

224902

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35225

SAN BENITO RAILROAD LLC
-ACQUISITION EXEMPTION-
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

NOTICE OF INTENT TO PARTICIPATE AND APPEARANCE OF COUNSEL

The Brotherhood of Maintenance of Way Employees Division/IBT hereby gives notice of its intent to participate in this Finance Docket and enters the appearance of its counsel Richard S Edelman, O'Donnell, Schwartz & Anderson, P C

This proceeding concerns the plan of the San Benito Railroad LLC to acquire a rail line from Union Pacific Railroad Co ("UP") in a transaction by which 1) San Benito would purchase a UP line in the County of San Benito, California and would, through a third party, provide passenger rail service on that line; but 2) the line would still be part of the interstate rail system, and would still be used by UP for freight transport San Benito has filed a notice for exemption from STB approval of the line sale under Section 10901 But FDOT contemporaneously filed a motion to dismiss its own notice of exemption, claiming that the Board actually has no jurisdiction over this line sale, relying on *Maine Department of Transportation-Acquisition Exemption- Maine Central RR Co* , 8 ICC 2d 835 (1991), and its progeny

BMWED hereby advises the Board that it intends to participate in these proceedings There is no time limit for responses to a verified notice of exemption so it is unclear what a time limit might be to respond to a motion filed by a party to dismiss its own notice And since San

Benito's filings were ex parte, BMWED has just learned of them BMWED intends to investigate this planned transaction and will file comments as soon as possible

Respectfully submitted,

/s/ [Signature]
Richard S Edelman
O'Donnell, Schwartz & Anderson
1300 L Street, N W
Suite 1200
Washington, D.C 20005
(202) 898-1707
(202)-682-9276
REdelman@odsalaw.com

Dated April 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Notice of Intent
To Participate and Appearance of Counsel, by First Class Mail, to the offices of the following:

Kevin M Sheys
Janie Sheng
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Date April 17, 2009


/s/ _____
Richard S Edelman