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SERVICE DATE – LATE RELEASE DECEMBER 15, 2005

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34798

CITY OF ALAMEDA–ACQUISITION EXEMPTION–ALAMEDA BELTLINE RAILROAD

Decided: December 15, 2005

This decision grants a housekeeping stay of the effective date of the exemption in this proceeding.

### BACKGROUND

*The Exemption Notice.* On December 9, 2005, the City of Alameda (the City), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire the line of railroad owned by the Alameda Beltline Railroad (ABL). The City contends that, pursuant to the terms of an agreement with ABL, it has an option to purchase the rail line and associated property.

*The Stay Petition.* On December 15, 2005, ABL filed a petition to stay the City's section 1150.31 exemption. ABL argues that the class exemption procedure is inadequate to permit the Board to compile a record sufficient to resolve the issues raised by the notice of exemption.

*Contractual Dispute.* ABL is jointly owned by the BNSF Railway Company (BNSF), as the successor to The Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company (UP), as the successor to the Western Pacific Railroad Company. The City entered into an agreement to sell the 3.44-mile Alameda Belt Line (Belt Line) to ABL on December 15, 1924. The agreement provided that the City had the right to repurchase the Belt Line, including associated property, for a sum equal to the original cost and the cost of any additional investments and additions. The City was required to give one year's notice of its intention to repurchase by city ordinance.

In 1975, ABL received authorization to abandon 0.83 miles of the Belt Line. In 1998, ABL granted local trackage rights to UP over 1.80 miles of the Belt Line. The agreement called for UP to handle all rail cars as the operating agent for BNSF. On November 2, 1999, the City notified ABL, through Ordinance 2817 N.S., of its intention to repurchase the Belt Line on December 4, 2000.

ABL filed suit in a California state court contesting the validity of the City's contractual repurchase option under the Statute of Frauds. The California Court of Appeals ruled that the provision did not violate the Statute of Frauds under California law. The case was remanded for

trial, scheduled for April 2006. ABL has claimed federal preemption as a defense to the City's exercise of the repurchase option.

#### DISCUSSION AND CONCLUSIONS

A housekeeping stay of the effective date of the exemption is appropriate to allow time for the parties to provide additional information and for the Board to consider the issues presented in the stay request. The exemption will be stayed until further order of the Board.

Each party shall have 30 days to file a supplementary pleading. Each party should address the claims made by the other in its initial pleading, provide any other information that may be relevant, and discuss the impact of any subsequent Board action on future rail service over the rail line in question.

This decision reflects no determination concerning any issue involved in the ongoing litigation in California state court over the City's repurchase option.

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

It is ordered:

1. The effective date of the exemption in this proceeding is stayed until further order of the Board.
2. The parties shall have 30 days (until January 17, 2006) to file additional pleadings as described above.
3. This decision is effective upon the service date.

By the Board, Roger Nober, Chairman.

Vernon A. Williams  
Secretary