

STATEMENT OF TIMOTHY STRAFFORD  
Staff Attorney, STB Office of Proceedings

STB Docket No. AB-33 (Sub-No. 132X)

UNION PACIFIC RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN RIO GRANDE AND MINERAL COUNTIES, CO.

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The draft decision before you denies a petition to reopen a decision in this proceeding served on May 11, 1999. That decision approved the sale of a 21.6-mile rail line in Rio Grande and Mineral Counties, CO, known as the Creede Branch by Union Pacific Railroad Company (UP) to the Denver & Rio Grande Railway Historical Foundation (Foundation) pursuant to the Board's offer of financial assistance (OFA) procedures.

In December 1998, UP sought to abandon the line and filed a notice of exemption. By a decision of the Director of the Office of Proceedings served on May 11, 1999, the Foundation was authorized to acquire the line under the OFA procedures and UP's abandonment exemption was dismissed, effective on the date the sale was consummated. Although the City asked the Board to reopen the decision because it opposed the sale, the Board determined that reopening was not justified. Ultimately, the sale of the line was consummated in May 2000, when the Foundation paid \$350,000 in cash and financed the remaining \$274,616 of the purchase price by a note held by UP.

In November 2000, the City filed suit against the Foundation in Colorado state court to resolve certain zoning issues related to the railroad right-of-way. The matter was subsequently removed to Federal court. The Federal district court referred issues of Federal preemption to the Board and, in so doing, specifically admonished the parties not to relitigate the OFA sale. Nonetheless, in July 2003, the City filed a pleading seeking to revoke the OFA sale authorization. This pleading was treated as a second petition to reopen and is the subject of the draft decision now before you. The petition is supported by two landowners adjacent to the right-of-way and is opposed by the Foundation and UP.

A petition to reopen will be granted upon a showing that material error, new evidence, or substantially changed circumstances would materially affect the challenged action. The City argues that new evidence gained in the civil court action demonstrates that the Foundation was not financially responsible under 49 U.S.C. 10904 and that its OFA was not for continued rail service.

The draft decision denies the petition to reopen. It notes that the need for administrative finality dictates that, as time passes, the hurdle to be overcome by a petitioner necessarily increases. Here, the sale of the line was consummated several years ago and the selling railroad remains satisfied with the outcome of the OFA process. Moreover, the record indicates that the

Foundation is current in its financial obligations, and that its clearing and rehabilitation work on the line demonstrate an intent to resume rail service. Also, there is no evidence that the Foundation's leasing practices are improper. Despite some apparent inconsistencies in the Foundation's financial documents, the draft finds that the City has not met its substantial burden for reopening.

The draft also indicates that a related declaratory order proceeding concerning the preemption issues referred by the district court, and held in abeyance pending issuance of this decision, will be put on a schedule for expeditious resolution.

This concludes my statement. We would be happy to answer any questions that you may have.

Thank you.