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SERVICE DATE – FEBRUARY 21, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35982

JACKSON COUNTY, MO.—ACQUISITION AND OPERATION EXEMPTION—UNION
PACIFIC RAILROAD COMPANY

Decided: February 20, 2019

On December 23, 2015, Jackson County, Mo. (the County), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Union Pacific Railroad Company and to operate approximately 17.7 miles of rail line between milepost 288.3 and milepost 270.6, in Jackson County. The Board denied a request for a stay by decision served February 4, 2016, and permitted the exemption to become effective immediately. On October 22, 2018, certain landowners¹ jointly filed a petition asking the Board to revoke the exemption. The County filed a reply in opposition to the petition to revoke on November 13, 2018. On January 28, 2019, the landowners filed a notice of additional authority and a notice of supplemental information.²

In a decision served on February 5, 2019, the Board instituted a proceeding and noted that evidence presented in the petition to revoke raises questions about whether recreational trail use on the right-of-way remains consistent with the County's acquisition and operation of a rail line under 49 C.F.R. § 1150.31 and the County's common carrier obligation. The Board also established a procedural schedule for further filings.

On February 11, 2019, the landowners and the County jointly filed a motion asking that the Board commence mediation pursuant to 49 C.F.R. part 1109, appoint a Board employee as mediator, and hold the proceeding in abeyance. This request for mediation will be granted and the proceeding held in abeyance. While the parties are encouraged to work out as many issues as possible, the scope of the mediation will not, under 49 C.F.R. § 1109.1, encompass any grant, denial, stay, or revocation of regulatory authority.

¹ The landowners are: Deborah S. Groh; DJHS Enterprises, LLC; JHB & MEB Enterprises, LLC; David W. Wells; Dawn R. Wells; Current Properties Investments, LLC; and Nephrite Fund I, LLC. The landowners are plaintiffs in a lawsuit before the U.S. Court of Federal Claims, Groh v. United States, Case No. 17-1066L. By order issued in that docket on July 10, 2018, the court stayed the lawsuit so that the landowners could pursue administrative remedies before the Board.

² These filings were dated January 4, 2019, and January 10, 2019, respectively, but because of the recent partial shutdown of the Federal government, they were considered filed on January 28, 2019. See Filings Submitted or Due to Be Submitted During the Partial Fed. Gov't Shutdown, EP 751 (STB served Jan. 28, 2019).

Within 10 days of the service date of this decision, the Chairman will appoint one or more mediator(s). Once appointed, the mediator or mediators will contact the parties to discuss the time and location of any meetings, and other matters. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The Board may extend mediation pursuant to mutual written requests of all parties to the mediation proceeding. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

It is ordered:

1. Mediation will be initiated as discussed above.
2. The proceeding is held in abeyance.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.