

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-409 (Sub-No. 5X)

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY—
ABANDONMENT EXEMPTION—IN LOS ANGELES COUNTY, CA

Decided: July 17, 2008

In this decision, we find that a notice filed by the Los Angeles County Metropolitan Transportation Authority (LACMTA) invoking a class exemption in order to abandon a 0.31-mile section of track in Los Angeles should be dismissed as moot because the track segment was embraced within a blanket exemption from the provisions of the Interstate Commerce Act granted by the Board's predecessor, the Interstate Commerce Commission (ICC), in Southern Pacific Transp. Co.—Abandonment, 8 I.C.C.2d 495 (1992) (Southern Pacific 1992). Therefore, an exemption permitting the abandonment of this segment has already been granted and has become effective. We will also dismiss as moot (1) a petition by LACMTA for exemption from the Board's offer of financial assistance (OFA) and public use provisions, and (2) a petition by James Riffin (Riffin) to toll the OFA filing period.

BACKGROUND

In 1990, LACMTA's predecessor, the Los Angeles County Transportation Commission (LACTC), acquired a portion of the Santa Monica Branch, including a 0.31-mile line of railroad (the Line),¹ between milepost 485.69 and milepost 486.00 in Los Angeles County, CA from Southern Pacific Transportation Company (SP).² Under the terms of the documents effecting the transfer, LACTC was to acquire the real property associated with the Line, and SP was to retain

¹ A .08-mile segment of rail line adjacent to the Line at issue here is the subject of a notice of exemption in Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) that was served and published in the Federal Register on April 8, 2008. The exemption became effective on May 8, 2008. In a decision served May 7, 2008, the Board rejected a notice of intent by James Riffin to file an OFA to purchase the segment. On May 28, 2008, Riffin filed a petition to revoke Union Pacific's (UP) exemption, to which UP replied on June 2, 2008. Those filings will be addressed in a subsequent Board decision.

² The Santa Monica Branch was a line of railroad that ran between SP mileposts 485.69 and 499.89. The western portion of the Santa Monica Branch, between mileposts 487.72 and 499.89, is no longer in the national rail system and is not at issue here.

all operating rights and the primary common carrier obligation. As discussed in more detail *infra*, however, the ICC found that, although SP retained the responsibility for conducting freight operations on the Line, as a result of the transfer LACTC also acquired certain common carrier responsibilities with respect to the Line. SP was later succeeded by UP.

To extinguish whatever common carrier responsibilities it may have retained, on May 29, 2008, LACMTA filed a notice of exemption under 49 CFR 1152 Subpart F—Exemption Abandonments to abandon the Line. Additionally, LACMTA simultaneously filed a petition for exemption from the agency’s OFA and public use provisions. Notice of the abandonment exemption was served and published in the Federal Register on June 16, 2008 (73 FR 34990). The abandonment exemption, which would take effect automatically under our regulations if we were to take no action, is scheduled to become effective on July 18, 2008.

On June 26, 2008, Riffin filed comments and a reply in opposition to LACMTA’s petition for exemption from the OFA provisions,³ a petition to toll the deadline for filing an OFA, and a notice of intent to file an OFA. On July 3, 2008, LACMTA filed a reply to Riffin’s comments.⁴

DISCUSSION AND CONCLUSIONS

Notice of Exemption. Riffin argues that granting LACMTA authority to abandon the segment between mileposts 485.69 and 486.00 would leave an unlawfully “stranded segment”—a segment of rail line subject to our jurisdiction but unconnected to the rest of the national rail system—of 1.72 miles between milepost 486.00 and milepost 487.72. For that reason, he asks that LACMTA’s notice of exemption be rejected. Riffin acknowledges that the ICC, in Southern Pacific 1992, granted LACTC an exemption from the provisions of the Interstate Commerce Act. But Riffin asserts that abandonment authority for the portion of rail line that lies between mileposts 486.00 and 487.72 was never granted and, therefore, LACMTA continues to have a common carrier obligation over this portion of track. As such, Riffin argues that, if LACMTA is granted abandonment authority between mileposts 485.69 and 486.00, the segment between mileposts 486.00 and 487.72, still in his view a regulated (if unused) line of railroad, would be unlawfully stranded because the only access to the national rail system is through the segment between mileposts 485.69 and 486.00.

Riffin is incorrect, because, under the principles and procedures established by the ICC in Southern Pacific 1992, LACMTA has no common carrier obligation for the entire stretch of

³ Riffin also filed a motion for a protective order, which was granted with some revision in a decision served on July 2, 2008.

⁴ On July 15, 2008, Riffin filed “supplemental comments” consisting of rebuttals to cases cited in LACMTA’s reply, a rehash of arguments previously made, and maps identifying potential shippers’ locations. Riffin acknowledges that, pursuant to 49 CFR 1104.13(c), a reply to a reply is not permitted; however, he requests that the Board accept his filing for the purpose of providing the Board with a more complete record. Riffin’s filing does not add any additional substance to the record; and, as he notes, it is an impermissible reply to a reply. Therefore, Riffin’s “supplemental comments” will be rejected.

track between mileposts 485.69 and 487.72, and that trackage is not, and was not intended to be, subject to the OFA procedures that would permit another buyer to take it away from LACMTA.

Southern Pacific 1992 addressed SP's attempt to obtain abandonment authority for three lines, including a portion of the Santa Monica Branch, whose underlying physical assets had been sold earlier to LACTC. Because the documents effecting the transfer of the assets had given LACTC substantial control over whatever freight operations SP might conduct over these lines, the question arose whether the sale to LACTC had been the sale of a "line of railroad" and whether acquisition authority should have been sought by LACTC at that time. The ICC found that, given the level of control that LACTC could exert over SP's operations, LACTC had obtained common carrier status and thus should have sought such authority. Additionally, however, the ICC held that the transactions were in the public interest because they furthered the creation of the Los Angeles mass transit system. Accordingly, the ICC exempted the three lines at issue and the other property acquired by LACTC from SP from regulation under the Interstate Commerce Act, 49 U.S.C. Subtitle IV. The property exempted from Subtitle IV included the line running from milepost 485.69 to milepost 499.89. Id. at 510 n.13. The ICC specifically pointed out that, as a result of that exemption from regulation under Subtitle IV, LACTC was free to relinquish its common carrier obligation without regulatory approval and that doing so would not subject it to the otherwise applicable OFA provisions. See id. at 512,⁵ 518 n.25.⁶

LACMTA's rights and obligation on the track at issue here arose from the Shared Use Agreement, one of the three agreements between SP and LACTC.⁷ Because LACTC was never

⁵ Noting that a freight carrying obligation could interfere with LACTC's ability "to fulfill its mission to provide mass transit passenger service," the ICC pointed out that the exemption would "reduce a barrier to LACTC's exit from the rail freight industry."

⁶ In Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X), slip op. at 2 n.3 (STB served May 7, 2008), a Board employee acting under delegated authority erroneously stated that the 0.31-mile segment at issue here was not exempt from 49 U.S.C. Subtitle IV. Upon further review of the transaction, as discussed above, it is clear that the ICC's exemption from Subtitle IV includes the rail line between milepost 485.69 and milepost 486.00.

⁷ The provisions governing Operation and Control over the line are as follows:

(a) The management, operation and maintenance of the and the [Santa Monica] Tracks shall, at all times, be under the direction and control of LACTC and/or its independent contractor, and the movement of trains, cars and locomotives over and along the [Santa Monica] Tracks shall, at all times, be subject to the direction and control of LACTC's superintendent, train dispatchers and other authorized agents and in accordance with such reasonable operating rules as LACTC shall from time to time institute in accordance with the terms and conditions of this Agreement.

(b) SPT shall have the right to use the [Santa Monica] Operating Land and [Santa Monica] Tracks solely to provide Local Freight Rail Service to

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granted authority to operate for-hire rail service on its own, LACTC's sole connection to freight service remained the power that it had to influence SP's freight operations through the general Operations and Control provisions of the agreement with SP. Thus, LACMTA's obligations as to the (allegedly stranded) 1.72-mile segment ceased when SP was granted discontinuance authority in Southern Pacific Transportation Company—Discontinuance of Service Exemption—1.72 Miles in Los Angeles County, California, Docket No. AB-12 (Sub-No. 154X) (ICC served Sept. 28, 1993). LACMTA's rights and obligations on the Santa Monica Branch ceased altogether when SP's successor, UP, was released from its statutory obligations as to the remaining 0.31-mile segment (over which no traffic had moved for a long time) in Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) (STB served May 7, 2008). Because there was nothing left to be done once the discontinuance authorization became effective as to each out-of-service segment, the decisions authorizing discontinuance served as the trigger that released LACMTA and its predecessor from their common carrier obligations.

In 1997, the Board clarified the agency's intent as to LACMTA's status and obligations.

The Board explained that:

The ICC never intended that these agencies be subjected to the full panoply of carrier obligations under the Interstate Commerce Act (Act). Because the Transit Agencies [including LACMTA] are not going to be operating as rail freight common carriers and do not hold themselves out to provide service over those lines, it makes no sense to subject them to the various requirements of the Act relating to freight service.

Orange County Transportation Authority, et al.—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company, STB Finance Docket No. 32173, et al., slip op. at 4 (STB served Mar. 12, 1997). Thus, the Board explained that: “If we permit the freight carrier to abandon, we will not require the Transit Agencies [including LACMTA] to provide residual or fall-back freight service. There is no need for us to require the Transit Agencies to file an abandonment application in this situation.” Id. Accordingly, the blanket exemption from regulation under Subtitle IV granted in Southern Pacific 1992, coupled with the discontinuances authorized in 1993 (for SP) and 2008 (for UP), extinguished any common carrier obligation for the 1.72-mile segment between milepost 486 and 487.72 and the 0.31-mile segment of track between milepost 485.69 and 486, and took those segments out of the national rail system.

OFA Exemption. LACMTA has requested that the proposed abandonment be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C.

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all existing and future rail-using customers located on or adjacent to the [Santa Monica] Operating Land or [Santa Monica] Tracks or served off any turnout or lead from the [Santa Monica] Tracks.

Southern Pacific 1992, 8 I.C.C.2d at 500.

10905. Riffin, however, opposes an exemption from the OFA provisions and proposes to file an OFA to acquire the segment between mileposts 485.69 and 486.00.

As we have noted above, in Southern Pacific 1992, the ICC exempted LACTC from regulation with regard to the line at issue. Because LACTC had been found to have common carrier responsibilities only as a result of its ability to interfere with freight operations, the ICC expressly found that the regulatory exemption extended not only to abandonment, but also to the financial assistance provisions of 49 U.S.C. 10904, pointing out that an OFA would make no sense once freight operations ended. Southern Pacific 1992, 8 I.C.C.2d at 518, n.25. Thus, LACMTA has already been granted an exemption from the OFA (and public use) procedures, which covers the track at issue in this proceeding. Accordingly, LACMTA's petition for an exemption from those requirements is unnecessary and will be dismissed as moot.

Moreover, had the agency not already granted LACMTA an exemption from the OFA procedures, we would have done so here. The OFA provisions are intended to permit a party genuinely interested in providing continued rail service on a line that would otherwise be abandoned to acquire that line for continued rail service. Exemptions from 49 U.S.C. 10904 have been granted, however, when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. See CSX Transportation, Inc.—Abandonment Exemption—in Pike County, KY, STB Docket No. AB-55 (Sub-No. 653X) (STB served Sept. 13, 2004); Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X) (ICC served Dec. 23, 1994) (exemption from OFA requirement granted where owner planned to use the rail corridor for mass transit purposes); Iowa Northern Railway Company—Abandonment—in Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

For example, in Norfolk and Western Railway Company—Abandonment Exemption—in Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13, 1998) (Hamilton County), the Board granted a petition for exemption from the OFA process in the face of arguments by two potential shippers that there was an overriding public need for transportation service. But the Board, in Hamilton County, found the shippers' arguments unpersuasive when weighed against the reality that no traffic had moved on the line for the prior 11 years, and that the shippers had viable transportation alternatives available. In addition, the Board found a valid public purpose: the city of Cincinnati wished to use the right-of-way over the track being abandoned for multi-purpose improvements for the city's downtown area, including a new professional football stadium.

In the present case, a mass transit operation is not only a valid public purpose, but—as the ICC recognized in Southern Pacific 1992—an important one. Southern Pacific 1992, 8 I.C.C.2d at 509. It is clear from the record before us that LACMTA would use the property at issue to facilitate the growth of its transit system.⁸ Furthermore, Riffin has not shown an

⁸ LACMTA states that it will use the property where the track is located for a valid public purpose, i.e., for: a staging area for the storage of track and sign material components;
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overriding public need for rail service here. Just as in Hamilton County, traffic on the Line (and on the adjacent, long-abandoned segment) has been nonexistent for years, and any plans to restore freight service on the Line are speculative at best. Riffin has not provided a single verified statement from a potential shipper, or even a letter or any other tangible manifestation of intent to use the Line, and has only offered vague claims of discussions with area businesses. And, his notion that he might transload for the Port of Los Angeles is not supported by a meaningful business plan. Riffin does not even provide evidence of having contacted the Port, let alone evidence of its entertaining his transload idea. Consequently, we find that LACMTA's petition for exemption from the OFA requirements and public use requirements is well supported on this record and, had such an exemption been necessary here, it would have been granted.

Finally, because the OFA process is not available here, Riffin's request to toll the OFA filing deadline will be dismissed as moot.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. LACMTA's notice of exemption in this proceeding and its petition for exemption from the procedures governing OFAs and public use are dismissed as moot.
2. Riffin's petition to toll the deadline for filing an OFA is dismissed as moot.
3. Riffin's July 15, 2008 supplemental filing is rejected as an impermissible reply to a reply.
4. All other requests in the parties' filings inconsistent with this decision are denied or dismissed as moot.

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parking for construction equipment used to construct and place into operation additional tracks, signals, and buildings on LACMTA's light rail Blue Line right-of-way adjacent to the LACMTA segment; construction of a traction power substation; employee parking; and future rail transit operations. In the short term, the area will be used to provide servicing and storage facilities for expanded light rail service that LACMTA will operate on a line being constructed between Los Angeles and Culver City, which LACMTA plans to extend to Santa Monica and the existing Blue Line.

5. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary