



Robert T. Opal
General Commerce Counsel

April 6, 2006

Via E-Filing

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

**Re: Docket No. AB-33 (Sub-No. 239X); Union Pacific Railroad Company --
Abandonment Exemption – In Oklahoma City, OK (Old Rock Island Main)**

Dear Mr. Williams:

Enclosed for filing in the above proceeding is UP's Reply to the Oklahoma Department of Transportation's Environmental Comments and Petition for Stay, and Petition to Revoke or Reopen.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Opal", with a long horizontal flourish extending to the right.

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cc (via E-Mail)
Eric M. Hoky

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 239X)

UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUANCE EXEMPTION --
IN OKLAHOMA CITY, OKLAHOMA
(OLD ROCK ISLAND MAIN)

**REPLY OF UNION PACIFIC RAILROAD COMPANY
TO
OKLAHOMA DEPARTMENT OF TRANSPORTATION REOPEN ENVIRONMENTAL
COMMENT AND PETITION FOR STAY AND PETITION TO REVOKE**

UNION PACIFIC RAILROAD COMPANY

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This Reply is submitted on behalf of Union Pacific Railroad Company ("UP"). It is in response to two documents filed by the Oklahoma Department of Transportation (ODOT) on April 5, 2006. The first is a document entitled "Environmental Comments and Petition for Stay" ("Stay Petition"), and the second is a document entitled "Petition to Revoke or Reopen the Exemption" ("Revocation Petition"). For the reasons stated below, the petitions are totally without merit. They should be denied and the exemption in the above proceeding should be allowed to become effective as scheduled on April 15, 2006.

1. The Discontinuance Meets The Requirements for the Class Exemption

The notice of exemption for this discontinuance was filed under the Class Exemption at 49 C.F.R. Part 1152, Subpart F -- Exempt Abandonments and Discontinuances of Service and Trackage Rights. The discontinuance clearly meets all of the Subpart F requirements. As discussed in the Notice of Exemption, this line is a

"dead railroad". There has been no local traffic over the line for over two years, and there is no overhead traffic on the line. Further, there has been no formal complaint regarding cessation of service over the line either filed or decided by anyone in the last two years. ODOT does not - and could not - dispute these facts.

2. No Environmental or Historical Report Was Required

As discussed in UP's notice of exemption (p. 6), no environmental / historical report is required in this proceeding because (i) the discontinuance will have no effect of rail or truck traffic in the area, as no rail operations are being conducted on the line, and (ii) discontinuance will not result in salvage or disposition of the line, because BNSF continues to have trackage rights on the line (although it is not using them) and, (iii) the line had been previously authorized for abandonment. UP pointed out this treatment was consistent with the Board's decision in Docket AB-1066X, Central Illinois R. Co. -- Discontinuance of Service Exemption - In Peoria County, IL, served December 23, 2005 (p. 5) ("Central Illinois"), where no environmental or historical report was required. Like the instant case, Central Illinois involved a former Rock Island line which had been authorized for abandonment in Chicago, R. I. & P. R. Co. - Abandonment - Entire System, 363 I.C.C. 150 (1980) ("Rock Island Abandonment"), subsequently sold to a government entity, and operated by a lessee. The only relevant factual difference Central Illinois and this case is that the rail line involved in Central Illinois had recent rail operations, which the Oklahoma trackage involved in this case has not.

Remarkably, while UP specifically cited and discussed the Central Illinois decision in its Notice of Exemption, and the case obviously involves a closely analogous situation to this one, ODOT doesn't even mention this decision in either of its filings. Instead, it completely ignores Central Illinois, and makes arguments that are

inconsistent with the Board's decision in that case, without even acknowledging this directly adverse precedent.

First, ODOT argues that the discontinuance should be treated as an abandonment "since there will be no remaining operator on the line" (ODOT Stay Petition, p. 2). That is factually wrong, since BNSF continues to have trackage rights on the line, as ODOT recognizes in other parts of its submissions. Further, it is inconsistent with the Board's conclusion in Central Illinois that discontinuance of service by an operator (in that case, the only operator) over a line that had been previously approved for abandonment in Rock Island Abandonment is treated as a discontinuance of service rather than an abandonment.¹

Second, ODOT recognizes that Board rules provide that no environmental documentation is normally required for actions which "do not result in significant changes in carrier operations" 49 C.F.R. § 1105.6(b). ODOT does not claim that the discontinuance will result in "significant changes in carrier operations". It couldn't make such a claim because there are no rail operations over the line now, and haven't been for years. Rather, ODOT argues that the discontinuance doesn't qualify under § 1105.6(b) because "neither abandonments nor discontinuances are listed" in that section (ODOT Stay Petition p. 3). But ODOT ignores the fact that § 1105.6(b) is not limited, to the actions described in the listed examples. It covers actions "...including (**but not limited to**) all of the following actions that meet this criterion". And ODOT, once again, ignores the Central Illinois decision, in which the Board expressly held that

¹ The Central Illinois decision specifically distinguishes the "agency precedent in which EA's were prepared in cases of discontinuance where the line would not continue to be operated, noting that "none of these cases involve liens that had already been authorized for abandonment," Decision, p. 5. That distinction also applies to the Old Rock Island Main.

no environmental or historical report was required under § 1105.6(b) and § 1105.8(e) for a discontinuance of service over a line like this one, which had been authorized for abandonment in Rock Island Abandonment.

Third, ODOT claims that an environmental report is required "to address, among other things, the safety of BNSF's potential trackage rights operations, and impact of eliminating this line as an interchange alternative or back-up" (ODOT Stay Petition, p. 3). But, even if an environmental report were required in this proceeding (and it is not), it would not have to address these subjects.² BNSF is not currently operating on this line. No environmental review is required for a resumption of operations by BNSF, see Docket No. AB-33 (Sub-No. 183), Salt Lake City Corporation - Adverse Abandonment, decision served March 8, 2002, p. 10 and cases cited (railroad may resume service over unused rail line not authorized for abandonment without any Board authority or environmental review). Similarly, there is no requirement that a carrier address the environmental effects of discontinuing hypothetical rail operations that it is not conducting and has no intention of conducting.

Finally, ODOT claims that there is a "historic city street bridge owned by Oklahoma City over the line" and that UP should file a historic report covering the effects on this "historic" bridge (ODOT Environmental Comments, pp. 2, 3). This is a misrepresentation. There is no such bridge. There was an old city street bridge over the line at Walnut Street which was owned by the City. But the City has already

² ODOT states that "in two year out of service **abandonments**, UP routinely prepares a Combined Environmental and Historical Report" (ODOT Stay Petition, p. 3 or 4). That is true for abandonments, where the environmental/historical materials focus on salvage. This proceeding, in contrast, involves discontinuance of UP service over a line already authorized for abandonment, which is owned by the state.

removed most of the old bridge in connection with a reconstruction project, including the entire original superstructure, a fact which ODOT neglects to mention. Further, UP doesn't own what's left of the old bridge, and doesn't have any control over what the City may choose to do with it. As such, it is not subject to "historic" review in this proceeding, Central Illinois at 5.

3. Other Issues

ODOT raises three other issues which warrant only a brief response.

First, ODOT claims that UP cannot discontinue operations as long as BNSF holds trackage rights over the line. There is no such principle. The cases cited by ODOT (Revocation Petition, p. 3) say only that a carrier cannot fully consummate an abandonment when another carrier holds trackage rights over a line. UP is not proposing to "abandon" this line. Further, UP is not proposing to discontinue or otherwise effect, in any way, BNSF's trackage rights over this line, as the Board recognized in its decision served March 16, 1006 in this proceeding (footnote 1).

Second, ODOT states that UP is seeking this discontinuance to avoid potential obligations to Oklahoma City with respect to reconstruction of the Walnut Street bridge (ODOT Revocation Petition, p. 2). It's not clear why ODOT is raising this point, since it doesn't attempt to show that this is improper. We would simply point out that one of the reasons for most abandonments and discontinuances is to avoid future obligations for rail facilities that are no longer needed. See, for example, Docket No. AB-6 (Sub-No. 175), Burlington Northern R. Co. -Abandonment, served July 30, 1984, Atchison T. & S.F. R. Co. - Abandonment, 207 I.C.C. 365, 368 (1935) and St. Louis-S.F.R.Co. - Abandonment, 202 I.C.C. 42 (1934) (loss of taxes otherwise collectible from a railroad is not a basis to deny an abandonment).

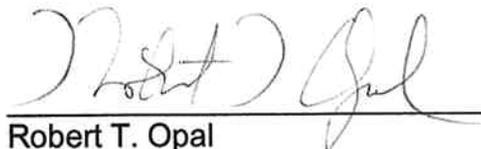
Third, ODOT claims that UP is seeking this abandonment in an attempt "avoid its obligations" under a 1982 lease agreement with the State (ODOT Revocation Petition, p. 2, 4), and then goes on to argue that the agreement makes no provisions for UP to "remove a line from application of the lease-purchase".³ We are not entirely sure what ODOT is complaining about. There is nothing in the lease which requires UP to actually operate all of the trackage covered by the lease, so long as "a continuous and usable line of railroad between the **termini** in effect on the Commencement Date is maintained" (Lease, Section 9.01). The Old Rock Island Main is not part of the line of railroad "between the termini" covered by the lease. Rather, it is a short branch diverging from it (see Exhibit 1 map to Notice of Exemption).

CONCLUSION

For the forgoing reasons, UP respectfully requests that ODOT's Petition for Stay and Petition to Revoke or Reopen be denied.

Respectfully submitted,

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³ The lease is described at p. 3 of UP's Notice of Exemption and in the decisions cited.

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document by electronic mail upon the following:

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Dated at Omaha, NE this 6th day of April, 2006.



Robert T. Opal