39 foot length in order to warrant no need for rehabilitation of the section.

The FRA Compliance Manual regarding Track Safety Standards ("TSS"), CFR 49 §213.109, "Crossties" subpart 109 (Guidance) governs the adequacy of crosstie support by including its functional requirements to maintain track geometry with the limits specified in Subpart C thereof. The failure of the crossties to meet any of the three

criteria constitutes a deviation from TSS. These regulations specifically provide that each 39 foot segment of track shall have:

- (1) A sufficient number of cross ties which in combination provide effective support that will
 - (i) Hold gage within the limits prescribed in 213.53(b);
 - (ii) Maintain surface within the limits prescribed in 213.63; and
 - (iii) Maintain alignment within the limits prescribed in 213.55.

Effective load distribution requires proper spacing and location of new and relay quality ties within each 39 foot track segment. The language of the regulation addresses failure to maintain effective load distribution and highlights ineffective load distribution in those situations where either non-defective ties or defective ties are disproportionately grouped at a short area of a 39 foot segment of track. Evidence that cross ties are not effectively distributed over a 39 foot track segment, in my opinion, is an indication of an actual deviation from proper track geometry. While it may be possible to move ties around to meet the FRA standard of 21% new or relay quality ties per 39 foot track segment to obtain effective load distribution, such action is wasteful and not a standard practice of Union Pacific on any of its lines. Removal of currently installed Landscape condition Ties may result in partial or total destruction and can lead to reclassification to the scrap tie category due to the condition of the tie and removal, relocation and insertion process. A rail line in the condition of the Henderson Line, as evidenced by Mr. Ghazai's on-site track evaluation, requires a complete rehabilitation in order to bring the condition of the track structure back to FRA Class I. Based on my

experience, such rehabilitation will also require surfacing and ballast to ensure proper drainage of the line and surface and track alignment to provide further stability from track buckling during hot and cold temperature changes.

VERIFIED STATEMENT OF WESLEY W. HOLLOWAY

I. Introduction and Background

My name is Wesley W. Holloway. I am employed by the Union Pacific Railroad Company ("Union Pacific") as Manager Terminal Operations in the Transportation Department. My office address is 111 South Magnolia Street Palestine, Texas 75801. I have been employed by Union Pacific since May 1990 and have been in my current position for seven years. My primary duties include the safe operation of trains over my Territory, which includes the Henderson Industrial Lead.

This verified statement is in response to items raised in the protest filing submitted to the Board on July 10, 2009 in AB-33 (Sub-No. 275).

II. LHA43B

The LHA43B is the local train that serves the sawmill operated by West Fraser Timber Co., Ltd. ("West Fraser") on the Henderson Industrial lead on Tuesday of each week, provided the train orders indicate the need for such service. The LHA43B consists of a two man crew which includes a Conductor and an Engineer. The LHA43B uses two low horsepower switch type locomotive units assigned to the job. While only one locomotive unit would technically be needed to serve West Fraser, the LHA43B has two locomotive units assigned to accommodate the tonnage of other customers serviced by the local on other days of the week not located on the Henderson Industrial Lead. For obvious reasons of safety, efficiency, economy and labor cost, the two (2) locomotive unit consist is not taken apart for the Tuesday move to West Fraser.

III. Gravity Drop

In order to serve West Fraser, the LHA43B has to make a gravity drop at M.P. 11.09 because the Henderson Industrial Lead is a dead end track with no run around. A gravity drop consists of the LHA43B train stopping at M.P. 11.09. The Conductor then dismounts the locomotives. The engineer, on the conductor's orders, drags ahead, then stops the movement of the train. The conductor lines the switch into the side track and has the engineer shove the cars into the track. The conductor then secures the cars and cuts the power off the cars. The two locomotive engines go ahead out the industrial lead. The conductor then stops the movement and lines the switch back for the industrial lead. He then instructs the engineer to move the engines backward to clear the switch. The conductor then lines the switch for the movement out of the side track and lets the cars roll by gravity toward Henderson. Once the cars are clear of the switch the conductor lines the switch for movement down the industrial lead. The conductor then couples the two locomotive engines to the cars and then makes a brake test on the cars. The engineer drags the cars by the conductor so he can get on the leading end of the cars to make the shove toward the Henderson/West Fraser switch. The shove movement is approximately 3.19 miles from the Blazer Construction switch, M.P. 11.09 to the West Fraser switch M.P. 14.28. The conductor must ride the point of the shove movement. There are several at grade public highway crossings that will be shoved over in this process.

IV. Henderson Industrial Lead

This track movement is time consuming but necessary in order to serve West Fraser. Depending on weather and track condition, the process can take two (2) to three(3) hours to complete. While the track chart speed of the Henderson Industrial is listed at 10 mph, the LHA43B can only travel an average of about six (6) mph on the subdivision at best. The

subdivision has undulating terrain, crossbuck public crossings which must be crossed at very slow speed when the conductor is riding on the shove move, adverse weather at times, and a track condition which does not permit safe operation above 10 mph on any portion of the Line.

V. Service to West Fraser

It takes the LHA43B from five (5) hours to six (6) hours to complete round trip service to West Fraser.

STATE OF TEXAS)
)
COUNTY OF ANDERSON)

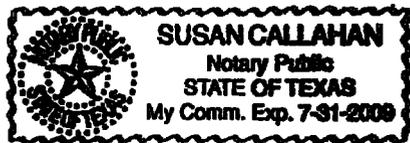
ss.

Wesley Holloway, 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.

Wesley Holloway

Wesley Holloway

SUBSCRIBED and SWORN to before me this 23rd day of July, 2009.



Susan Callahan

Notary Public