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SERVICE DATE – LATE RELEASE DECEMBER 16, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 265X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF TRACKAGE RIGHTS EXEMPTION—IN
LOS ANGELES COUNTY, CA

Decided: December 15, 2008

This decision denies a petition filed by James Riffin (Riffin) to revoke a notice of exemption to abandon and discontinue trackage rights over two segments of the Santa Monica Industrial Lead (the Lead) in Los Angeles County, CA.

BACKGROUND

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the Lead from milepost 485.61 to milepost 485.69 and to discontinue trackage rights from milepost 485.69 to milepost 486.00, a total distance of 0.39 miles in the City of Los Angeles, Los Angeles County, CA. UP certified that no local or overhead traffic had moved over these segments for at least 2 years. Notice of the exemption was served and published in the Federal Register on April 8, 2008 (73 FR 19136-37). The exemption was scheduled to become effective on May 8, 2008, provided no formal expression of intent to file an offer of financial assistance (OFA) had been received.¹

On April 16, 2008, Riffin, describing himself as a Class III carrier, filed a notice of intent to file an OFA to purchase the entire 0.39-mile rail line for which UP sought abandonment and discontinuance authority. On the same date, Riffin filed a petition to toll the date by which an OFA must be filed. By decision served on May 7, 2008, the Board rejected Riffin's notice of intent to file an OFA and denied his petition to toll the date for filing an OFA as moot. The Board found that Riffin could not acquire the 0.31-mile segment over which UP had trackage rights because OFAs to purchase a line are not permitted in discontinuance proceedings. Additionally, the Board rejected Riffin's proposal to purchase the 0.08-mile segment that UP owns, finding that there was essentially no possibility of Riffin providing freight rail service over this segment because the lack of potential shippers and the short length and width of the segment rendered it incapable of supporting rail service.

¹ By decision served on May 7, 2008, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to a historic preservation condition.

On May 28, 2008, Riffin filed a petition to revoke UP's notice of exemption on grounds that the notice contained false and misleading statements rendering it void ab initio, and that permitting abandonment of the 0.08-mile segment would create an unlawfully stranded segment. Specifically, Riffin maintains that UP failed to reveal to the Board that the Lead was stub-ended, which, he says, would result in a stranded line segment to the west between mileposts 485.69 and 487.72 upon a grant of abandonment authority to UP between mileposts 485.61 and 485.69. Further, Riffin alleges that UP failed to disclose who had the residual common carrier obligation over the 0.31-mile segment between milepost 485.69 and milepost 486.00, which is owned by Los Angeles County Metropolitan Transportation Authority (LACMTA).

On June 2, 2008, UP filed a reply in opposition to Riffin's petition to revoke in which it argued that the proposed abandonment would not create an unlawfully stranded segment, that the line is not stub-ended, and that UP was not required to disclose who had the common carrier obligation on the segment between mileposts 485.69 and 486.00. On June 4, 2008, LACMTA also filed a reply in opposition to Riffin's petition. Riffin filed a response in opposition to UP's reply on June 9, 2008, and UP responded on June 11, 2008.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(d), the Board may revoke an exemption in whole or in part if it finds that regulation is necessary to carry out the rail transportation policy (RTP) set forth in 49 U.S.C. 10101. The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns.²

Here, Riffin seeks revocation on the basis that abandonment of the 0.08-mile segment would result in a stranded line segment—a segment of rail line subject to our jurisdiction but unconnected to the rest of the national rail system—to the west. This claim is without merit and was specifically addressed in Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—In Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X) (STB served July 17, 2008) (Los Angeles County). In that decision, at 4, the Board explained that, because the Interstate Commerce Commission exempted the issue segments from regulation under the Interstate Commerce Act, 49 U.S.C. Subtitle IV in Southern Pacific Transp. Co.—Abandonment, 8 I.C.C.2d 495 (1992), any obligations LACMTA had with respect to segments to the west of milepost 485.69 ceased: (1) when Southern Pacific Transportation Company, UP's predecessor, was granted discontinuance authority for the segment between mileposts 486.00 and 487.72 in Southern Pacific Transportation Company—Discontinuance of Service Exemption—

² I&M Rail Link LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

1.72 Miles in Los Angeles County, California, Docket No. AB-12 (Sub-No. 154X) (ICC served Sept. 28, 1993), and (2) when UP was granted discontinuance authority for the segment between mileposts 485.69 and 486.00 in this proceeding. Thus, no segments subject to our jurisdiction will be left stranded due to UP's abandonment of the 0.08-mile segment because neither LACMTA nor any other carrier retains a common carrier obligation for those segments.

Riffin also argues that UP's notice of exemption should be revoked because UP failed to disclose (1) who had the residual common carrier obligation over the 0.31-mile segment over which UP sought discontinuance authority, and (2) that the Lead was stub-ended. These arguments fail, too. Although these claims, which rest on the assertion that the notice of exemption contained false and misleading information, should have been raised in a petition to reject the notice as void ab initio,³ they are in any event without merit. UP was under no obligation to identify in its notice who had the residual common carrier obligation on the 0.31-mile segment, nor was it required to disclose that the Lead was stub-ended.⁴ Accordingly, the omission of this information from UP's notice of exemption was not false and misleading.⁵

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

It is ordered:

1. Riffin's petition to revoke the notice of exemption in this proceeding is denied.
2. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

³ See 49 CFR 1152.50(d)(3).

⁴ See 49 CFR 1152.50(d)(2) (listing required contents of notice of exemption to abandon line or discontinue service).

⁵ See Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento, STB Finance Docket No. 34114, slip op. at 2 (STB served Feb. 3, 2003) (notice of exemption to lease and operate rail line that did not identify existing operator not false and misleading because regulations did not require that information to be included in notice).