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Via E-Filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Finance Docket No. 35982 (Sub No. 1)

Dear Ms. Brown:

Union Pacific submits this response to the Landowners' Motion for Declaratory and Injunctive Relief filed on January 6, 2020 ("Motion") in the above-referenced proceeding. The Landowners misrepresent the facts relating to Union Pacific's sale of the Line to Jackson County. Contrary to the Landowners' allegations, Union Pacific did not sell the Line before the Board authorized the transaction and did not manipulate the abandonment process to sell the Line. The Board should reject their baseless accusations.

The Landowners claim Union Pacific sold the Line "without the knowledge and approval of the Board." Motion at 2. However, their claim is refuted by the Line Sale Agreement itself, which expressly made Board approval a condition precedent to the sale. Section 5 of the Line Sale Agreement established several "Conditions Precedent to Sale," one of which was that Jackson County would obtain "STB Authority." Motion, Ex. A, § 5(f). In other words, Union Pacific and Jackson County negotiated and agreed on the sale's terms in advance, but the transaction itself did not close until after Jackson County obtained the necessary authority through the Board's decision in this proceeding served on February 4, 2016. Thus, Union Pacific's sale of the Line was no different from countless other transactions in which the parties negotiate and agree on terms before obtaining the regulatory authority necessary for closing.¹

The Landowners also allege that Union Pacific sold the Line "to avoid the proper abandonment process." Motion at 5. This is also not true. Union Pacific could have obtained compensation from Jackson County for its rights to the Line through a sale or an abandonment and interim trail use/rail banking agreement under the Trails Act. Union Pacific agreed to sell the Line, and Jackson County agreed

¹ See, e.g., *WRL, LLC d/b/a Rainier Rail—Acquis. and Operation Exemption—City of Tacoma, Department of Public Works d/b/a Tacoma Rail*, FD 36341 (STB served Sept. 20, 2019), slip op. at 1 ("WRL states that it has reached an agreement with Tacoma Rail to acquire and operate the Line upon the exemption's effective date."); *Youngstown & Southeastern RR Co.—Acquis. and Operation Exemption—Mule Sidetracks, LLC*, FD 36342 (STB served Aug. 30, 2019), slip op. at 2 ("YSSR further states that it is entering into an asset purchase sale agreement with MSLLC in which YSRR will acquire the Line and all of MSLLC's related rights to the contiguous track segments, and, following closing, YSRR will be both the owner and operator of the Line and contiguous track segments.").

to acquire it, with the common carrier obligation. Indeed, the Board found that Jackson County acquired the Line with the intent to assume the common carrier obligation. *See Jackson Cty., Mo.—Acquis. & Operation Exemption—Union Pacific*, FD 35982 (STB served Feb. 4, 2016), slip op. at 3. There is no basis for the Landowners’ claim that Union Pacific sold the Line to avoid the abandonment process.

Union Pacific’s sale of the Line was unquestionably valid, but the Board’s July 31, 2019 decision revoking Jackson County’s acquisition and operation exemption created some uncertainty about the rights and obligations of the parties regarding the Line. Union Pacific and Jackson County are trying to resolve the uncertainty by obtaining abandonment authority in STB Docket No. AB-33 (Sub-No. 342X). In that proceeding, the parties stated their intent to enter into an interim trail use/rail banking agreement and seek issuance of a notice of interim trail use (“NITU”). Jackson County filed a Statement of Willingness to Assume Financial Responsibility, as required for issuance of an NITU, and Union Pacific indicated its willingness to negotiate for trail use. On January 21, 2020, the Board issued an NITU for the Line. *Union Pacific and Jackson County, Mo.—Aband. Exemption—In Jackson County, Mo.*, Docket No. AB-33 (Sub-No. 342X) (STB served Jan 21, 2020). The parties fully anticipate entering into an agreement for interim trail use/rail banking within 180 days. Once this process is complete, any uncertainty about the parties’ respective rights and obligations regarding the Line will be resolved.

Union Pacific’s actions in selling the Line to Jackson County were entirely consistent with Board procedures and precedent. Moreover, Union Pacific is helping Jackson County address the issues that arose after the sale and eliminate any uncertainty over the Line’s status. No further Board action is warranted in this proceeding.

Respectfully Submitted,

/s/ Jeremy M. Berman

Jeremy M. Berman

cc: Parties of Record