

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 34958**

**NEVADA PACIFIC RAILROAD CORPORATION  
— LEASE AND OPERATION EXEMPTION —  
PAN WESTERN CORPORATION**

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**OPPOSITION TO PETITION TO REVOKE EXEMPTION**

Nevada Pacific Railroad Corporation (“NPRC”) hereby replies in opposition to the Petition to Revoke Exemption, filed by Nevada Central Railroad (“Petitioner”) on December 15, 2006.<sup>1</sup> The exemption was published by the Board in the Federal Register on December 14, 2006.

The entire premise of the Petition to Revoke, that NPRC submitted “materially false, misleading, and therefore fraudulent” information in its Notice of Exemption (Pet. at 5) , is unsupported by the record. Rather, Petitioner, for undisclosed reasons, seeks to exploit a mistake in the Notice of Exemption that subsequently was promptly disclosed and corrected in the record.

The Notice was filed on November 14, 2006 in the name of “UP Nevada Railroad LLC,” 13110 Birch Dr., #317, Omaha, NE 68164, and was verified by Mr. Mitchell Truman. The Applicant, however, should have been identified as “UP Nevada Corporation.” Due to a miscommunication between Mr. Truman and counsel, the name of the Applicant was incorrectly stated in the Notice.

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<sup>1</sup> NPRC notes that, although the Petition is dated December 13, 2006 and the Board received the Petition on December 15, 2006, the service copy was not post-marked until December 28, 2006 and was not in fact received by NPRC until January 2, 2007.

In a November 17, 2006 letter, the Union Pacific Railroad (“UP”), while not objecting to the Notice, raised concerns about the use of “UP” in the Applicant’s name. UP also noted that it could not find any entity incorporated under the name “UP Nevada Railroad LLC.” That letter brought the incorrect name in the Notice to Applicant’s attention.

On November 20, 2006, Applicant responded to UP’s letter by stating that it would change its name and by disclosing the mistake in Applicant’s original Notice. On November 22, 2006, Applicant asked the Board to substitute Nevada Pacific Railroad Corporation, 2800 West Sahara Ave., Suite 680, Box 23, Las Vegas, Nevada 89102, as the Applicant.

The exemption was published in the Federal Register under the name and address of NPRC on December 14, 2006. Thus, the exemption was not, and could not have been, granted under false or misleading circumstances.

In a tacit acknowledgement of this fact, Petitioner turns its attack upon the Board itself by alleging that the Board “proceeded to Unlawfully ALTER the PUBLIC RECORD of the Finance Docket, by changing the Name of the Petitioner on the said Official Docket...” Petition at 9. *See also* page 13 (accusing the Board of “Criminal Conduct”). But, Petitioner ignores Applicant’s request to the Board of November 22, 2006, which is part of the public record, to substitute NPRC as the Applicant. Petitioner does not cite to any authority that would render the request or the granting of the request improper or unlawful.

Since the original Notice of Exemption could have been filed under the name of NPRC, it is hard to see what is improper about substituting NPRC as the Applicant. Furthermore, even if the Board were to revoke the exemption, NPRC could refile the exemption and Petitioner could have no basis to object. If Petitioner had any other basis to object, presumably it would have raised them in its Petition to Revoke. The fact that NPRC properly could have filed the Notice

and could refile the Notice at any time without objection from Petitioner further demonstrates that the Board's action in substituting NPRC as the Applicant was not only permissible, but also non-prejudicial to Petitioner.

Although Petitioner baldly asserts that Mr. Truman "knowingly" and "fraudulently" submitted a false verification, it gives no evidence of Mr. Truman's knowledge or intent, nor does Petitioner offer any explanation as to why Mr. Truman would knowingly and intentionally submit a false verification or what he had to gain from doing so. That is because there is nothing to be gained. It would be wholly irrational for Mr. Truman to have knowingly falsified the name of the Applicant.

This exemption is wholly unlike the revocation decision cited by Petitioner in *SF&L Railway Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Ry. Corp.*, STB Finance Docket No. 33995 (served Oct. 17, 2002). In that case, the Board found that the applicant had abused the class exemption process by misrepresenting its intent to provide continuing rail service over the line when it actually intend to salvage the line for scrap. Petitioner in this case has not demonstrated any intent or purpose of NPRC to abuse the class exemption process.

After 15 pages of repetitive and blustery rhetoric, one is left wondering what this Petition is really about and why Petitioner is so interested in this exemption. In its last gasp of breath on page 15, Petitioner sheds some light on this question. Petitioner appears to be claiming an exclusive right to provide rail service in the territory in which NPRC will operate. Petitioner is extremely vague as to the source of its claim and the exhibits to the Petition certainly do not bear out such a claim. Certainly the Board has never granted Petitioner exclusive rail rights and it is

doubtful that the Board could do so consistent with the national rail transportation policies that favor competition.

Nevertheless, Petitioner seeks to exploit the mistaken identification of the Applicant in the Notice of Exemption to protect its perceived rights. But, as the record clearly demonstrates, the mistake was identified and corrected and the exemption was published in the Federal Register based on correct information provided by the Applicant. Consequently, the exemption is not predicated on any false or misleading information, and thus should not be revoked. Petitioner clearly misunderstands this fact.

Petitioner concludes by threatening to join NPRC in a lawsuit on charges of “Industrial Economic Espionage, Theft of Trade Secrets, Interference with Contract and Business Expectancy, Fraud, Conspiracy, and Civil Rico [sic],” if the Board denies the Petition to Revoke. NPRC cannot conceive of any basis for such an action against it. Indeed, NPRC is completely baffled and bewildered by Petitioner’s interest in this proceeding at all. But NPRC cannot prevent Petitioner from making such claims no matter how frivolous. In any event, Petitioner’s threat, along with any other claims that it has raised with respect to its alleged contract rights and trademark infringements, are irrelevant to whether the Board should revoke NPRC’s exemption.

Respectfully submitted,



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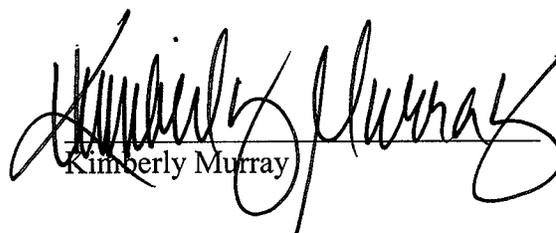
Dated: January 12, 2007

*Attorneys for Nevada Pacific Railroad Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 12th day of January, 2007, served a copy of the foregoing Opposition to Petition to Revoke Exemption was sent by first class mail, postage prepaid, to the following.

Mr. Robert Alan Kemp  
Chief Executive Officer  
Aviation Technologies Ltd.  
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Kimberly Murray