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SERVICE DATE – LATE RELEASE FEBRUARY 10, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35586

SOUTHERN SAN LUIS VALLEY RAILROAD, LLC—ACQUISITION AND OPERATION  
EXEMPTION—IOWA PACIFIC HOLDINGS, LLC

Docket No. FD 35585<sup>1</sup>

IOWA PACIFIC HOLDINGS, LLC AND PERMIAN BASIN RAILWAYS, INC.—  
CONTINUANCE IN CONTROL—SOUTHERN SAN LUIS VALLEY RAILROAD, LLC

Digest:<sup>2</sup> The Board declines to authorize the acquisition of a rail line and an associated transaction because of unresolved issues regarding prior acquisitions of the rail line.

Decided: February 10, 2012

In Docket No. FD 35586, Southern San Luis Valley Railroad, LLC (SSLV), a newly established limited liability company and noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 1.53 miles of rail line (the Line) owned by Iowa Pacific Holdings, LLC (IPH). IPH is a short line railroad holding company that indirectly owns SSLV. The Line, which SSLV alleges is dormant but not abandoned, extends between a currently out-of-service connection with one of IPH's subsidiaries, San Luis & Rio Grande Railroad (SLRG), at milepost 0.0 at Blanca, Colo., and the Line's terminus at milepost 1.53 at McClintock, Colo. SSLV states that, upon acquisition, it intends to rehabilitate the Line to handle modern railroad equipment and restore common carrier railroad service.

In a related transaction in Docket No. FD 35585, IPH and Permian Basin Railways, Inc. (PBR), a wholly owned subsidiary of IPH, seek an exemption from the prior approval requirements of 49 U.S.C. § 11323 to continue in control of SSLV upon SSLV's becoming a Class III rail carrier.

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<sup>1</sup> These proceedings are not consolidated; they are being considered together for administrative purposes.

<sup>2</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).

Because the circumstances surrounding IPH's alleged 2007 acquisition of the Line are unclear on the present record, the notice in Docket No. FD 35586 will be rejected. As a result, IPH's and PBR's related petition for continuance in control of SSLV in Docket No. FD 35585 will be dismissed as moot.

## BACKGROUND

SSLV states that the Line is the last surviving remnant of a now defunct short line railroad company named the Southern San Luis Valley Railroad Company (old SSLV). In the notice, SSLV asserts that the old SSLV suspended operations on the Line in 1996. SSLV states that in 2007, IPH acquired the right-of-way comprising the Line from Mr. Richard Vrondock, an individual local landowner. SSLV states that, at the time, IPH believed it was acquiring the right-of-way of a fully abandoned railroad that had not been operated for over 10 years. As a result, SSLV states, it did not seek or obtain Board authority to acquire the Line from Mr. Vrondock. SSLV states that it and IPH did not learn that the Line had not been abandoned until its preparation of the filings in the current proceedings. Even though it never obtained Board authority to acquire what it now understands to be an unabandoned line of railroad, IPH is not before the Board seeking belated authority for its alleged 2007 acquisition of the Line from Mr. Vrondock. Rather, SSLV argues that there is no need for the Board to require IPH to "unscramble" that 2007 transaction and suggests that the Board could exempt IPH's 2007 acquisition on its own motion.

## DISCUSSION AND CONCLUSIONS

The accelerated time period specified in the Board's regulations for processing notices invoking class exemptions makes such procedures appropriate only when the notices do not raise a substantial controversy or substantial factual and legal issues. Ne. Interchange Ry.—Lease & Operation Exemption—Line in Croton-on-Hudson, N.Y., FD 34734 et seq. (STB served Nov. 18, 2005). The class exemption procedure is suited for routine cases. See, e.g., The Burlington N. & Santa Fe Ry.—Acquis. & Operation Exemption—State of S.D., FD 34645, slip op. at 2-3 (STB served Jan. 14, 2005), citing Riverview Trenton R.R.—Acquis. & Operation Exemption—Crown Enters., FD 33980, slip op. at 6-10 (STB served Feb. 15, 2002).

Given the issues surrounding the status and history of the Line, this case is not routine. Although the acquisition of the Line by SSLV could otherwise be authorized through the notice process, legal questions arise because IPH's 2007 acquisition of the Line and Mr. Vrondock's prior acquisition seem to have occurred outside the Board's authority. Substantial questions remain as to how, if the Line is an unabandoned line of railroad of the old SSLV as alleged, IPH could have acquired it from Mr. Vrondock, who is not alleged to have any connection to the old SSLV.

IPH notes correctly that the Board on occasion has granted authority for transactions that had taken place in the past. See, e.g., PPL Susquehanna, LLC & Allegheny Elec. Coop.—

Acquis. Exemption—Pa. Dep’t. of Transp., FD 35576, (STB served Dec. 7, 2011); Steuben Cnty. Indus. Dev. Agency—Acquis. Exemption—Line of Bath & Hammondsport R.R., FD 32963, (STB served July 15, 1997).<sup>3</sup> But in each decision cited by IPH, the prior transaction was authorized only after the record was developed more completely. The record in each of those proceedings traced the chain of authority and could specify all prior acquisitions and other transactions involving the subject rail line. In contrast, the history of the Line between the cessation of old SSLV’s operation in 1996 and IPH’s acquisition in 2007 is unexplained. Moreover, in the proceedings most analogous to the instant case, the purchasers, unlike IPH, had sought Board approval for the prior acquisition. The Board will not grant authority for the 2007 acquisition without more information.

For the foregoing reasons, SSLV’s notice in Docket No. FD 35586 will be rejected. Rejection of the notice is without prejudice; SSLV may refile a notice of exemption to acquire the Line from IPH upon Board approval of IPH’s 2007 acquisition.

If it wishes to proceed with the contemplated transactions, IPH should file a petition for exemption or an application for authority for its alleged 2007 acquisition. IPH should trace the history of the Line as well as it can, with supporting evidence, and request specific authority from the Board for this prior transaction.

Because SSLV’s notice is being rejected and SSLV thus is not authorized to become a carrier, the petition for exemption in Docket No. FD 35585 for IPH and PBR to continue in control of SSLV upon SSLV becoming a carrier will be dismissed as moot, without prejudice.

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

It is ordered:

1. In Docket No. FD 35586, SSLV’s notice of exemption is rejected without prejudice.
2. In Docket No. FD 35585, IPH’s and PBR’s petition for exemption is dismissed as moot, without prejudice.

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<sup>3</sup> IPH argues that it would be contrary to the public interest to require the parties to “unscramble” the transaction, forcing IPH to convey the right-of-way back to Mr. Vrondock, and then seek acquisition authority before reacquiring the Line. Notice at 9. The Board did not require the parties to “unscramble” prior transactions in any of the cases cited by IPH, nor are we doing so in this decision.

3. This decision is effective on its service date.

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