



# KAPLAN KIRSCH ROCKWELL

June 15, 2007

**Via EFiling**

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

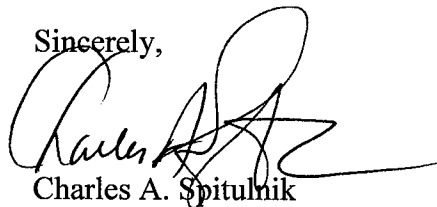
**Re: *Savage, Bingham & Garfield Railroad Company – Acquisition and Operation  
Exemption – Union Pacific Railroad Company, Finance Docket No. 35002***

***Utah Transit Authority – Acquisition Exemption – Union Pacific Railroad  
Company in Salt Lake County, Utah, Finance Docket No. 35008***

Dear Sir:

I am enclosing the Petition of Utah Transit Authority for Expedited Consideration in the above referenced proceedings.

Sincerely,



Charles A. Spitulnik

Enclosure

133652

**Before the  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35002  
SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY - -  
ACQUISITION AND OPERATION EXEMPTION - -  
UNION PACIFIC RAILROAD COMPANY**

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**Finance Docket No. 35008  
UTAH TRANSIT AUTHORITY - -  
ACQUISITION EXEMPTION - -  
UNION PACIFIC RAILROAD COMPANY  
IN SALT LAKE COUNTY, UTAH**

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**PETITION OF UTAH TRANSIT AUTHORITY  
FOR EXPEDITED CONSIDERATION**

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Pursuant to 49 C.F.R. 1117.1, the Utah Transit Authority (“UTA”) hereby petitions this Board for expedited consideration of the removal of the stay that is in place in F.D. No. 35002 and of the Motion to Dismiss that is pending in F.D. No. 35008.<sup>1</sup> As UTA has explained in its pleadings in response to various requests for a stay, the implementation of the transactions in these two proceedings is time-sensitive, relating to availability of funding, adherence to project schedules for a project that entails a series of transactions and construction projects, and escalating costs that will result from further delays. Because the substantive issues raised by the shippers have been resolved, because the relief sought by UTA in this proceeding is consistent with relief that the Board has granted in the other proceedings cited in the Motion to Dismiss, and because the public interest very much favors expedited resolution of these issues, UTA

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<sup>1</sup> Although these proceedings have not been consolidated, UTA is submitting this Petition in both proceedings because the issues raised by and the outcome of each of them are closely intertwined.

respectfully requests the Board to issue an order by no later than June 21, 2007 that: (1) grants the Motion to Dismiss filed by UTA in F.D. No. 35008; (2) removes the stay of implementation of the transaction in F.D. No. 35002; and (3) approves the Protective Order sought in both proceedings.

## **BACKGROUND**

On February 27, 2007, the Savage, Bingham and Garfield Railroad Company ("SBGR") filed a Notice of Exemption in F.D. No. 35002 (as amended on March 5, 2007) in which proceeding SBGR proposes to acquire the easement from Union Pacific Railroad Company ("UPRR") to operate over lines of railroad described therein, including: the lines of railroad (a) between Milepost 4.66 at Welby and Milepost 17.10 at Magna ("Garfield Branch"), and between Milepost 0.00 at Kearns and Milepost 2.01 at Bacchus ("Bacchus Branch"); (b) the UPRR line of railroad between Milepost 0.18 at Midvale and Milepost 6.60 at Bagley Spur ("Bingham Industrial Lead"); and (c) various UPRR wye, yard and team tracks in the vicinity of Midvale ("Midvale Trackage"), all in Salt Lake County, Utah. At the request of the Utah Shipper Coalition (the "Coalition"), and over the objections of UTA, SBGR and UPRR, this Board has stayed the effective date of that Exemption.

On March 27, 2007, UTA filed a Notice of Exemption in STB F.D. No. 35008, (as supplemented on April 16, 2007) with respect to the acquisition by UTA from UPRR of the remaining width of a portion of the Bingham Industrial Lead from Midvale, UT, Milepost 0.0 of said line to Bagley, at Milepost 6.60, along with trackage referred to as the Dalton Spur, the latter of which is not subject to the STB's jurisdiction. UTA then filed a Motion to Dismiss that Notice of Exemption on April 20, 2007. SBGR has submitted a Reply in support of that Motion to Dismiss. The Coalition, though initially expressing its opposition to the Motion, has since

with drawn that opposition in a letter submitted to this Board on June 1, 2007. In that same letter, the Coalition indicated that it is withdrawing its request for a Stay in F.D. No. 35002. Both the Coalition and SBGR have requested a limited oversight of the implementation of the transaction in F.D. No. 35002.<sup>2</sup>

At the same time, both UTA and SBGR filed a further amended copy of the Administration and Coordination Agreement (“ACA”) that will govern the operation of freight service on the Bingham Industrial Lead after the transaction. As the parties have previously explained, the key to the Coalition members’ willingness to withdraw their opposition to the Motion to Dismiss in F.D. No. 35008 is the amendment to Section 5.4 of the ACA, which now provides that if this Board issues an order requiring an expansion of the exclusive freight operating window available on the Bingham Industrial Lead, UTA will be required to modify its operations to accommodate that change. That is, though this Board will no longer have jurisdiction over UTA once the Board grants the Motion to Dismiss, UTA will have a contractual obligation to comply with the Board’s order, an obligation that will be enforceable in state court.

## **ARGUMENT**

### **THE PUBLIC INTEREST FAVORS EXPEDITED HANDLING OF THIS PROCEEDING.**

UTA has explained to this Board previously the urgency associated with resolution of the issues in these proceedings. To place the matter in context, the Board should understand that UTA has been developing a program of transportation projects titled the “2015 rail program” in the Salt Lake City area. The total cost of the program, when completed, will be \$2.8 Billion.

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<sup>2</sup> That oversight condition would not apply in F.D. No. 35008, in which all of the parties have agreed that the Notice of Exemption should be dismissed.

UTA has proposed a funding program to the Federal Transit Administration (“FTA”) by which FTA will provide \$570 Million in federal funds for the program. With construction cost escalation at the current growth rate in 2007 of 7-8%, UTA’s ability to fund the program depends on the ability to meet the planned program schedule.

Acquiring a contractor for the alignment along the current Bingham Branch is the next major milestone in the program schedule. A Request for Proposal (“RFP”) for that contractor is due to be advertised on June the 25<sup>th</sup>. The last remaining constraint to the release of that RFP is for UTA to complete the acquisition of the rail corridor along the Bingham Branch from UP. UTA cannot complete that acquisition until the Board removes the stay in F.D. No. 35002 and grants the Motion to Dismiss in F.D. No. 35008.

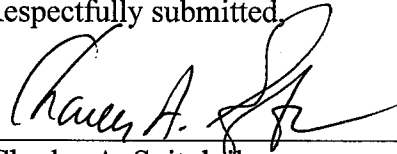
There is no remaining substantive obstacle to the expedited issuance of the requested order:

- As UTA has explained in the Motion to Dismiss, filed in this proceeding on April 20, 2007, the Board has ruled in the decisions cited in that Motion that rights that UTA is acquiring on the Bingham line do not trigger a transfer of common carrier obligations to UTA, thus enabling the Board to conclude that it has no jurisdiction over the UTA acquisition.
- In the transaction that is the subject of F.D. 35002, SBGR will acquire from UPRR the freight common carrier obligation on that line. SBGR has confirmed, in its response to UTA’s Motion to Dismiss, that nothing about the transaction will prevent it from fulfilling its common carrier obligation on the line.

- The revised ACA confirms that in the event that expansion of the window for freight operations is required to permit SBGR to fulfill that common carrier obligation, there is a mechanism in place to ensure that UTA complies with an order of the Board mandating that expansion.
- The Coalition has withdrawn its request for a stay, and has withdrawn its opposition to the approval of the Motion to Dismiss.

WHEREFORE, and in order to promote the public interest in completion of the UTA project in a timely way, UTA respectfully requests this Board to expedite its issuance of a ruling in these two proceedings, and that the decision be issued by no later than June 21<sup>st</sup>.

Respectfully submitted,



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Counsel for Utah Transit Authority

## CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of June, 2007, I caused to be served a copy of the foregoing PETITION OF UTAH TRANSIT AUTHORITY FOR EXPEDITED

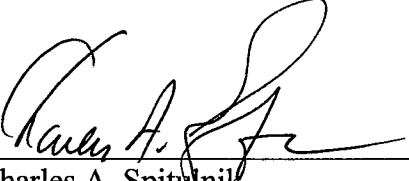
CONSIDERATION to be served by first class mail, postage prepaid, and via Email upon:

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208 South LaSalle Street, Suite 1890  
Chicago, IL 60604

Robert P. vom Eigen  
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