

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35982

**JACKSON COUNTY, MISSOURI
-- ACQUISITION AND OPERATION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.31**

JACKSON COUNTY'S MOTION TO STRIKE

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Dated: May 8, 2019

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Pursuant to 49 C.F.R. § 1104.8 and 49 C.F.R. § 1117.1, Jackson County, Missouri (“Jackson County”), a political subdivision of the State of Missouri, files this Motion to Strike certain portions of the Reply filed by the Petitioners in this proceeding on April 18, 2019 and the multiple submissions made by James Frank Abbott.

Under 49 C.F.R. § 1104.8, the “Board may order that any redundant, irrelevant, immaterial, impertinent or scandalous matter be stricken from any document.” In their Reply, the Petitioners claim without support that Jackson County has perpetrated a fraud on its taxpayers “by paying \$50 million to \$80 million to [Union Pacific Railroad Company] when they should have railbanked the corridor.”¹ There is no evidentiary basis for this fraud accusation by the Petitioners, which should be stricken from the record as irrelevant, impertinent and scandalous under 49 C.F.R. § 1104.8. The Petitioners’ fraud accusation echoes the unsubstantiated grievances lodged by Mr. Abbott in his numerous submissions in this

¹ Petitioners’ Reply at 13, n. 26.

proceeding, which also should be stricken from the record as redundant, irrelevant, immaterial, impertinent and scandalous.

In addition to being highly prejudicial and unsubstantiated, the fraud accusations asserted by the Petitioners and Mr. Abbott are not germane to the central issue pending before the Board in this proceeding – specifically, whether Jackson County’s development of a recreational trail on portions of the rail bed along the Corridor that Jackson County acquired from the Union Pacific Railroad Company (“UPRR”) is consistent with the common carrier obligation that Jackson County acquired as a result of its transaction with UPRR. The objectionable portion of the Reply filed by the Petitioners does not focus on this relevant question, but instead attempts to taint Jackson County’s actions with unsubstantiated fraud allegations.

The Petitioners also assert without any evidence that the Corridor would have been abandoned by UPRR if not for Jackson County’s plans to develop a recreational trail,² and that Jackson County’s actions have unfairly prejudiced the state law property rights of the Petitioners.³ These claims by the Petitioners, much like the fraud accusations leveled by the Petitioners and Mr. Abbott, are irrelevant, unsupported and inconsistent with the relevant facts of this case. The Petitioners may have preferred a scenario where UPRR abandoned the corridor before selling its interests to Jackson County, but that is not what happened in this case. Jackson County acquired the rail line from UPRR prior to any abandonment and subject to Jackson County’s common carrier obligation to provide service on the line upon reasonable request under 49 U.S.C. 10901 unless and until such time as an abandonment of the line is consummated. The Petitioners have failed to establish that Jackson County was required to acquire the corridor from

² Petitioners’ Reply at 9. Although not disclosed in their Reply, the Petitioners make this claim because railbanking would enable them to proceed with their Takings claim against the federal government.

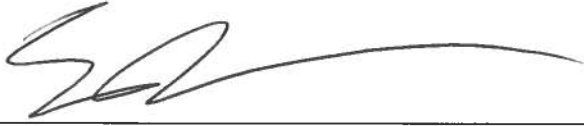
³ See Petitioners Reply at 9. As previously noted by Jackson County, the state property law arguments made by the Petitioners are not germane to the issues before the Board in this proceeding and should be stricken from the record as well.

UPRR only after it had been abandoned. Therefore, the Petitioners are relegated to leveling unsubstantiated fraud accusations against Jackson County which mirror the baseless charges asserted by Mr. Abbott.

CONCLUSION

For the reasons set forth in 49 C.F.R. § 1104.8, Jackson County respectfully requests that the Board strike the portions of the Petitioners' Reply that contains the baseless fraud and other irrelevant arguments and the multiple unsubstantiated submissions made by Mr. Abbott in this proceeding.

Respectfully submitted,



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Counsel for Jackson County, Missouri

Dated: May 8, 2019

CERTIFICATE OF SERVICE

I, Carolyn Kraska, hereby certify that on May 8, 2019, a true and correct copy of Jackson County's Motion to Strike was sent via e-mail to the following:

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