

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35331

SIERRA NORTHERN RAILWAY—LEASE AND OPERATION  
EXEMPTION—UNION PACIFIC RAILROAD COMPANY

Digest:<sup>1</sup> This decision denies a petition by Sierra Northern Railway to revoke its exemption for the lease and operation of a line of railroad.

Decided: March 27, 2012

This decision denies a petition by Sierra Northern Railway (Sierra), a Class III rail carrier, to revoke its exemption to lease and operate a line of railroad in Santa Cruz County, Cal., known as the Santa Cruz Branch line (the Line).

BACKGROUND

On December 1, 2009, Sierra filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate the Line pursuant to a lease from Union Pacific Railroad Company (UP). The Line is located between milepost 0.433, at the east boundary of Salinas Road, near Watsonville Junction, Cal., and milepost 31.39, at the end of UP's line near Davenport, Cal., including the interconnection with the Santa Cruz and Big Trees Railroad at milepost 20.4 at Santa Cruz, Cal., and various associated sidings and spur trackage. The total length of the Line is approximately 31.0 miles, and there are 3.6 additional miles of sidings and spurs. Also, pursuant to an interchange agreement attached to the lease agreement, UP granted to Sierra certain trackage rights in UP's Watsonville yard, as necessary for interchange. Notice of the exemption was served and published in the Federal Register on December 17, 2009 (74 Fed. Reg. 67,006-07). The exemption became effective on December 31, 2009.

Subsequently, on April 5, 2011, Sierra filed another verified notice of exemption in a separate proceeding to acquire a freight rail operating easement from UP over the Line and to operate on the Line pursuant to an operating agreement with the Santa Cruz Regional Transportation Commission (Santa Cruz). See Sierra N. Ry.—Acquis. & Operation Exemption—Union Pac. R.R., FD 35490 (STB served Apr. 21, 2011). In that notice of exemption, Sierra explained that Santa Cruz and UP planned to enter into a transaction pursuant

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

to which UP would sell the physical assets of the Line to Santa Cruz, while retaining a freight rail operating easement, which would then be assigned to Sierra.<sup>2</sup> That exemption became effective on May 5, 2011.

On December 22, 2011, Sierra filed a motion to withdraw the notice of exemption to acquire a freight rail operating easement from UP in FD 35490. In support thereof, Sierra stated that the easement transaction between Santa Cruz, UP, and Sierra had not yet been consummated and that it sought withdrawal because it has determined that the Line cannot be operated profitably. That request was granted in a decision served on February 16, 2012.

On December 28, 2011, Sierra filed a petition to revoke its 2009 exemption pertaining to the lease of the Line in this proceeding. In its petition, Sierra states that the Line has few shippers and generates relatively little freight traffic.<sup>3</sup> According to Sierra, because it knew that the Line could not be operated profitably, Sierra and UP came to an understanding whereby Sierra would also perform UP's switching operations in West Sacramento as a means of offsetting any losses associated with operating the Line.<sup>4</sup> Sierra alleges, however, that UP failed to follow through with this arrangement, leaving Sierra to operate the Line without the benefit of switching revenues. Sierra states that, in 2011, it incurred approximately \$500,000 in maintenance and operating costs, while generating only about \$136,000 in gross revenues.<sup>5</sup> Sierra thus seeks revocation of its exemption so that it may "exit from the Line."<sup>6</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10502(d), the Board may revoke an exemption if it finds that application, in whole or in part, of a provision of Title 49, Subtitle IV, Part A is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. The party seeking revocation has the burden of showing that regulation is necessary to carry out the rail transportation policy, 49 C.F.R. § 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and that more detailed scrutiny of the transaction is necessary. See Consol. Rail Corp.—Trackage Rights Exemption—Mo. Pac. R.R., FD 32662 (STB served June 18, 1998).

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<sup>2</sup> In still another proceeding related to this transaction, on April 8, 2011, Santa Cruz filed a petition for declaratory order seeking a determination that the agreement between Santa Cruz, UP, and Sierra falls within the Board's precedent in Maine Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad, 8 I.C.C. 2d 835 (1991) (State of Maine). On December 15, 2011, we issued a decision concluding that the parties' transaction, as proposed, is consistent with State of Maine, and thus does not require Board authorization under 49 U.S.C. § 10901. Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35491, slip op. at 6 (STB served Dec. 15, 2011).

<sup>3</sup> Pet. ¶ 2.

<sup>4</sup> Id. ¶¶ 3-6.

<sup>5</sup> Id. ¶ 10.

<sup>6</sup> Id. ¶ 13.

Although Sierra has requested revocation, we need not determine whether it has met the criteria to obtain it, because, as a common carrier currently operating on the Line, Sierra is relying on the wrong statutory standard to exit from the Line. To be relieved of the common carrier obligation to serve shippers on the Line, Sierra must obtain Board approval in the form of discontinuance authority, not revocation authority. Pursuant to 49 U.S.C. § 10903 and 49 C.F.R. pt. 1152, a carrier that intends to discontinue service must file an application seeking prior approval by the Board. In some circumstances, a carrier may seek exemption from the prior approval requirements of § 10903 by instead filing a petition for exemption to discontinue service pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.60, or a notice of exemption to discontinue service under 49 C.F.R. § 1152.50. If Sierra wishes to be relieved of its common carrier obligation, it must avail itself of these Board procedures specific to discontinuances.

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

It is ordered:

1. Sierra's petition to revoke its exemption is denied.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.