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SERVICE DATE – FEBRUARY 8, 2012
SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 409 (Sub-No. 6X)

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY—
ABANDONMENT EXEMPTION—IN LOS ANGELES COUNTY, CAL.

Decided: February 8, 2012

On December 29, 2011, the Los Angeles County Metropolitan Transportation Authority (LACMTA) filed a verified notice of exemption to terminate whatever residual common carrier obligation it may have retained over a 4.85-mile rail segment in Los Angeles, Cal.¹ For the reasons discussed below, the notice will be dismissed.

The line is part of a group of rail lines that were the subject of an agreement between The Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Los Angeles County Transportation Commission (LACTC), a predecessor of LACMTA, in 1992.² In that transaction, LACTC acquired the ownership of the physical assets of the lines for mass transit use, along with certain rights regarding ATSF's use of the lines. ATSF retained an exclusive and permanent easement to continue providing freight rail common carrier service over the lines.

Subsequently, the Board's predecessor, the Interstate Commerce Commission (ICC), found that the commuter service restrictions on ATSF's freight rail service in the parties' shared use agreement were so extensive that they would substantially impair the effect of the permanent easement, thus rendering the transaction subject to the ICC's jurisdiction.³ Based on that ruling, LACMTA sought a blanket exemption from the requirements of the Interstate Commerce Act at 49 U.S.C. Subtitle IV. LACMTA explained that it did not intend to operate any rail lines as a freight rail common carrier and did not intend to hold itself out to provide freight rail service on the rail lines it had acquired from ATSF. The Board granted LACMTA the blanket exemption, and further stated in its decision that, if ATSF sought to abandon its freight rail service obligation over the lines at a future date, the Board would evaluate the potential environmental

¹ The line extends between milepost 119.35, just east of the San Gabriel River, in Irwindale, and milepost 124.20, just east of the Santa Anita Blvd. grade crossing, in Arcadia, in Los Angeles County, Cal.

² See Los Angeles Cnty. Transp. Comm'n.—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., FD 32172 (ICC served Dec. 2, 1992).

³ See Orange Cnty. Transp. Auth.—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., 10 I.C.C.2d 78 (1994).

impacts of the abandonment at that time.⁴ The Board also noted that the blanket exemption did not extend to labor protection.

The successor to ATSF's freight easement over the line is BNSF Railway Company (BNSF). BNSF petitioned the Board to abandon the easement, and the Board granted BNSF abandonment authority effective on October 16, 2011, subject to environmental conditions and standard labor protective conditions. BNSF Ry.—Aban. Exemption—In Los Angeles Cnty., Cal., AB 6 (Sub-No. 477X) (STB served Sept. 16, 2011, Oct. 6, 2011, and Nov. 23, 2011). The Board removed one of the environmental conditions in a decision served on October 6, 2011. It later removed another environmental condition and imposed two new environmental conditions in a decision served on November 23, 2011.

To make way for a passenger rail project, LACMTA now seeks an exemption to terminate whatever residual common carrier obligation it may have retained on the line. In furtherance of its exemption request, LACMTA notes that no employees will be adversely affected by the termination of its common carrier obligation and that the interests of railroad employees will be protected by the standard labor protective conditions already imposed in Docket No. AB 6 (Sub-No. 477X). LACMTA also adopts the environmental and historic report submitted by BNSF on May 12, 2011, in seeking authority to abandon its freight easement in Docket No. AB 6 (Sub-No. 477X). LACMTA claims in its notice that all the current environmental conditions have been or will be complied with as part of the passenger rail project.⁵

Guidance on how to proceed can be found in a Board decision involving a similar notice that the Board dismissed as moot in 2008.⁶ In that case, LACMTA held a similar interest in a rail line for which it had received the same blanket exemption from Subtitle IV.⁷ When LACMTA later filed an abandonment notice of exemption, the Board dismissed the notice as

⁴ See Orange Cnty. Transp. Auth.—Acquis. Exemption—The Atchison, Topeka & Santa Fe Ry., FD 32173 et al. (STB served Mar. 12, 1997) (Orange County 1997).

⁵ On January 5, 2012, BNSF submitted a filing in Docket No. AB 6 (Sub-No. 477X) to notify the Board that it has quitclaimed all of its interest in the line to LACMTA. In the process, BNSF sets forth environmental conditions LACMTA has agreed to undertake as part of the transaction. One of the conditions found in this January 5 filing is a condition concerning the California Department of Fish & Game, a condition that LACMTA mistakenly excluded from its December 29 commitment to the Board. Between the January 5 filing and the commitments made in the notice, LACMTA has agreed to be bound by all the environmental conditions currently found in Docket No. AB 6 (Sub-No. 477X).

⁶ See Los Angeles Cnty. Metro. Transp. Auth.—Aban. Exemption—In Los Angeles Cnty., Cal., AB 409 (Sub-No. 5X) (STB served July 17, 2008).

⁷ The blanket exemption in that case concerned a Southern Pacific Transportation Company (SP) line. See Southern Pac. Transp. Co.—Aban.—L.A. Cnty., Cal., 8 I.C.C.2d 495 (1992), recon. and clarified 9 I.C.C.2d 385 (1993).

moot. The Board found that the previously granted blanket exemption, which had become effective, included permitting abandonment by LACTC and its successor LACMTA, and that the Board had already granted authority to SP's successor to abandon and discontinue service over that line.

Here, LACMTA's notice is also moot, and it will be dismissed. An abandonment exemption has already been granted and has become effective for LACTC and its successor LACMTA pursuant to the broader blanket exemption from Subtitle IV of the Act granted in the Orange County 1997 decision,⁸ and the Board has granted BNSF authority to abandon the line in Docket No. AB 6 (Sub-No. 477X), which also has become effective. In addition, the Board has recently imposed environmental and labor protective conditions for this line in connection with its grant of abandonment authority to BNSF, and LACMTA has agreed to abide by all the current environmental conditions. As such, LACMTA needs no further authority from us.

In the future, if LACMTA wishes to abandon whatever residual common carrier obligation it may have retained over a line of railroad subject to the blanket exemption from Subtitle IV, and the operating railroad has already received authority to abandon the freight easement on the line and that authority has become effective, LACMTA does not need to file for abandonment authority. It must only submit a letter explaining how it meets these criteria and including: (1) a commitment by LACMTA to adopt the environmental and historic conditions the Board imposed on the abandoning railroad; (2) an explanation of why there are no changed circumstances that would warrant imposing additional measures; and (3) an explanation that the required level of labor protection that is necessary to safeguard the line's employees has been imposed. The letter will be posted to the agency's website.

It is ordered:

1. The notice of exemption is dismissed as moot.
2. This decision is effective on its date of service.

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

⁸ See n. 4.