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KAPLAN KIRSCH ROCKWELL

April 20, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: F.D. No. 35008, *Utah Transit Authority - Acquisition Exemption - Union Pacific Railroad Company in Salt Lake City, UT*

Dear Mr. Williams:

This in response to the letter from Thomas F. McFarland on behalf of the Utah Shipper Coalition requesting a stay of the effective date of the above-referenced Notice of Exemption. Utah Transit Authority ("UTA") respectfully submits that no stay is necessary or appropriate at this time. The interests of the members of the Coalition will not be adversely affected in any way if the Notice is allowed to become effective, as described below, and there is no basis for issuing a stay. The Coalition's request should be denied, for the following reasons:

1. Even though the Notice will become effective on April 27, 2007 (or even if it does not become effective until 14 days after the publication of the Notice in the Federal Register), UTA and Union Pacific Railroad Company ("UPRR") do not plan to close the transaction described in the Agreement that is attached to the Notice until May 11, 2007 at the earliest. The authority to implement that is created by the filing and publication of the Notice is permissive, not mandatory. Since the parties to the transaction are hereby representing to this Board and confirming that they do not intend to exercise that authority until May 11, 2007, at the earliest, there is no basis to issue an order staying the transaction at this time. The requirement to publish a Notice of Exemption in the Federal Register within 16 days after filing of that Notice is designed to provide interested persons with 14-days notice prior to implementation of the transaction. In view of the parties' representation as to the earliest closing date, this objective will have been satisfied by that time.

2. Proceeding to implementation of the transaction described in the Notice of Exemption presents no risk to the members of the Coalition. UTA will file a Motion to Dismiss the Notice of Exemption once it has reached agreements with appropriate parties (currently, UPRR, the Savage Bingham & Garfield Railroad Company ("SBG"), and BNSF Railway Company) regarding continued freight operations on the track that is the subject of the Notice. If the transaction closes before that Motion is filed and/or acted upon, the shippers will not be harmed. No matter what scenario the Coalition members postulate, there is no circumstance where they will be harmed by implementation of the transactions here and in F.D. No. 35002, the related

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proceeding relating to the SBG acquisition of operating rights from UPRR. That is to say, no matter how events unfold, there will be an entity to whom this Board can turn to enforce the obligations of 49 U.S.C. §11101.

- If UTA elects to proceed to closing without an agreement with SBG and/or BNSF in place, UTA will be the carrier to whom the shippers and this Board can turn to enforce the obligation to provide service upon reasonable request.
- If, prior to the effective date of the Notice, UTA reaches an agreement with SBG and/or BNSF regarding the assumption by SBG of the freight service on the line, then the shippers that are members of the Coalition will still have a carrier to whom they can look for the rail service that they require. If the shippers believe that the agreement limits their ability to receive service upon reasonable request, they will still have the same ability to bring the matter to this Board.

Either way, this Board will have a carrier to whom it can turn to require enforcement of the common carrier obligation on the line. If UTA determines that it wishes to proceed with the transaction and to take the risk that it may be assuming the obligation of a common carrier, which obligation it will only be able to extinguish upon completion of the appropriate processes at this Board, there is no basis on this record for the shippers to argue that the transaction should not be allowed to proceed.

Moreover, allowing the Notice to become effective does not have the potential for increasing the complexity of proceedings that this Board will consider. When SBG, BNSF and UTA complete the agreements that are required for the transfer and reorganization of freight service on the line, they will be addressed via a Motion to Dismiss or other proceeding in which this Board will review the transaction(s) and make a legal conclusion based on the facts and arguments presented there. If that is handled in a Motion to Dismiss in this proceeding, or in another proceeding after this transaction closes, the issues and the time required to review them will be the same. The shippers cannot argue that the interests of judicial economy require addressing this matter now – the same resources will be required to address the issues whenever the parties elect to present them. No matter when those issues are addressed, the shippers will not be left without a carrier to serve them, unless and until the obligation to provide rail freight service over this line is abandoned pursuant to 49 U.S.C. §10903, a scenario that, to the best of UTA's knowledge, is not under consideration by any party at this time.

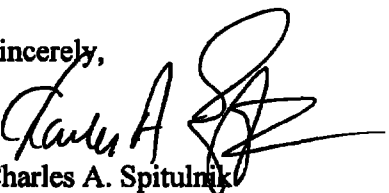
3. As was the case in F.D. No. 35002, the Coalition has not satisfied the requirements for issuance of a stay:

- They have not demonstrated any likelihood of success on the merits of a challenge to the transaction at issue here.

- They cannot demonstrate any harm to their interests. As noted above, their interest in having a carrier that is obligated to provide service upon reasonable request will be served no matter how or when the issues are brought before this Board.
- The parties to the transaction, on the other hand, will be harmed by the unnecessary uncertainty that will be created with respect to their ability to close the transactions once all of the agreements have been finalized.
- The Coalition has not explained why the public interest would be served by imposition of a stay on a transaction that the parties have confirmed will not close until May 11, 2007 and that has not been shown to have any adverse impact on any member of the public.

As a result, and in view of all of the foregoing, UTA respectfully requests this Board to deny the request for a stay submitted by the members of the Utah Shipper Coalition in this proceeding.

Sincerely,



Charles A. Spitulnik

cc: Kathryn Pett, Esq.
Thomas F. McFarland, Esq.
Robert P. vom Eigen, Esq.
Robert T. Opal, Esq.