



Robert T. Opal
General Commerce Counsel

November 17, 2006

Via E-Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: Finance Docket No. 34958, UP Nevada Railroad LLC -- Lease and Operation
Exemption -- Pan Western Corporation

Dear Mr. Williams:

This refers to the Notice of Exemption filed November 14, 2006 by an entity calling itself "UP Nevada Railroad LLC" ("UPNRR") covering UPNRR's lease and operation of a 2.66 mile rail line in Nevada. In spite of the name of this firm, it has no affiliation of any kind with Union Pacific Railroad Company.

Certain aspects of this transaction appear to raise questions which warrant inquiry by the Board. For example, the applicant describes itself as "UP Nevada Railroad LLC of Omaha, Nebraska" and gives its business address as "13110 Birch Drive, #317" in Omaha (Notice, p. 2). We have checked with CT Corporation, and there is no such firm registered to do business in the State of Nebraska. For that matter, there appears to be no such firm registered to do business anywhere in the United States. Further, there is no such company at the address shown in the notice. I personally visited "13110 Birch Drive" yesterday evening. It is a strip shopping mall in northwest Omaha comprised of two restaurants, a doctor's office, a health spa and a number of retail businesses. There are no business offices in the mall. In fact, there is no store "#317" in the mall - the store numbers are all lower than 200. Finally, the person verifying the notice of exemption is "Mitchell Truman". This is the same person who verified a nearly identical notice of exemption in 2004 on behalf of an applicant called "Tonapah & Tidewater Railroad Company" in Finance Docket No. 34547 covering the same trackage involved in the instant proceeding. According to the footnote 1, p. 3 of the current notice, the FD 34547 transaction was never consummated. In other words, instead of simply consummating the FD 34547 transaction, it appears that the same applicant has, for some unknown reason, chosen to file a new notice of exemption under a different name. Perhaps there are legitimate explanations for all of this, but it is not immediately apparent what they could be.

Nevertheless, Union Pacific Railroad is not, at this time, requesting stay or revocation of the exemption in this proceeding, although we reserve the right to seek revocation in the future. But we strongly oppose applicant's lease and operation of this trackage under the name "UP Nevada Railroad LLC." This is not only a blatant violation of Union Pacific's trademarks, but it is false and misleading, in that it suggests an affiliation with Union Pacific where there is none. In fact, we have already received inquiries about this transaction from people who believe that Union Pacific is involved in it. Applicant's establishment of a phantom office address in Omaha, Nebraska for a rail operation in the State of Nevada also appears to be for no purpose other than to suggest an affiliation with Union Pacific.¹

Accordingly, if the Board permits the exemption to become effective, we request that the Board condition the exemption to require that UPNRR change its name to remove any reference to "UP". In the alternative, we request that the Board, when issuing its exemption notice, indicate that it is not conferring any authority on the applicant to use "UP" or "Union Pacific" in its name or to otherwise identify its business.

Very truly yours,



Robert T. Opal

¹ This is particularly so because Mr. Truman, the "President" of UPNRR appears to be located in Nevada (see verification sheet, FD 34958 Notice of Exemption, p. 5), so there is no apparent reason UPNRR should have an address in Omaha. Note that Mr. Truman was also shown as "President" of the Tonapah & Tidewater (FD 34547 Notice of Exemption, p. 5), which had an address in North Las Vegas, Nevada (at precisely the same address - down to the suite number - as lessor Pan Western, see FD 34547 Notice of Exemption, pp. 2 and 3).

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document by fax upon the following:

Jeffrey O. Moreno
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Dated at Omaha, Nebraska this 17th day of November, 2006.


Robert T. Opai