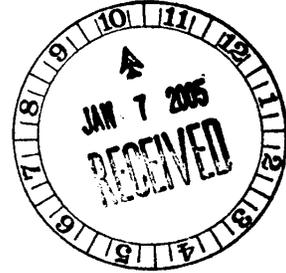


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January 6, 2005



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VIA UPS OVERNIGHT DELIVERY

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

Re: Finance Docket No. 34631; Union Pacific Railroad Company – Acquisition and Operation Exemption – Line of Denver Terminal Railroad Company d.b.a. Denver Rock Island Railroad

Dear Mr. Williams:

I am enclosing the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Petition for Exemption covering the transaction proposed in the above proceeding
2. A payment form in the amount of \$5,300.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (41)(vi).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

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Office of Proceedings

JAN 07 2004

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Public Record

RTO/mls
Enclosures

FILED

JAN 07 2004

Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

ORIGINAL

CONTAINS COLOR IMAGES

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34631



UNION PACIFIC RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF DENVER TERMINAL RAILROAD COMPANY
d.b.a. DENVER ROCK ISLAND RAILROAD

FILED

JAN 07 2004

PETITION FOR EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179-0001
(402) 544-3072
(402) 501-0132 (FAX)

Dated: January 6, 2005

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34631



UNION PACIFIC RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF DENVER TERMINAL RAILROAD COMPANY
d.b.a. DENVER ROCK ISLAND RAILROAD

PETITION FOR EXEMPTION

This Petition is filed on behalf of Union Pacific Railroad Company ("UP"). It requests an exemption covering UP's acquisition and operation of a line of Denver Terminal Railroad Company d.b.a. Denver Rock Island Railroad ("DRIR") extending from DRIR milepost 0.72 near Sandown to the end of DRIR's ownership at Belt Junction, DRIR milepost 3.95, a distance of approximately 3.23 miles in Denver, CO, as shown on the map attached on Exhibit 1 (the "Line"). DRIR will retain local trackage rights over the entire Line.

I.

DESCRIPTION AND PURPOSE OF THE TRANSACTION

UP and DRIR have agreed to an exchange of rail lines between UP and DRIR in the Denver area, and a formal agreement for the exchange transaction is in the process of being finalized. UP is to acquire the Sandown-Belt Junction line involved in this proceeding from DRIR (the "UP Acquisition"). DRIR will, in turn, acquire lines known as the "Stock Yard Lead" and "North Washington Industrial Park Lead" from UP (the "DRIR Acquisition").¹ The exemption sought by UP in this proceeding covers only the UP Acquisition. DRIR will file for an exemption of the DRIR Acquisition in a separate proceeding.

The purpose of the UP Acquisition is to provide UP with a potential alternate route for trains operating between UP's "Kansas Pacific" ("KP") line (Limon Subdivision), and routes running west and north from the Belt Junction area. UP's existing routing between these points operates through "Pullman" in central Denver, near the Union Station area, a difficult routing with heavy curvature. The Denver Regional Transportation District ("RTD") and Colorado Department of Transportation ("CDOT") have plans for extensive public transit improvements in the Denver area, known as "FasTracks".² One of the FasTracks projects is a commuter rail line between Union Station and Denver International Airport ("DIA"). The UP "KP" line corridor is one of the corridors being considered for this line. If the "KP" corridor is used for FasTracks,

¹ Pending completion of the exchange transaction, DRIR will lease the Stock Yard Lead from UP as covered by the DRIR notice of exemption filed December 17, 2004 in Finance Docket No. 34673.

² On November 2, 2004, voters approved a sales tax increase for the Denver area to fund the local share of FasTracks.

through freight traffic may be rerouted from the existing KP routing to the Line between a connection near Sandown and Belt Junction.³ While this rerouting may not take place for several years (if it occurs at all), UP desires to acquire the Line in order to assure that it will be available if and when it is needed.

DRIR currently uses the Line to provide service to on-line industries. Under the exchange transaction, there will be no change in DRIR service as DRIR will retain exclusive local trackage rights to serve these industries, as it does today.

II.

THE STANDARDS FOR AN EXEMPTION HAVE BEEN MET

Under 49 U.S.C. §11323(a)(2), prior Board approval is required for a rail carrier to acquire or operate the line of another rail carrier. However, under 49 U.S.C. §10502, the Board must exempt a transaction from regulation if the Board finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101 and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power. As shown below, the UP Acquisition easily meets the requirements for exemption.

³ The Line was formerly a CRI&P through route between the UP KP line at Sandown Junction (over which CRI&P had trackage rights) and Belt Junction. However, the 0.72 miles between Sandown Junction and the current end of track at DRIR milepost 0.72 has been removed. In order to use the Line as a through route, this trackage will have to be replaced, either on the original alignment or on an alternate alignment. It is anticipated, if the track were ever constructed, the work would be done in connection with the FasTracks East corridor project. Since the restored trackage would simply give UP an alternate through route a short distance from existing UP "KP" route, and would not enable UP to invade new territory (or, for that matter, to serve any additional customers), no STB authority would be required, City of Detroit v CNR, 9 I.C.C. 2d 1208. 1218-19 (1993) aff'd 59 F. 3d 1314 (DC Cir., 1995).

A. Rail Transportation Policy

In determining whether regulation of a transaction proposed for exemption is necessary to carry out the rail transportation policy, the Board considers the policies of the statute from which exemption is sought, Indiana R. Co. - Acq. & Oper. - Illinois Central R. Co., 6 I.C.C.2d 1004, 1006 (1990); aff'd sub nom., Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991); Finance Docket No. 31493, Blackstone Capital Partners - Control Exemption - CNW, served July 5, 1989, p. 2.

The UP Acquisition does not involve the merger or control of two or more Class I railroads. Thus, absent an exemption, this transaction would be subject to the standards of 49 U.S.C. §11324(d). This section requires the Board to approve a transaction, unless it finds both that:

- (1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant public needs.

The UP Acquisition will have no anticompetitive effects. Neither DRIR nor UP is giving any rights to compete against each other, or against other carriers. DRIR, in fact, is not giving up any such rights at all – it will continue to use the Line to serve on-line shippers under its retained trackage rights. UP is similarly not giving up any rights. While it is unknown at this point in time whether UP will ever use the line, it is gaining the potential of using the line for through traffic if it is needed to protect UP's ability to provide competitive freight service in the Denver area. Further, by allowing UP to acquire the Line without a formal application under §11321, an exemption will minimize the need for Federal regulatory control over the rail transportation system [49 U.S.C.

§10101(2)], foster sound economic conditions in transportation [49 U.S.C. §10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. §10101(7)], and encourage efficient management of railroads [49 U.S.C. §10101(9)]. Other aspects of the rail transportation policy are not adversely affected.

B. Limited Scope

The UP Acquisition of a line only 3.23 miles in length is clearly a transaction of "limited scope." It would be difficult to find many transactions which are more "limited" in scope than this one.

C. Abuse of Market Power

The UP Acquisition will not result in any abuse of market power by either UP or DRIR. As discussed above, the acquisition will have no impact on the competitive situation over the Line. DRIR will retain its rights to service shippers on the Line. UP similarly is not giving up any operating rights, and is gaining the potential to use the Line for through freight service which, if it occurs, would enhance UP's ability to provide competitive service.

III.

LABOR PROTECTION

The applicable labor protective conditions for this transaction are those imposed in *New York Dock Ry. – Control – Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

IV.

ENVIRONMENTAL AND HISTORICAL DOCUMENTATION

This transaction is exempt under 49 C.F.R. §1105.6(c)(2)(i) and §1105.7(e) from environmental reporting requirements because the proposed transaction will not result in operational changes that exceed any of the Board's

environmental thresholds. The UP Acquisition will not, in and of itself, result in any operational changes – the acquisition is for potential future use only. As previously discussed, in order for UP to utilize the Line for overhead train movements, a section of previously removed trackage between the current end of track and the UP KP line must be replaced, either on the original alignment or on an alternate alignment.

The replacement of the connecting trackage at Sandown and the rerouting of UP overhead trains to the Line is, at this point in time, purely speculative. It will occur, if at all, only if public authorities decide to initiate rail commuter service to DIA over UP's "KP" line, and to fund the work necessary to reroute UP freight trains to avoid conflicts with passenger service. UP does not know at this time the scope of the commuter service that would be provided, whether it would share trackage with freight trains, or what, if any, freight trains would be displaced to the DRIR route by that service. Further, as we understand the FasTracks proposals, any commuter service on the "KP" line will be funded, in part by Federal funds. As such, we anticipate that the environmental effects of any rerouting of freight trains to the Line to free up passenger capacity on the KP line will be analyzed as part of this federally funded project.

The proposed transaction is exempt from historic preservation requirements under 49 C.F.R. §1105.8(b)(1) because further Board approval will be required to abandon any service, and there are no plans to alter or dispose of any properties subject to Board jurisdiction that are 50 years old or older.⁴

⁴ Board and FRA rules require "Safety Integration Plans" for certain transactions between a Class I and a Class I or II carrier. No safety integration plan is required for this transaction as it does not involve a proposal by a Class I railroad to consolidate with, merge with or acquire control of another Class I railroad or a Class II railroad, 49 C.F.R. §§244.1, 1106.2 (definition of "transaction") and 1106.3.

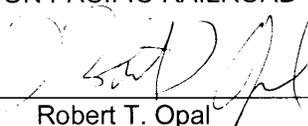
V.

CONCLUSION

For the reasons stated above, UP respectfully requests the Board to exempt the UP Acquisition from regulation under 49 U.S.C. §10502.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 

Robert T. Opal
General Commerce Counsel
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179-0001
(402) 544-3072 (direct)
(402) 501-0132 (FAX)

VERIFICATION

Warren C. Wilson, Director Rail Line Planning of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Petition for Exemption in Finance Docket No. 34631, knows the facts stated therein, and that said facts are true as stated.

Dated: January 6, 2005.



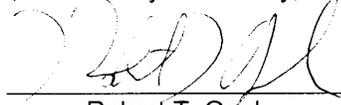
Warren C. Wilson

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by first class, United States mail:

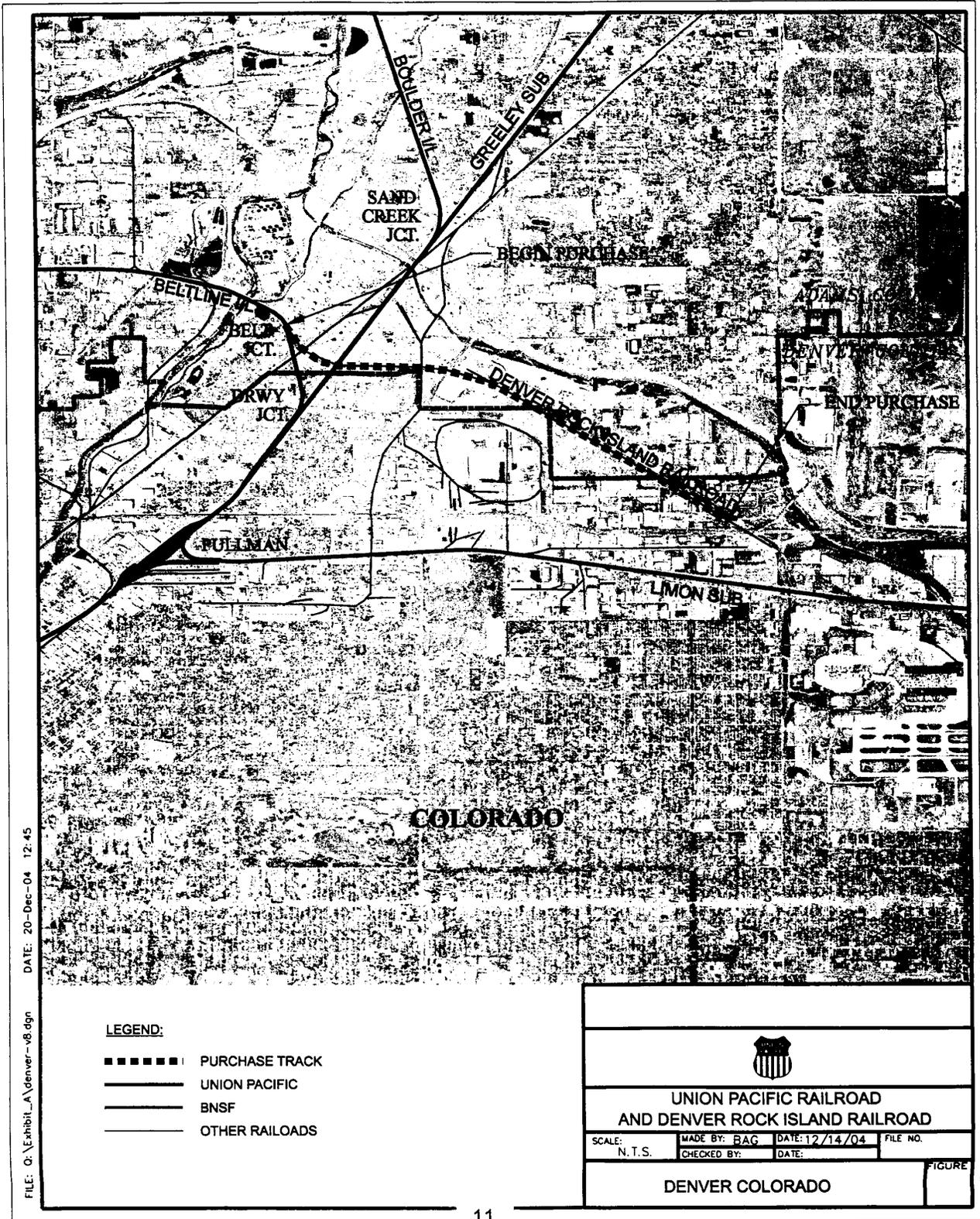
Thomas F. McFarland, Jr., Esq.
208 South La Salle Street
Suite 1890
Chicago, IL 60604-1112

Dated at Omaha, Nebraska, this 6th day of January, 2005.



Robert T. Opal

EXHIBIT 1
(Finance Docket No. 34631)



FILE: Q:\Exhibit_A\denver-v8.dgn
 DATE: 20-Dec-04 12:45

- LEGEND:**
- PURCHASE TRACK
 - UNION PACIFIC
 - BNSF
 - OTHER RAILROADS

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| UNION PACIFIC RAILROAD AND DENVER ROCK ISLAND RAILROAD | | | |
| SCALE: N.T.S. | MADE BY: BAG | DATE: 12/14/04 | FILE NO. |
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| DENVER COLORADO | | | FIGURE |