

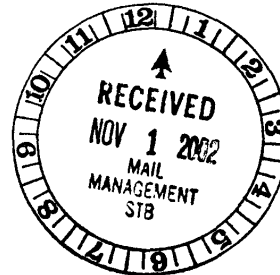
206539

Law Department

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

November 1, 2002

**VIA FAX (202) 565-9004**The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001Re: Finance Docket No. 34252; Union Pacific Railroad Company – Operation
Exemption – In Yolo County, California

Dear Mr. Williams:

Attached for filing in the above proceeding is Union Pacific's "Verified Reply to Petition to Reject / Petition to Stay". This filing is being made pursuant to the former Interstate Commerce Commission's procedures for receiving submissions in emergency/rush situations by fax, Acceptance of Mail by Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice").

As required by the 1989 Notice, an original and 10 copies of the attached filing will be provided to the Board under separate cover.

Very truly yours,

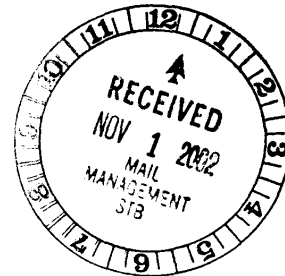
Robert T. Opal
General Commerce Counsel
Phone: 402/271-3072
Fax: 402/271-5610cc: (via Fax)
Joseph Dettmar (STB) --202/565-9002
Rose-Michele Weinryb (YSLR) 202/628-2011
(Via UPS Overnight)
Persons shown on Certificate of ServiceENTERED
Office of Proceedings

NOV 1 - 2002

Part of
Public Record

Atts.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34252

**UNION PACIFIC RAILROAD COMPANY
- OPERATION EXEMPTION -
IN YOLO COUNTY, CALIFORNIA**

**VERIFIED REPLY TO
PETITION TO REJECT/PETITION TO STAY**

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

Dated & Filed: November 1, 2002

TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND	5
II. YSLR'S REQUEST FOR REJECTION OF THE UP NOTICE	6
A. The UP Notice Covers A Transaction Within The Scope Of 49 U.S.C. §10901	6
B. The Notice Is Covered By The Class Exemption In 49 C.F.R. Part 1150, Subpart D	10
C. A Change In The Legal Status Of A Rail Line Is Within The Scope of The §10901 Class Exemption	12
III. YSLR'S REQUEST FOR A STAY	14
A. Likelihood Of Success On The Merits	14
B. Irreparable Harm To The Movant	16
C. Harm To Other Interested Parties	17
D. The Public Interest	17
CONCLUSION	18
VERIFICATION	19
CERTIFICATE OF SERVICE	20
APPENDIX A - OPSL 6000-W (Excerpt)	21

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34252

**UNION PACIFIC RAILROAD COMPANY
- OPERATION EXEMPTION -
IN YOLO COUNTY, CALIFORNIA**

**VERIFIED REPLY TO
PETITION TO REJECT/PETITION TO STAY**

This Reply is filed on behalf of Union Pacific Railroad Company ("UP"). It is in response to a Petition filed October 28, 2002, on behalf of Yolo Shortline Railroad Company ("YSLR") requesting that the Board reject or stay the UP's Notice of Exemption in this proceeding ("UP Notice"), which is scheduled to become effective on November 11, 2002.

The UP Notice covers 6.3 route miles of trackage (including access to connecting auxiliary trackage) in and near the Port of Sacramento in Yolo County, California. Of this, 2.72 route miles is owned by the Port and the remaining 3.38 miles (the West Sacramento Port Center track) is owned by UP.¹ As disclosed in the Notice, UP is currently operating over this trackage as exempt industrial trackage. The effect of the

¹ While not issues the STB need resolve, the map attached to YSLR's Petition does not accurately depict the division of ownership between the Port and UP and contains errors or omissions in the designation of the agreements applicable to certain segments of trackage. None of these are material to this proceeding.

Notice would be to convert this operation to regulated common carrier service. This would prevent YSLR from forcing a discontinuance of UP's existing service over the Port trackage, pursuant to an exemption YSLR previously obtained (by notice of exemption) in Finance Docket No. 34114, Yolo Shortline Railroad Company - Lease and Operation Exemption - Port of Sacramento (served November 20, 2001).² The UP Notice is supported by Farmers' Rice Cooperative ("FRC"), the principal shipper served from the Port trackage, and a supporting statement from Curt Graham, FRC's Manager-Marketing Services, is included with the UP Notice.

YSLR's Petition seeks rejection of the UP Notice on essentially two grounds. These are that (i) the UP Notice does not describe a transaction subject to 49 U.S.C. §10901 or the Board's class exemption at 49 C.F.R. Part 1150, Subpart D, and (ii) that the class exemption cannot be used to change the legal status of a railroad line from exempt trackage to a regulated rail line. YSLR also seeks a stay of the UP Notice, arguing that the criteria for a stay have been satisfied.

As we will show below, there is no merit to any of YSLR's arguments. They are a smokescreen, intended to obscure YSLR's attempt to misuse its exemption authority in Finance Docket No. 34114 to effect a forced discontinuance of UP services over the subject Port trackage, which will adversely effect both UP and FRC. In fact, many of the arguments YSLR are making as to the UP Notice apply with equal or greater force to YSLR's own notice of exemption in Finance Docket No. 34114, which covered much of the same trackage as the UP Notice.

² At p. 4 of UP's Notice, the service date of the STB notice of the YSLR exemption is incorrectly shown as "November 10, 2001." The correct service date is November 20, 2001, as stated above.

Before turning to the substance of YSLR's arguments, however, it is necessary to address the incomplete factual picture painted in the "Background" section of YSLR's Petition (pp. 2-3).

I.

BACKGROUND

The "Background" section of YSLR's Petition describes YSLR's contractual arrangements with the Port, and the steps it has taken to force a discontinuance of UP's service over Port trackage. But it fails to mention two facts which are highly relevant to this proceeding.

First The YSLR Port agreement is not a private contractual relationship outside the Board's regulatory sphere. Incredibly, YSLR's Petition never bothers to mention that YSLR sought and obtained Board authority (by notice of exemption in Finance Docket No. 34114) to carry out its contractual arrangements with the Port. The YSLR Notice of Exemption in the latter proceeding failed to disclose that the underlying transaction contemplated a forced discontinuance of UP service over the subject Port trackage and was obviously designed to mislead the Board into believing it was dealing with a "plain vanilla" line lease.³ And there is no question that a forced discontinuance was YSLR's intent from the outset - YSLR's November 16, 2001, termination letter was sent before the Board served its notice of the transaction (on November 20, 2001).⁴

³ The YSLR Notice did state that YSLR was seeking to become the "exclusive" railroad serving the Port trackage, but it did not disclose YSLR's planned discontinuance of any UP service. §§ 10901 and 10902 transactions often result in acquisition of "exclusive" rights by the acquiring carrier, but not a forced discontinuance of the incumbent carrier's service.

⁴ UP filed a Petition with the Board on October 21, 2002, seeking a declaration that the YSLR exemption in Finance Docket No. 34114 was materially misleading and therefore

Second - YSLR similarly fails to fully disclose what it intends to accomplish by the forced discontinuance of UP's service. Beginning on November 16, 2002, YSLR will insert itself as an unwanted middleman between UP and Port area customers (primarily FRC), replacing direct UP service with a two-railroad move. The "service" YSLR intends to provide in place of UP's direct service consists of a movement of approximately one mile between UP's West Sacramento Yard and FRC, for which it will charge \$200 per car. This will adversely affect shippers by increasing their costs for no good reason.⁵

II.

YSLR'S REQUEST FOR REJECTION OF THE UP NOTICE

UP's Notice is intended to preserve UP's existing rail services over the Port trackage. There is nothing improper about this, it is consistent with the purpose of the §10901 Class Exemption. It was fully disclosed in the UP Notice (pp. 4-5). None of the arguments raised by YSLR warrant rejection of the UP Notice.

A. The UP Notice Covers A Transaction Within The Scope Of 49 U.S.C. §10901.

YSLR argues that UP's Notice is not within the scope of §10901 because it "does not describe the construction of a railroad line, the provision of transportation of an

⁴(...continued)

void ab initio or, in the alternative, revocation of the exemption. The Petition and its accompanying statements described in detail the circumstances surrounding the YSLR Notice, and UP's unsuccessful attempts to negotiate a resolution of this matter before seeking relief from the Board.

⁵ This "service" is strikingly similar to the situation in Finance Docket No. 33995, SF&L - Acq. & Oper. Exemption TP&W Ry. Co. (not printed) served October 17, 2002 ("SF&L"), where a direct interchange was replaced by an operation "necessitating a costly and inefficient 1-mile movement by TP&W between lines of KJRY and SF&L," which made it more expensive to send shipments over the line. The Board cited this arrangement as one of the factors warranting revocation of SF&L's exemption, SF&L, pp. 12-13.

extended or additional rail line, or the acquisition or operation of a railroad line by a non-carrier," essentially because UP is already providing service over the subject trackage as exempt industrial trackage (YSLR Petition, p. 4).

YSLR does not cite any authority for its notion that the presence of existing operations over a track makes §10901 unavailable. In fact, STB/ICC have previously granted exemptions under §10901 for conversion of exempt spur track operations to fully regulated common carrier service, see, Finance Docket No. 34018, Yolo Shortline R. Co. - Acq. & Oper. Exemption - County of Sacramento, CA (not printed) served March 27, 2001 (McClelland Park industrial trackage); Finance Docket No. 31405, Arkansas Central Ry. Co., Inc. - Oper. Exemption - Line of Herzog Stone Products, Inc., decided May 31, 1989; Finance Docket No. 33997, Texas Central Business Line Corp. - Oper. Exemption - MidTexas Business Center (not printed) served September 20, 2002. Such a conversion easily fits into the statute's description of providing "transportation over, or by means of an extended or additional rail line." Essentially, the UP Notice, by removing the trackage from the ambit of §10906, makes the trackage an "extended or additional line of railroad," since it did not previously have that status.

Another way to look at this issue is to ask whether a §10901 notice of exemption for UP to operate over this trackage would be appropriate if UP were just about to start those operations for the first time today. There is little question that it would. The Port and UP trackage covered by the UP notice constitute what is in many respects a 6-mile long branch line serving multiple shippers.⁶ An extension of this length that enables a railroad to serve new territory it did not previously serve is within the scope of §10901,

⁶ See partial listing of shippers at Appendix 2 to UP's October 18, 2002, Certificate of Compliance in this proceeding.

e.g., City of Detroit v. Canadian Nat'l Ry. Co., 9 I.C.C.2d 1208, 1214-18 (1993); aff'd sub nom Detroit/Wayne County Auth. v. I.C.C., 59 F.3d 1314 (D.C. Cir., 1995). In fact, the Board has granted exemptions under §10901 for lines that are much shorter in length, and serve fewer shippers, see, e.g., Finance Docket No. 33862, Public Service of Colorado - Construction Exemption - Pueblo County, CO (not printed) served August 23, 2000 (new rail line 1,500 feet in length to serve single shipper held to be "line of railroad" under §10901, not exempt spur or industrial track under §10906). Finally, the fact that the carrier planning to serve the new track (here UP) would be requesting an exemption under §10901 and holding itself out to perform common carrier service for all shippers along the rail line would itself be highly relevant to the proper classification of the track, Finance Docket No. 3248, et al., GWI Switching Services, L.P. - Operation Exemption - Lines of Southern Pacific Transp. Co. (not printed) served August 7, 2001, p. 5; Arkansas Central, supra, p. 2.

Thus, YSLR's §10901 argument boils down to timing. Essentially, YSLR is arguing that once a railroad has operated a track as an exempt industrial or spur track, it cannot thereafter be converted into a common carrier operation (even though it could have been originally instituted as common carrier service). There is nothing in the statute that supports such a notion, and YSLR cites no authority in support of it. In fact, the former ICC has recognized that the classification of a track can change from "spur" to "line of railroad" over time as service over the track is expanded, Docket No. AB-52 (Sub-No. 71X). Atchison T. & S. F. Ry. Co. - Abandonment Exemption - In Lyon County, KS (not printed) served June 17, 1991, p. 3. The service over the Port and the Port Center tracks has, in fact, been expanded over the years, as the Port Center track was first constructed (in 1966) and then extended in stages to reach new customers. It

is entirely appropriate for UP to file a notice of exemption to convert the operation into a common carrier service in these circumstances.⁷ While this may not involve any immediate change in UP's existing operations on the route, it constitutes a holding out by UP that it will provide common carrier service to existing and future shippers along the route. YSLR has made no attempt to demonstrate that UP does not intend to provide such service, see, GWI Switching, supra, p. 5.

Finally, YSLR's argument on §10901 is inconsistent with its own exemption from §10902 in Finance Docket No. 34114. The YSLR exemption covers much of the same Port-owned trackage as the UP Notice in this proceeding. The relevant language of §10901 and §10902 is nearly identical. §10901(a)(3) covers proposals to "provide transportation over, or by means of, an extended or additional railroad line," while §10902(a) covers proposals to "acquire or operate an extended or additional rail line." The YSLR Notice did not propose operations materially different than UP's existing operations. The effect of the YSLR Notice was to convert what had previously been an

⁷ The line today has many of the indicia recognized by the ICC and the STB as indicia of a regulated line of railroad. In the first place, the line includes a station. The station of "Yolo Port" has been published as a UP station in the OPSL since at least 1991. A copy of the relevant listing in OPSL 6000-W, issued March 1, 2002, is attached hereto as Appendix A. As can be seen from this Appendix, "Yolo Port" is also shown as a station on BNSF, which has right to serve the Port under the UP/SP merger (it currently exercises that right by utilizing UP switching). The line is over 6 miles in length and serves multiple shippers. In 2001, these shippers generated over, 3,300 cars of traffic. UP provides regularly-scheduled service over the route for itself and BNSF (5 days per week, Monday-Friday). The weight of rail (mostly 132 lb. on the Port "main" track, 100 lb. and 85 lb. on the Port Center track) is equal or better than rail used on a typical branch line. The line is used in the actual movement of traffic between shippers and receivers similar to other branch lines. The "main" track on the line is not maintained by the shippers. The Port Center track is maintained by UP while the Port track is maintained by the Port or its contractors. See, Chicago N.W. T. Co. - Abandonment Exemption - In McHenry County, IL, 3 I.C.C.2d 366 (1987), rev'd other grounds, Illinois Com. Comm. v. I.C.C., 879 F.2d 917 (D.C. Cir., 1989).

exempt industrial track service into a fully regulated common carrier service - exactly what YSLR is arguing UP cannot do here. YSLR cannot have it both ways. If the YSLR Notice in Finance Docket No. 34114 covered a transaction within the scope of §10902, then UP's Notice in this proceeding covers a transaction within the scope of §10901.

**B. The Notice Is Covered By The Class Exemption
In 49 C.F.R. Part 1150, Subpart D.**

YSLR argues that the UP Notice does not qualify under the §10901 Class Exemption at 49 C.F.R. Part 1150, Subpart D, because the exemption supposedly applies only the three specific types of transactions (described in §§1150.32, 1150.35 and 1150.36) for which procedures are provided. This argument ignores the language of the exemption and its history.

The class exemption is expressly applicable to "all acquisitions and operations under section 10901" subject to only one exception which is not here relevant,⁸ 49 C.F.R. §1150.31(a). As we have shown in the previous section, the transaction covered by the UP Notice is an "operation" within the scope of §10901. As such, it is covered by the express language of §1150.31(a). This is confirmed by the fact that the ICC and the Board have issued exemptions under the §10901 Class Exemption for transactions which are very similar to the instant transaction, as shown in the next section, p. 12, infra.

YSLR mentions the broad language of §1150.31(a) in passing, but then suggests that the language must be read or limited to the three types of transactions described in §§1150.32, 1150.35 and 1150.36 (YSLR Petition, p. 5, n. 4). However, there is

⁸ The only exception is the acquisition by a Class I railroad of a rail line abandoned by another Class I railroad where the acquisition would result in a "major market extension."

nothing in the language of the rule to support the notion that there are any exceptions to the exemption beyond the one exception specifically mentioned in §1150.31(a).

The broad scope of the §10901 Class Exemption is confirmed by its history. As originally adopted, the Class Exemption did not break out the three kinds of transactions now described in §§1150.32, 1150.35 and 1150.36. Rather, the exemption broadly applied to all §10901 acquisitions and operations (subject to the "abandoned rail line" exception previously discussed). There was only one set of procedures that applied to the entire exemption, Class Exemption - Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 820-821 (1985) ("1985 Decision"). The specific procedures that now appear at §§1150.32, 1150.35 and 1150.36 were not added until 1988 in Class Exemption - Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 309, 320-321 (1988) ("1988 Decision"). There is nothing in the 1988 Decision that indicates the I.C.C. was intending to limit the scope of the original exemption, or create additional exceptions to it. The failure of the 1988 decision to establish "catch all" procedures for transactions that did not fall within the three particular types of transactions addressed cannot be read as limiting the scope of the exemption.⁹

Finally, YSLR's argument is, once again, inconsistent with its own notice of exemption in Finance Docket No. 34114. The §10902 Class Exemption utilized by YSLR has broad language in §1150.41(a) similar to §1150.31(a), but only provides specific procedures for two types of transactions ("small line acquisitions" under §1150.43 and "transactions under section 10902 that involve creation of Class I or

⁹ While it was not required to do so, UP voluntarily elected to follow the procedures specified in §1150.35 ("Transactions that involve creation of Class I or Class II carriers") in this proceeding. The UP Notice, of course, does not involve the creation of a Class I or Class II carrier.

Class II rail carriers" in §1150.45). Neither of these transactions literally apply to an acquisition or operation of track that was all exempt industrial track prior to the transaction - both are written in terms of "rail lines," as is §10902(a). As such, if YSLR's arguments were accepted as to UP's Notice, YSLR's own notice is beyond the scope of the class exemption it purported to utilize.

C. A Change In The Legal Status Of A Rail Line Is Within The Scope Of The §10901 Class Exemption.

YSLR argues broadly that the §10901 Class Exemption cannot be used to "change the legal status of a railroad line" from §10906 trackage to fully regulated trackage (YSLR, p. 6). Of course, if there were such a "*per se*" rule, YSLR's own notice of exemption in Finance Docket No. 34114 would be fatally defective. As previously discussed, the YSLR Notice effectively changed the "legal status" of the Port trackage from §10906 trackage to fully regulated track, and this is some of the same track covered by the UP notice.

The fact is that there is no "*per se*" rule against exemptions that involve a change in the legal status of track, and the Board has previously allowed such exemptions to become effective even when they were contested, see, e.g., Finance Docket No. 33997, Texas Central Business Lines Corporation - Operation Exemption - MidTexas Industrial Center, supra; Finance Docket No. 33323, Chicago Rail Link, L.L.C. - Lease and Operation Exemption - Union Pacific R. Co. (not printed) served December 31, 1997, aff'd sub nom, UTU v. STB, 160 F.3d 474 (7th Cir., 1999). Nevertheless, the Board is right to be suspicious of these transactions, because they can sometimes have improper purposes or raise issues that do not appear from the face of the notices. The two cases cited by YSLR, Finance Docket No. 33950, Jefferson Terminal Railroad

Company - Acquisition and Operation Exemption - Crown Enterprises (not printed)

served March 19, 2001, and Finance Docket No. 33980, Riverview Trenton Railroad

Company - Acquisition and Operation Exemption - Crown Enterprises (not printed)

served February 15, 2002, are examples of this. The Jefferson case involved an apparent attempt by a property owner to use a Board exemption to prevent a condemnation, which was not disclosed in the exemption notice, in order to retain the property for non-railroad purposes, Jefferson, p. 5. Riverview involved a proposal to expand a dormant industrial or private track into an intermodal facility, using the STB authority to override community concerns. The Board revoked the Riverview exemption, not because of any violation of the class exemption but because it felt the transaction required greater regulatory scrutiny, Riverview, p. 8.

YSLR's own exemption in Finance Docket No. 34114 is another example of an abuse of the Board's class exemption in connection with a conversion of industrial track. As previously discussed, the essence of the YSLR transaction was the forced discontinuance by YSLR of UP service on the subject trackage, which was completely undisclosed in the YSLR Notice.

The UP Notice, in contrast, is entirely proper under existing Board precedent. It seeks preservation of rail service, not its termination. It is supported by the principal shipper ("FRC") that would be affected by YSLR's forced discontinuance of UP service. The only opposition to UP's Notice comes from YSLR because of its desire to force UP to discontinue some of its services over the subject trackage. And, unlike the applicant in Jefferson, or YSLR in Finance Docket No. 34114, UP's notice fully discloses the reasons for the transaction and its intended effect.

III.

YSLR'S REQUEST FOR A STAY

YSLR properly states the four criteria that are considered in determining whether to grant a petition to stay a notice of exemption.¹⁰ As we will show below, YSLR has failed to satisfy any of them.

A. Likelihood Of Success On The Merits.

YSLR argues that it is likely to prevail on the merits because (1) the Board's §10901 class exemption is not available for the UP transaction, (2) a class exemption cannot be used to change the legal status of a rail line, and (3) UP's labor notice was defective because it was not posted at the workplace of YSLR's employees (YSLR Petition, pp. 9-10).

We have already discussed YSLR's first two points in Section II above. As to YSLR's first point, the UP transaction is within the scope of both 49 U.S.C. §10901 and the Board's Class Exemption at 49 C.F.R. Part 1150, Subpart D (pp. 6-12, supra). As to YSLR's second point, there is no "per se" rule against exempt transactions that change the legal status of rail lines. Exemptions for such transactions may, however, be revoked if they are not for continued rail service (Jefferson), raise serious public impact issues (Riverview) or fail to disclose material information about the transaction (Jefferson). UP's Notice raises none of these concerns. In contrast, the YSLR Notice in Finance Docket No. 34114 raises serious issues as to adverse impact on shippers and

¹⁰ The criteria are:

- (1) that there is a strong likelihood that the movant will prevail on the merits
- (2) that the movant will suffer irreparable harm in the absence of a stay
- (3) that other parties will not be substantially harmed, and
- (4) that the public interest supports the granting of a stay.

failure to disclose material information (YSLR's plans to effect a forced discontinuance of UP service) (pp. 12-13, supra).

That leaves only YSLR's claim that UP's labor notice should have been posted at its workplace of YSLR's employees (which YSLR, of course, would never have permitted).¹¹ At the outset, this requirement (contained in §1150.32(e) and made applicable to certain Class I railroad transactions by §1150.35(a)) is not even applicable. §1150.32(e) applies to "transactions that involve creation of Class III carriers" while §1150.35(a) applies to "transactions that involve creation of Class I or Class II carriers." The UP transaction does not involve the "creation" of any carrier. Even YSLR admits that the procedures specified in §§1150.32 and 1150.35 are not applicable to the UP transaction (YSLR Petition, p. 5, fn. 4). UP voluntarily attempted to follow the procedures for a §1150.35 transaction. If there were defects in the posting of the labor notice (which, as discussed in the next paragraph, there are not), they are irrelevant, since the entire labor notice requirement is inapplicable to this transaction.

Further, as explained in the Board's decision which adopted the labor notice requirement, the requirement only applies to "certain transactions in which rail lines are transferred to a new owner or operator," Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 - Advance Notice, 2 S.T.B. 592 (1997) (emphasis supplied). Consistent with this

¹¹ YSLR also complains that neither it nor the Port were served with UP's Notice of Intent (YSLR Petition, p. 10, fn. 8). But, even if §1150.35 applied to this transaction, UP had no obligation to serve the notice of intent on YSLR or the Port. YSLR's complaint is particularly ironic because, in Finance Docket No. 34114, YSLR did not bother to serve its notice of exemption or anything else on UP, even though UP was obviously an interested party. UP did not learn of the filing until November 20, 2001, when the Board served its own notice of the exemption. In contrast to YSLR's action in F.D. 34114, UP served its notice of exemption in this proceeding on both YSLR and the Port by overnight mail. YSLR has nothing to complain about.

statement, the Board's decision repeatedly uses terms such as "seller," "buyer," "acquirer," and "acquiring carrier or entity" in describing the new requirement. This makes sense because, where a rail line is transferred to another entity, the employees working on the line are potentially at risk of losing their work, and have an understandable interest in learning what their employment prospects may be with the buyer. This transaction, on the other hand, involves no transfer of either rail lines or existing work from employees of either UP or YSLR who are now performing that work.

B. Irreparable Harm To The Movant.

YSLR claims that it and its shippers will be irreparably harmed if the UP exemption becomes effective because it will have to bring an adverse discontinuance to terminate UP's operations on the track, thus denying YSLR the "benefit of its bargain" with the Port (YSLR Petition, p. 10).

YSLR's claim that its shippers will be harmed is patently false. No shippers are supporting YSLR's Petition. To the contrary, FRC, the principal shipper affected by the UP Notice, supports UP and opposes a takeover of service by YSLR, see Statement of Curt Graham on behalf of FRC attached to the UP Notice.

Turning to YSLR, there is nothing about the UP notice that will prevent YSLR from itself serving the Port track to the full extent of whatever contractual rights it may have. What YSLR will not be able to do is to force UP to discontinue any of its services over the track without further action by the Board. That is entirely appropriate because YSLR had to use (abuse) the Board's regulatory processes to put itself in a position in which it could force a UP discontinuance. It is not simply a matter of "contract." YSLR has no right to profit from its abuse of the Board's processes in Finance Docket No. 34114.

C. Harm To Other Interested Parties.

There is no question that "other interested parties" - particularly FRC - will be substantially harmed if the UP Notice is stayed. If a stay is granted, UP will not be able to serve FRC's Mill No. 1 on and after November 16, 2002. YSLR will replace the direct service currently provided by UP with a two-line UP-YSLR move, in which YSLR will impose a charge of \$200 a car to move cars roughly a mile from UP's West Sacramento Yard to FRC - \$200 per car which FRC does not pay today. FRC cannot avoid this charge by shifting traffic to its other mill, which will continue to be served by UP. All of this was explained in the statement of FRC's Curt Graham, which was included with the UP Notice, and all of it is ignored by YSLR in its Petition.

In light of this, it is ludicrous for YSLR to argue that no party will be harmed because "staying the transaction preserves the status quo" (YSLR Petition, p. 11). Staying the UP exemption will permit YSLR to destroy the status quo on November 16, 2002, and it is clear from YSLR's Petition that this is precisely what YSLR intends to do. The only way to preserve the status quo is to deny the requested stay and permit the UP exemption to go into effect.¹²

D. The Public Interest.

YSLR argues that the public interest will be served by a stay because it would protect the "integrity" of the Board's regulatory process, and avoid inappropriate interference with enforcement of a contract's terms (YSLR Petition, p. 11).

¹² For this reason, the Board should not consider even a "housekeeping stay" of the UP Notice. If such a stay were imposed, YSLR would remain free to effectuate its discontinuance of UP service on November 16, 2002, and will obviously do so.

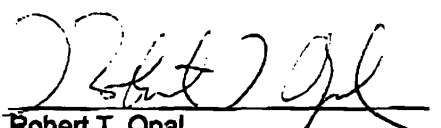
In fact, as we have demonstrated in this Reply and in our Petition to Revoke YSLR's exemption in Finance Docket No. 34114, it is YSLR that has been abusing the Board's regulatory process. It obtained an exemption for its transaction with the Port without disclosing that the transaction involved a forced discontinuance of UP's service over the subject trackage, a material omission which was obviously intended to mislead the Board. For the Board to now stay the UP Notice will allow YSLR to reap the fruit of its abuse of the Board's §10902 Class Exemption. A denial of the requested stay will preserve the status quo, protect the shipper that will be harmed if YSLR is allowed to carry out its discontinuance of UP service, and protect the integrity of the Board's regulatory processes.

CONCLUSION

For the reasons stated above, UP respectfully requests that the Board deny YSLR's requests to reject or stay UP's Notice of Exemption in this proceeding, and allow the Notice to go into effect on November 11, 2002.

Respectfully submitted,

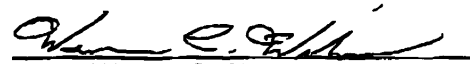
UNION PACIFIC RAILROAD COMPANY

By: 

Robert T. Opal
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

VERIFICATION

Warren C. Wilson, under penalty of perjury, declares and verifies that he is Senior Manager-Rail Line Planning for Union Pacific Railroad Company, that he has read the foregoing Reply and knows the facts stated therein, and that said facts are true as stated.


Warren C. Wilson

Dated: October 31, 2002

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of UP's Verified Reply to Petition to
Reject/Petition to Stay in Finance Docket No. 34252 upon the following:

David McGaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 95776-6012

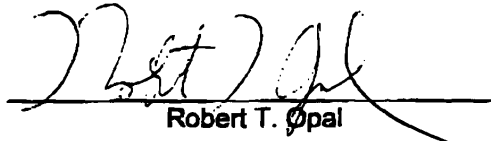
John G. Sulpizio
Port Director
Port of Sacramento
3251 Beacon Blvd., Suite 210
West Sacramento, CA 95798-0070

Curt Graham
Farmers Rice Cooperative
2525 Natomos Park Drive
Sacramento, CA 95833-2927

Mark H. Sidman
Jo A. DeRoche
Rose-Michele Weinryb
1300 19th Street, NW
Fifth Floor
Washington, DC 20036
(via fax and UPS)

Service was made by UPS Overnight, except as otherwise noted.

Dated at Omaha, Nebraska, this 1st day of November, 2002.


Robert T. Opal

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2002

EFFECTIVE
MARCH 15, 2002

OPSL™ 6000-W
(Cancel. OPSL 6000-V)

Includes National Rate Basis™ and Centralized Station Master Data

- A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- Official Rate Basis Points
- Official Centralized Station Master Data
- Rating ZIP Codes
- Intermodal facilities
- Junction Rule 260 and interchange points
- Standard Point Location Codes
- Freight Station Accounting Codes
- Freight handling facilities and restrictions

Sandra S. Hladick
Issuing Officer

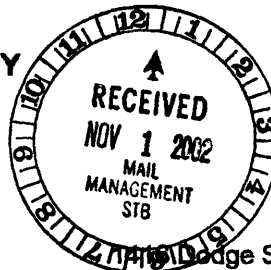
7001 Weston Parkway
Suite 200
Cary, NC 27513
(919) 651-5091
FAX: (919) 651-5191



CALIFORNIA

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 280	RR	OPBL	FBAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE ZP
Willow Springs, CA (3340)	[Lassen]		BNSF	15400	14510	871144	Nella Flat, CA		96137
Willowbrook, CA (1-3201)	[Los Angeles]		UP	72708	72702	863708	Los Angeles, CA		90222
Willows, CA (1-3500)	[Glenn]		CFNR	7785	8584	872980	Chico, CA		95888
Willows, CA (1-3500)	[Glenn]		UP	72180	72180	872980	Chico, CA		95888
Wilmington Ave Blvd, CA (19-3340)	[Los Angeles]		BNSF	39455	22240	863179	Los Angeles, CA		90055
Wilmington Ave Blvd, CA (1-3201)	[Los Angeles]		UP	72680	72680	863179	Los Angeles, CA		90748
Wilmington Im Ex, CA	[Los Angeles]		BNSF	39480	22241	863050	Los Angeles, CA		90060
Wilmington, CA (19-182-3340)	[Los Angeles]		BNSF	39480	21842	863178	Los Angeles, CA	Los Angeles, CA	90055
Wilmington, CA (1-182-3201)	[Los Angeles]	WLMTH	UP	15015	8939	863178	Los Angeles, CA	Los Angeles Harbor, CA	90748
Wilson, CA (3500)	[Sacramento]		CCT	220	71	874484	Sacramento, CA		95893
Wilson, CA (1-3500)	[Sacramento]		UP	21095	21095	874484	Sacramento, CA		95893
Winchester, CA (3340)	[Riverside]		BNSF	39885	25125	868365	Riverside, CA		92398
Wingfoot Im Ex, CA	[Los Angeles]		BNSF	39320	21851	863051	Los Angeles, CA	Los Angeles, CA	90000
Wingfoot, CA (19-3340)	[Los Angeles]		BNSF	39315	21850	863120	Los Angeles, CA	Los Angeles, CA	90000
Wingfoot, CA (1-3201)	[Los Angeles]		UP	72688	72688	863120	Los Angeles, CA	Los Angeles, CA	90055
Wintersburg, CA (1-3201)	[Orange]		UP	72740	72740	867186	Santa Ana, CA		92847
Winton, CA (19-3340)	[Merced]		BNSF	30345	15764	879124	Merced, CA		95388
Wise, CA (1-3201)	[Los Angeles]		UP	72784	72784	863717	Los Angeles, CA		90245
Wiser, CA (1-3201)	[Imperial]		UP	72828	72828	868132	Nilead, CA		92257
Woodford, CA (3340)	[Kern]		BNSF	30080	17790	861238	Mojave, CA		93500
Woodford, CA (1-3201)	[Kern]		UP	72582	72582	861238	Mojave, CA		93531
Woodlake, CA (3500)	[San Joaquin]		CCT	135	44	875631	Sacramento, CA		95240
Woodlake, CA (1-3500)	[San Joaquin]		UP	21070	21070	875631	Sacramento, CA		95220
Woodland, CA (1-3500)	[Yolo]		CFNR	7370	5700	874870	Sacramento, CA		96485
Woodland, CA (1-3500)	[Yolo]		UP	18445	50517	874870	Sacramento, CA		96485
Woodbro Im Ex, CA	[San Joaquin]		BNSF	30444	14481	875650	Stockton, CA		95208
Woodbro, CA (19-3340)	[San Joaquin]		BNSF	30443	14480	875653	Stockton, CA		95208
Wortfield, CA (1-3201)	[Monterey]		UP	73402	73402	878821	Watsonville, CA		93840
Worham, CA (1-3201)	[Los Angeles]		UP	15125	8908	863608	Los Angeles, CA		90280
Wunpass, CA (1-3201)	[Monterey]		UP	73446	73446	878788	Paso Robles, CA		93426
Wyo, CA (1-3500)	[Glenn]		CFNR	7840	5558	872812	Chico, CA		95883
Wyo, CA (1-3500)	[Glenn]		UP	72188	72188	872812	Chico, CA		95883
Yarmouth, CA (1-3500)	[San Joaquin]		CFNR	8060	15215	875688	Stockton, CA		95378
Yarmouth, CA (1-3500)	[San Joaquin]		UP	72228	72228	875688	Stockton, CA		95378
Yermo, CA (1-3201)	[San Bernardino]	WYFM	UP	15850	9378	880174	Berkeley, CA		92388
Yolo Port, CA (3340)	[Yolo]	YOLPO	BNSF	32985	36779	874882	Sacramento, CA	West Sacramento, CA	95887
Yolo Port, CA (1-3201)	[Yolo]	YOLPO	UP	18513	50081	874882	Sacramento, CA	West Sacramento, CA	95887
Yolo, CA (1-3500)	[Yolo]		CFNR	7570	5680	874881	Colusa, CA		96483
Yolo, CA (1-3500)	[Yolo]		UP	72148	72148	874881	Colusa, CA		96487
Youngstown, CA (3800)	[San Joaquin]		CCT	145	53	875614	Sacramento, CA		95220
Youngstown, CA (1-3500)	[San Joaquin]		UP	21085	21085	875614	Sacramento, CA		96220
Yountville, CA (1-3100)	[Napa]		NVRR	120	120	874851	Santa Rosa, CA		94589
Yreka, CA (1-3201)	[Siskiyou]		UP	71851	71851	870540		Montague, CA	96097
Yreka, CA (1-688-3100)	[Siskiyou]		YW	15	15	870540		Montague, CA	96097
Yuba City, CA (1-3201)	[Sutter]		UP	18945	60132	873527	Marysville, CA		96881
Zamora, CA (1-3500)	[Yolo]		CFNR	7585	5675	874817	Colusa, CA		96488
Zamora, CA (1-3500)	[Yolo]		UP	72152	72152	874817	Colusa, CA		96488
Zanta, CA (3200)	[Tulare]		BNSF	86285	17551	877585	Tulare, CA		93257
Zanta, CA (1-865-3151-3200-3500)	[Tulare]		SJVR	820	16830	877585	Tulare, CA	Fresno, CA	93257
Zanta, CA (1-3500)	[Tulare]		UP	72426	72426	877585	Tulare, CA		93257
Zee Im Ex, CA	[Contra Costa]		BNSF	30555	14361	878216	San Francisco, CA	Antioch, CA	94101
Zee, CA (3340)	[Contra Costa]		BNSF	30560	14360	878217	San Francisco, CA	Antioch, CA	94608
Zentner, CA (3200)	[Kern]		BNSF	66355	17533	881221	Bakersfield, CA		93215
Zentner, CA (1-3500)	[Kern]		UP	72454	72454	881221	Bakersfield, CA	Goshen, CA	93215
COLORADO									
A E C Spur, CO (1-3201)	[Jefferson]		UP	56584	56584	744830	Colorado Springs, CO		90001
Academy, CO	[El Paso]		BNSF	18180	57740	746855	Colorado Springs, CO		90901
Acadula, CO (1-3201)	[Douglas]		UP	58854	68854	746421	Sedalia, CO		90131
Achenman, CO	[Logan]		BNSF	17360	84076	741673	Stirling, CO		90751
Adams City, CO (1-3201)	[Adams]		UP	3945	3157	744186	Pueblo, CO		90022
Adams, CO (1-3201)	[Boulder]		UP	56488	56488	751748	Pueblo, CO		90487
Adobe Creek, CO (1-3100)	[Glen]		CKP	25	35	747195			91021
Adobe, CO (1-3201)	[Fremont]		BNSF	10000	67636	744744	Durham, CO		91200
Adobe, CO (3200)	[Fremont]		RRRR	25	25	754754	Portland, CO		91200
Adobe, CO (1-3201)	[Fremont]		UP	56788	56788	754754	Portland, CO		91226
Agass, CO (1-3201)	[Elbert]		UP	3855	3085	746114	Granburg, CO		90101
Agro, CO (1-3201)	[Rio Grande]		UP	56885	56885	757508	Del Norte, CO		91101
Alam, CO (1-3201)	[Alamosa]		UP	56375	56375	756417			91630
Alam, CO	[Washington]		GRFC	20710	20847	743540	Alam, CO		90720
Alamosa, CO (1-3201)	[Alamosa]		UP	56658	56658	757400	Alamosa, CO		91101

**UNION PACIFIC RAILROAD COMPANY
FACSIMILE TRANSMISSION**

Law Department
Room 830

1111 Dodge Street
Omaha, NE 68179

Deliver to: Vernon A. Williams (202) 565-9004 **Co./Dept:** STB
Joseph Dettmar (202) 565-9002 STB
Rose-Michele Weinryb (202) 628-2011 WBSK (for YSLR)

From: Robert T. Opal **Phone:** (402) 271-3072

Date: November 1, 2002 **Fax:** (402) 271-5610

No. of Pages Transmitted: ~~23~~ Cover

COMMENTS:

Finance Docket No. 34252; Fax filing of UPRR Reply to Petition to Reject / Petition to Stay

Transmitting From

Fax No. (402) 271-5610
(402) 271-5625

**IF YOU DO NOT RECEIVE ALL PAGES
CALL US AS SOON AS POSSIBLE
(402) 271-3072**

This facsimile message may be a privileged and confidential communication and is intended for the use of the person to whom it was sent. If you have received this message in error, please notify us immediately at (402) 271-3072. This message should not be disseminated or copied if you are not the intended recipient, but should be returned to the above address by mail or destroyed. THANK YOU.