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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35155]

FPN-USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline

FPN-USA, Inc. (FPN), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate an approximately 44.6-mile line of railroad known as the Tijuana-Tecate Shortline, currently owned by the San Diego & Arizona Eastern Railway Company (SD&AE).¹ The rail line, almost all of which is in Mexico, extends between approximately milepost 15.0 at San Ysidro, CA, and milepost 59.6 at Division, CA, and runs through Baja California, Mexico.² In addition, FPN proposes to acquire, as incidental trackage rights, trackage rights over the line being operated by Carrizo Gorge Railway, Inc. (CZRY) between milepost 59.6 at Division and milepost 65.8 at Campo, CA.³ FPN seeks these incidental trackage rights to reach a suitable interchange point at Campo because there is no place to interchange at Division.

¹ FPN concurrently filed a public and a confidential version of the notice. The confidential version was filed under seal along with a motion for protective order. The motion for protective order is being addressed in a separate decision.

² FPN will shortly submit a proposal to the Mexican State of Baja California to operate the line. FPN will commence operations if this proposal is accepted and an operating agreement is executed.

³ See Carrizo Gorge Railway, Inc.—Operation Exemption—Line of San Diego and Arizona Eastern Railway Company and San Diego & Imperial Valley Railroad Company, Inc., STB Finance Docket No. 34078 (STB served Aug. 16, 2001). On

(continued . . .)

FPN advises that the Tijuana-Tecate Shortline constitutes a portion of a longer rail line owned by SD&AE, a former Southern Pacific Transportation Company subsidiary.⁴ Citing San Diego, FPN states that, until July 1, 2001, pursuant to an operation and management agreement with SD&AE, the San Diego & Imperial Valley Railroad Company (SDIV) provided freight service over a rail line that extends a distance of approximately 130 miles between San Diego, CA, and a point near Plaster City, CA (the San Diego-Plaster City line), and includes the Tijuana-Tecate Shortline.⁵ See San Diego & Imperial Valley R. Co., Inc.—Exemption, 1 I.C.C.2d 941 (1985). On July 1, 2001, SDIV entered into a sublease with CZRY, which then operated over the Tijuana-Tecate Shortline. See supra note 3. FPN further states that CZRY has recently been performing service outside the Tijuana region only sporadically. As a result, according to FPN, Baja California is in the process of canceling CZRY's contract and has put the operation of the line out for bid.

(. . . continued)

July 18, 2008, FPN stated that it intends to enter into a trackage rights agreement with CZRY.

⁴ SD&AE is owned by the San Diego Metropolitan Transit Development Board, a noncarrier public agency which operates light rail passenger transit service over a portion of the San Diego-Plaster City line between San Diego, CA, and the International Border between the United States and Mexico at San Ysidro, CA/Tijuana, MX. See San Diego & Imperial Valley R. Co., Inc.—Exemption From 49 U.S.C. 10901 and 11301, Finance Docket No. 30457 (ICC served Aug. 17, 1984) (San Diego).

⁵ The Board has entry jurisdiction over railroads and rail lines that provide service between one point in the United States and another point in the United States through a foreign country. See id., see also Trans-Ontario Ry. Co.—Exemption—49 U.S.C. 10901, Finance Docket No. 30566 (ICC served Feb. 5, 1985).

FPN indicates that Union Pacific Railroad Company has indicated its willingness to work with FPN, should Baja California select FPN to operate the Tijuana-Tecate Shortline, for the purpose of interchanging traffic that originated or will terminate in Mexico. By letter filed on July 21, 2008, SDIV states that it is unaware of any changes to CZRY's operation over the Tijuana-Tecate Shortline or of FPN's intent to operate over it, that SDIV has had no communications with FPN regarding FPN's desire to operate over the line, and that there have been no discussions with FPN regarding coordination of operations.⁶

The transaction is scheduled to be consummated on or after August 10, 2008 (the effective date of the exemption).

FPN certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding).

⁶ If the exemption becomes effective, the authority obtained by FPN through the exemption is permissive and does not bestow on FPN any legal rights it would need to obtain by contract from SD&AE, SDIV, CZRY, or any other party.

The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 1, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35155, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Hefner, Esq., John D. Heffner, PLLC, 1750 K Street, N.W., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: July 21, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary