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SERVICE DATE – FEBRUARY 16, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35490

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

Decided: February 15, 2012

On April 5, 2011, Sierra Northern Railway (Sierra) filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to acquire from Union Pacific Railroad Company (UP) a freight rail operating easement over the Santa Cruz Branch line (the Line) and to operate on the Line pursuant to an Administration, Coordination, and License Agreement between Sierra and the Santa Cruz County Regional Transportation Commission (Santa Cruz). Notice of the exemption was served and published in the Federal Register on April 21, 2011 (76 Fed. Reg. 22449). The exemption became effective on May 5, 2011.

In a separate proceeding, Santa Cruz, a public agency that proposed to acquire the physical assets of the Line from UP, sought a determination that it would not become a common carrier by its acquisition of the physical assets of the Line. Specifically, Santa Cruz sought a determination that the proposed two-part transaction involving Santa Cruz, UP, and Sierra would not conflict with 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, the Board issued a decision concluding that the transaction, as proposed, would not contravene State of Maine and would not require Board authorization pursuant to 49 U.S.C. § 10901. Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory Order, FD 35491 (STB served Dec. 15, 2011).

On December 22, 2011, Sierra filed a petition to withdraw its verified notice of exemption in this proceeding.¹ Sierra states that the proposed transaction has not been

¹ Previously, on December 1, 2009, Sierra filed a verified notice of exemption under 49 C.F.R. § 1150.41 in a separate proceeding to lease and to operate the Line, pursuant to a lease agreement with UP. See Sierra N. Ry.—Lease & Operation Exemption—Union Pac. R.R., FD 35331 (STB served Dec. 17, 2009). That lease agreement was to remain in effect in part and be amended in part to account for the transaction among Sierra, Santa Cruz, and UP. On December 28, 2011, Sierra filed a petition to revoke its notice of exemption to lease and operate

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consummated, as neither the conveyance of the physical assets of the Line from UP to Santa Cruz, nor the conveyance of the freight rail operating easement from UP to Sierra, has occurred. Sierra also states that it has determined that the Line cannot be operated profitably, and it is for that reason that it seeks to withdraw its notice of exemption. No replies to the petition have been filed.

Sierra's request to withdraw its notice of exemption will be granted. Although the exemption became effective on May 5, 2011, the authority conferred to Sierra is permissive, not mandatory. Sierra indicates that the parties have not consummated the transaction envisioned in its notice of exemption in this proceeding, and, under the circumstances, permission to withdraw will be granted. See Chicago, Peoria & W. Ry.—Acquis. Exemption—Rail Line of Corn Prods. Int'l, Inc., FD 34289 (STB served Apr. 18, 2003). Accordingly, Sierra's notice of exemption will be withdrawn, and the proceeding will be dismissed without prejudice to Sierra's filing another notice of exemption in the future, should it so choose. The withdrawal of Sierra's notice of exemption here does not alter the Board's December 15, 2011 decision that the proposed transaction, as it was submitted to the Board, would not contravene State of Maine and would not require Board authorization pursuant to 49 U.S.C. § 10901.

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 request to withdraw its verified notice of exemption is granted. The notice of exemption is withdrawn, and this proceeding is dismissed without prejudice. The notice served and published in the Federal Register on April 21, 2011, in this proceeding is vacated.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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the Line in FD 35331, which is presently under consideration. Nevertheless, in its petition to withdraw filed in this proceeding, Sierra states that it will continue to provide service on the Line as the lessee until such time as it is relieved of that obligation by the Board.