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ZUMBACH FLYNN**

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(1928 - 1999)

Steven E. Zumbach

ENTERED
Office of the Secretary

JAN 31 2002

Part of
Public Record

January 30, 2002

HAND DELIVERED

Vernon A. Williams, Secretary
Surface Transportation Board
1925 "K" Street, N.W.
Washington, D.C. 20423-0001

204655

Direct Dial: (515) 283-4625
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Re: Docket No. AB-33 (Sub-No. 170), Union Pacific Railroad Company--Abandonment and Discontinuance of Operation--in Polk County, IA (Bell Avenue Industrial Lead in Des Moines, IA)

Dear Mr. Williams:

Attached for filing in the above proceeding is an original and ten copies of Mid-America's Response to Union Pacific's Reply to Offer of Financial Assistance of Mid-America Railroad, L.L.C., dated January 30, 2002. Kindly acknowledge receipt by date-stamping the enclosed duplicate copy of this letter and return the duplicate to the individual filing these documents.

Sincerely yours,

Steven E. Zumbach
For the Firm

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Enclosures



BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY

—ABANDONMENT AND DISCONTINUATION OF OPERATION—

IN POLK COUNTY, IOWA

(BELL AVENUE INDUSTRIAL LEAD IN DES MOINES, IOWA)

**RESPONSE TO UNION PACIFIC'S REPLY
TO OFFER OF FINANCIAL ASSISTANCE
OF MID-AMERICA RAILROAD, L.L.C.**

MID-AMERICA RAILROAD, L.L.C.

Steven E. Zumbach
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Des Moines, IA 50309
515-243-7100 (Telephone)
515-243-1408 (Facsimile)

ATTORNEYS FOR MID-AMERICA

Dated: January 30, 2002
Filed: January 30, 2002

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing offer of financial assistance was served upon the following:

Union Pacific Railroad Company
Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, #1920
Chicago, IL 60606
(by fax)

Ringling Brothers and Barnam
and Bailey Circus
8607 Westwood Center Drive
Vienna, VA 22182
(by regular mail)

Des Moines Water Works
2201 Valley Drive
Des Moines, IA 50321
(by regular mail)

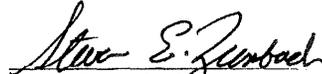
Iowa Interstate Railroad, Ltd.
Terry Bailey
1300 Des Moines Building
405 Sixth Avenue
Des Moines, IA 50309
(by regular mail)

Iowa Transportation Department
Modal Division
Tom Jackson
800 Lincoln Way
Ames, IA 50010
(by regular mail)

Smurfit-Stone Container Corporation
Jim Shelley
2201 Bell Avenue
Des Moines, IA 50321
(by regular mail)

Dated this 30th day of January, 2002.

MID-AMERICA RAILROAD, L.L.C.



Steven E. Zumbach
William D. Bartine
Holly M. Logan
Christopher M. Miller
BELIN LAMSON McCORMICK
ZUMBACH FLYNN, P.C.

ATTORNEYS FOR MID-AMERICA

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY

—ABANDONMENT AND DISCONTINUATION OF OPERATION—

IN POLK COUNTY, IOWA

(BELL AVENUE INDUSTRIAL LEAD IN DES MOINES, IOWA)

**RESPONSE TO UNION PACIFIC'S REPLY
TO OFFER OF FINANCIAL ASSISTANCE
OF MID-AMERICA RAILROAD, L.L.C.**

Mid-America Railroad, L.L.C., a wholly owned subsidiary of Mid-America Development Company (collectively and individually referenced as "Mid-America"), filed an offer of financial assistance ("OFA") for the purchase of Union Pacific's Bell Avenue Industrial Lead ("the Line") in the City of Des Moines, Polk County, Iowa on January 25, 2002. Union Pacific filed a reply to Mid-America's OFA on January 26, 2002. This response quite properly characterizes Union Pacific's reply as simply a bad-faith attempt to avoid the Board's OFA procedures.

Principally, Union Pacific argues that Mid-America has failed to demonstrate financial responsibility as required by 49 C.F.R. § 1152.27(c). Such an allegation, however, flies in the face of Union Pacific's expressed willingness to negotiate with Mid-America. Union Pacific's attorney, Mack Shumate, made an oral representation to Mid-

America's attorney, Holly Logan, on January 22, 2002 that Union Pacific was interested in negotiating the sale of the Line to Mid-America. (Attached Verified Statement of Ms. Holly Logan). Mr. Shumate further represented to Ms. Logan that Union Pacific would agree to allow Mid-America to represent in its OFA that the railroad had agreed to negotiate with Mid-America. *Id.* Ms. Logan was given the impression that Union Pacific was supportive of Mid-America's participation in the OFA process. *Id.*

At no point during Ms. Logan's conversation with Mr. Shumate did Mr. Shumate nor either of the two additional Union Pacific officials participating in the conference call express a concern about Mid-America's financial responsibility. *Id.* If Union Pacific had a legitimate concern about Mid-America's financial responsibility, Mr. Shumate had a good-faith duty to address it with Ms. Logan. Instead, Union Pacific allowed Mid-America to labor under the eminently reasonable assumption while compiling its OFA that its financial responsibility was unquestioned. Indeed, Mid-America relied on Mr. Shumate's representations to Ms. Logan in choosing to make a minimal assertion in its OFA that it had more than sufficient resources to honor its commitment to see rail service continue on the Line. In light of the railroad's expressed willingness to negotiate, the Board found a similar assertion satisfactory in *Consolidated Rail Corporation Abandonment — In Huntingdon County, PA*, Docket No. AB-167 (Sub-No. 1175) (STB served February 19, 1997).

Union Pacific now challenges Mid-America's financial responsibility only after the OFA deadline set by the Board has passed and only after Mid-America's justifiable reliance on Mr. Shumate's representations to Ms. Logan. Union Pacific's actions

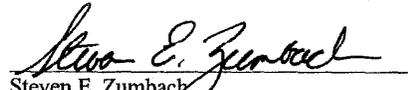
constitute a transparent attempt to circumvent the OFA process. Such tactics ought not be sanctioned by the Board.

Union Pacific also challenges Mid-America's \$5,000 offer to purchase the Line as "ridiculously low" and thus not reasonable under 49 C.F.R. § 1152.27(c). Such a characterization is surprisingly bold given Union Pacific's "ridiculously high" estimated net liquidation value of \$1,682,894 for the Line. As detailed in Mid-America's OFA, Union Pacific's estimate simply neglects to factor an admitted \$750,000 obligation to remove the Des Moines River bridge upon abandonment. Further, Union Pacific's estimated real estate value of \$1,500,000 is nothing short of fantasy — at best representing some alleged value of an existing railroad right-of-way, not that of an abandoned corridor.

A longtime corporate citizen of Des Moines, Iowa, Mid-America has a genuine interest in seeing rail service continue on the Line. Indeed, Mid-America has already formed a railroad company to operate the Line, Mid-America Railroad, L.L.C., as part of the Mid-America Group. In addition, Mid-America has entered into negotiations with a local short-haul provider to service the Line. Mid-America relied in good faith on Mr. Shumate's representations about Union Pacific's willingness to negotiate with Mid-America. And Mid-America submitted a reasonable offer of \$5,000 for purchase of the Line in light of Union Pacific's dramatically overstated estimated net liquidation value. Union Pacific ought not now be allowed to circumvent the statutorily proscribed OFA process by claiming ignorance of Mid-America's financial responsibility and by falsely spouting offense to an offer for purchase that is no more "ridiculous" than the asking price which prompted it.

WHEREFORE, Mid-America respectfully requests that the Board find that Mid-America is a financially responsible party and further find that Mid-America's offer of financial assistance to purchase Union Pacific's Bell Avenue Industrial Lead is bona fide and sufficient to postpone the effective date of the abandonment and to allow negotiations to be initiated.

Respectfully submitted,



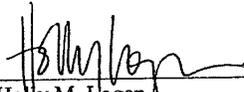
Steven E. Zumbach
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ATTORNEYS FOR MID-AMERICA

VERIFICATION

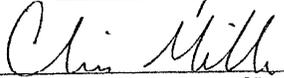
STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Holly M. Logan, being duly sworn, depose and state that an attorney for Mid-America Development Company and Mid-America Railroad, L.L.C., that I have read the foregoing, and that I know the facts asserted therein to be true.



Holly M. Logan

Subscribed and sworn to before me this 30th day of January, 2002.



Notary Public for the State of Iowa



VERIFIED STATEMENT

OF

HOLLY M. LOGAN

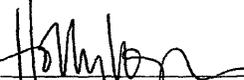
I, Holly M. Logan, being duly sworn upon my oath, do hereby depose and state as follows:

1. I am an attorney practicing law at the Belin Law Firm in Des Moines, Iowa.
2. The Belin Firm represents Mid-America.
3. On January 22, 2002, on behalf on Mid-America, I had a telephone conversation with Mack Shumate, Union Pacific's attorney, as well as John J. Herdzina from Union Pacific's Real Estate Department and Raymond Allamong from Union Pacific's Rail Line Planning Department.
4. During our telephone conversation, Mack Shumate expressly stated that Union Pacific would allow Mid-America to represent in its offer of financial assistance ("OFA") that Union Pacific agreed to negotiate with Mid-America. I was given the impression that Union Pacific was supportive of Mid-America's participation in the OFA process.
5. At no point during our conversation did Mr. Shumate, Mr. Herdzina, or Mr. Allamong express a concern about Mid-America's financial responsibility.

VERIFICATION

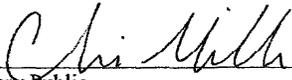
STATE OF Iowa)
COUNTY OF Polk) ss.

HOLLY M. LOGAN, being first duly sworn, deposes and states that she has read the above document, knows the facts asserted therein, and that the same are true as stated.



HOLLY M. LOGAN

SUBSCRIBED and sworn to before me this 29th day of January, 2002.



Notary Public

