



June 8, 2007

Via E-Filing

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

Re: Finance Docket No. 35038; Tulare Valley Railroad Company – Feeder Line Acquisition -- A Line of San Joaquin Valley Railroad Company

Dear Mr. Williams:

This refers to the "feeder line" application filed May 25, 2007 ("Application") on behalf of Tulare Valley Railroad Company ("TVR") seeking to acquire a line of San Joaquin Valley Railroad Company ("SJVR") between Exeter and Jovista, California. TVR appears to be affiliated with A&K Materials, as TVR's President and Vice President shown at p. 2 of the Application (Kent Shumacher and Michael Von Wagenen) are principals of A&K.

SJVR acquired the Exeter-Jovista line in 1993 pursuant to an exemption issued in Finance Docket No. 31993 (Sub-No. 1), San Joaquin Valley Railroad Company - Acquisition and Lease Exemption - Southern Pacific Transportation Company, served October 4, 1993. As described in the ICC decision, SJVR purchased only the track structure. SP (now UP) retained ownership of the right-of-way, and leased it to SJVR.¹

UP respectfully requests that the Board reject TVR's Application as incomplete and defective under the Board's Feeder Line rules, 49 C.F.R. Part 1151 for the following reasons:

First - 49 C.F.R 1151,3 (a)(4) and (5) require that an application contain estimates of the NLV and GCV of a line, and an offer to purchase the line at the higher of the two estimates. The Exeter-Jovista line includes both the right-of-way and the railroad improvements constructed on it. TVR has proposed to pay only \$968,000 for the track materials owned by SJVR. It has offered nothing for the right-of-way owned by UP, apparently on the grounds that "SJVR does not own the right-of-way" (Application, p. 3). But UP owns this property and is entitled to compensation for it. UP's preliminary estimate is that the right-of-way (which is mostly owned in fee) has a net liquidation value of approximately \$8.3 million.

TVR's failure to offer any compensation to UP (or anyone else) for the right-of-way cannot be dismissed as an inadvertent oversight. The fact is that both UP and SJVR were discussing a possible voluntary sale of the line to TVR prior to the filing of the Application, and UP actually provided TVR with valuation information for the right-of-way. TVR was thus well aware that UP

¹ The ICC in this decision expressly refused to find that the transaction extinguished SP's common carrier obligation for the subject lines, noting that "SP is retaining a substantial interest in the involved properties, namely ownership in the underlying rights-of-way" and suggesting that SP could file a petition for declaratory order if it wanted to clarify this issue, Decision at pp. 2-3, fn 8. No such petition was ever filed.

owned the right-of-way. TVR's failure to offer include any value for the right-of-way in its GCV and NLV estimates or to offer to pay any compensation for the right-of-way was obviously deliberate, and renders the Application fatally defective under 1151.3(a)(4) and (5).

Second - 49 C.F.R. 1151.3(a)(4) not only requires an application to include estimates of the GCV and NLV of a line. It also requires an application to contain "evidence in support of these estimates." TVR's Application contains only conclusory estimates of the value of the track materials (Application pp. 2-3, No. 4). There is no "evidence" whatever provided in support of these estimates (the Application isn't even verified). And, as noted above, the Application contains neither an estimate nor supporting evidence as to the value of the right-of-way.

Third - While not stated in the Application, it may be that TVR intends that UP be forced to lease TVR the right-of-way. If so, the Board has no authority under 49 U.S.C. 10907 to force UP to lease anything to TVR. The Board can only authorize the purchase of a line under this section, and then only if the applicant pays "constitutional minimum value" for the line. Moreover, even if the Board did have authority to force UP into a lease (which it does not), TVR has not offered to pay UP any compensation for such a lease, or any explanation of why it should be allowed to use UP's property for free.

Fourth - 49 C.F.R 1151.2(a) requires that an applicant serve a copy of its Application on "the owning railroad" at the same time as it is filed. TVR states that its Application was "served on the persons identified in 49 C F R 1151.2(a)", and UP is unquestionably an "owning railroad" required to be served. It is now two weeks since TVR filed its Application, and UP has yet to receive a service copy of the Application. Apparently, UP was never served. We became aware of the filing, and obtained a copy, from the Board's website.

For the reasons stated above, UP respectfully requests that the Board reject TVR's Application for failure to comply with the Board's Feeder Line Development Program rules. The rejection, of course, would be without prejudice to TVR's submission of a revised Application that is in compliance with these rules.

Very truly yours,



Robert T. Opal
General Commerce and FRA Counsel

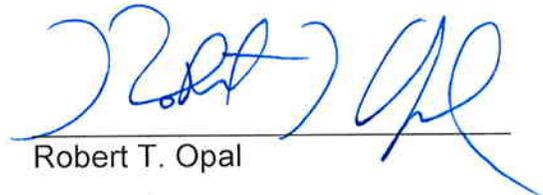
CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document by E-Mail on
the parties listed below:

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Dated at Omaha, Nebraska this 8th of June, 2007.



Robert T. Opal