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SERVICE DATE – LATE RELEASE JUNE 27, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35475

PORT OF IVORY, LLC—OPERATION EXEMPTION—LINE OF RAILROAD IN TULARE  
COUNTY, CAL.

Decided: June 27, 2011

This decision reopens the proceeding to permit Port of Ivory, LLC (Port) to withdraw its notice of exemption, and dismisses the proceeding.

On March 4, 2011, Port, a limited liability company and noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate about 1,500 track feet of existing railroad trackage inside an existing industrial facility it owns in Tulare County, Cal. (March 4 notice). According to the March 4 notice, the current rail facilities on Port's property consist of 2 sidings that connect with a rail line operated by the San Joaquin Valley Railroad Company (SJVR) at a point known as Ivory (milepost 232.3 on SJVR's Exeter Subdivision).

Notice of the exemption was served and published in the Federal Register on March 18, 2011 (76 Fed. Reg. 15,047).<sup>1</sup> The exemption became effective on April 3, 2011.

On March 29, 2011, SJVR filed a petition to reject the notice of exemption, alleging that the notice contains significant false and misleading information, rendering it void ab initio.

By a series of decisions, the proceeding was held in abeyance at Port's request and with the consent of SJVR to allow those parties to attempt to resolve their differences. The latest extension of the abeyance period was granted (by decision served on April 26, 2011) until April 29, 2011. In that decision, the parties were directed to notify the Board on the status of the negotiations on or before April 29, 2011.

By letter filed on April 27, 2011, Port requested permission to withdraw its March 4 notice in order to facilitate substantive discussions between senior officials of SJVR's parent company and one of Port's owners. Port noted that it advised counsel for SJVR of its desire to withdraw its notice.

By letter filed on June 16, 2011, Port provided supplemental information in connection with its request to withdraw the March 4 notice. Port states that it has not consummated the exemption authority and has not held itself out as a common carrier railroad. Port indicates that it decided not to consummate based on its expectation of a private resolution of commercial issues with SJVR, and that recently the parties have reached an understanding that will resolve

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<sup>1</sup> A protective order was served on March 25, 2011.

their respective concerns. Thus, Port has agreed to withdraw its notice of exemption in this proceeding without prejudice to its filing of a new notice addressing the concerns SJVR articulated in its petition to reject.

Port's request to withdraw its notice of exemption will be granted. Although the exemption became effective on April 3, 2011, the authority conferred to Port is permissive. Port indicates that it has not consummated its operating authority or held itself out as a common carrier. Moreover, the parties have reached an understanding that will resolve their respective concerns and, it is anticipated, lead to the filing of a new notice of exemption. Under the circumstances, withdrawal of the March 4 notice is warranted. See Rock River R.R.—Acquis. & Operation Exemption—Rail Lines of Renew Energy, LLC, FD 35016, et al. (STB served June 25, 2010). Accordingly, the March 4 notice of exemption will be withdrawn, and the proceeding will be dismissed without prejudice.

Because the notice of exemption is being withdrawn, SJVR's petition to reject it will be denied 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. Port's request to withdraw its March 4 notice is granted. The March 4 notice is withdrawn, and this proceeding is dismissed without prejudice. The notice served and published in the Federal Register on March 18, 2011, in this proceeding is vacated.
2. SJVR's petition to reject Port's notice of exemption is denied as moot.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.