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SERVICE DATE - NOVEMBER 27, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33679

SIERRAPINE — LEASE AND OPERATION  
EXEMPTION — SIERRA PACIFIC INDUSTRIES

Decided: November 21, 2001

On August 10, 1999, SierraPine filed a petition to revoke the authority that it previously obtained in this proceeding (by filing a notice of exemption under 49 CFR 1150.31) to lease and operate approximately 12 miles of rail line owned by Sierra Pacific Industries (SPI) between Ione and Martell, California.<sup>1</sup> SierraPine now claims that it does not require regulatory authority to conduct its operations. We disagree and will deny the petition to revoke.

BACKGROUND

According to SierraPine, this line was first operated in 1906 as the Ione and Eastern Railroad, hauling gold ore and firebricks west from Martell to the yard at Ione for connection with the Central Pacific Railroad. Eastward shipments originating from the Ione yard consisted of passengers, mail, groceries, clothing and animal feed. Passenger service ended in 1932, but the railroad continued to provide freight service to the public under the name of Amador Central Railroad (ACR). Control of ACR passed to the Amador Lumber Company, which established a lumber mill at Martell. Beginning in the mid-1940s, ACR was operated by a series of lumber company owners, including the Georgia-Pacific Company (GP), which acquired control of ACR in 1988.<sup>2</sup>

In 1997, the line, along with associated spur and yard tracks, was acquired by SPI, a forest products company, as an adjunct to SPI's purchase of GP's mill and particle board plant.<sup>3</sup> Petitioner states that, at the time of the purchase from GP, SPI was a Class III rail carrier that conducted other rail operations in Plumas and Lassen Counties, California.

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<sup>1</sup> Notice of SierraPine's exemption authority was served and published in the Federal Register (63 FR 68505) on Dec. 11, 1998.

<sup>2</sup> See Amador Central Railroad Company and Georgia-Pacific Corporation — Exemption from 49 U.S.C. 11343, ICC Finance Docket No. 31266 (ICC served May 23, 1988).

<sup>3</sup> See Sierra Pacific Industries — Acquisition and Operation Exemption — Amador Central Railroad Company, STB Finance Docket No. 33378 (STB served Apr. 9, 1997).

In 1998, SierraPine, a California limited partnership, purchased a particle board manufacturing plant located at Martell and entered into an agreement with SPI to lease and operate the 12-mile line of track, primarily to transport its own particle board from Martell to the junction with the Union Pacific Railroad Company (UP) at Ione. In November 1998, SierraPine filed its notice of exemption to lease and operate the line as a common carrier as of November 25, 1998.<sup>4</sup> According to SierraPine, it commenced operations over the line on April 5, 1999. In addition to the 2 to 10 carloads of particle board each week that it transports for itself from the Martell plant to the UP yard at Ione, SierraPine has transported at least one carload of fiberboard to another shipper on the line.

### DISCUSSION AND CONCLUSIONS

The standards for revoking an exemption — the relief SierraPine requests — are set out at 49 U.S.C. 10502(d), which states in relevant part:

(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title.

Although it has asked to have its licensing exemption revoked, SierraPine does not assert that application of the licensing provisions is necessary to carry out the rail transportation policy. Rather, its revocation argument is premised on its view that its acquisition and operation of the Ione-Martell line are not subject to the licensing provisions of 49 U.S.C. 10901, i.e., that it did not need authority to lease and operate the line in the first place. SierraPine now asserts that its operations constitute switching and are therefore excepted from the licensing requirements of section 10901 by 49 U.S.C. 10906.<sup>5</sup> The petitioner states that it now “believes that it initially erred” (Petition to Revoke at 4) in determining that the proposed operations required a license from the Board. Petitioner asserts that “[m]ore seasoned consideration” leads it to conclude that

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<sup>4</sup> Although the Board had approved the sale by SPI of the same line to Sierra Railroad Company in 1997, see Sierra Railroad Company — Acquisition and Operation Exemption — Sierra Pacific Industries, STB Finance Docket No. 33525 (STB served Dec. 2, 1997), the notice of exemption in this proceeding indicated that the sale to Sierra Railroad Company was never completed.

<sup>5</sup> Section 10906 provides in pertinent part: “The Board does not have authority under [49 U.S.C. 10901-10905 and 10907] over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”

“despite the fact that these tracks have . . . previously been classified as ‘mainline,’ the Board’s jurisdiction does not extend to SierraPine’s use of the line.” Id.<sup>6</sup>

After review of the facts and circumstances, we conclude that SierraPine did properly invoke the class exemption. Historically, this line has been operated as a regulated, common carrier line of railroad and the operators of the line have had authority from our predecessor, the Interstate Commerce Commission (ICC), to provide service over the line. When SierraPine took over responsibility for operation of the line from SPI, it duly filed for a license to operate line-haul service, just as its predecessors had done, and it assumed the common carrier obligation that has historically attached to the line.

Notwithstanding that it did exactly what its predecessors did, SierraPine now seems to take the view that its operations over the line are unregulated switching operations.<sup>7</sup> What

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<sup>6</sup> We must correct what appears to be a fundamental misconception in SierraPine’s understanding of the extent and reach of our jurisdiction. The quoted sentence seems to indicate that SierraPine thinks that if its use of the line is “switching,” then its operations would not be subject to the Board’s jurisdiction. However, the Board’s jurisdiction covers “transportation by rail carrier,” 49 U.S.C. 10501(a)(1), i.e., by a “person providing common carrier railroad transportation for compensation,” 49 U.S.C. 10102(5). The section 10906 exception provides that the Board does not have entry or exit licensing authority over switching track, but this does not remove switching track from other aspects of the Board’s jurisdiction, such as sections 11101, 10741, etc. See United Transportation Union-Illinois Legislative Board v. STB, 183 F.3d 606, 612 (7th Cir. 1999) (Effingham).

<sup>7</sup> In support, SierraPine cites Chevron USA Inc. — Lease and Operation Exemption — Richmond Belt Railway, ICC Finance Docket No. 32352 (ICC served June 12, 1995) (Chevron), pet. for review dismissed, Brotherhood of Locomotive Engineers v. United States, 101 F.3d 718, 728 (D.C. Cir. 1996). But Chevron — in which the ICC found that the lease of land, yard track, and rail line by Chevron from the Southern Pacific Transportation Company (SP) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) did not require agency approval — is distinguishable. In Chevron, the ICC looked at much more than the fact that the line was operated in switching service. The ICC had extensive documentation of binding contractual commitments in which SP and Santa Fe (and their successors and assigns), as owners/lessors, expressly reserved the right to operate over the tracks and remained ready to provide service over the tracks at any time if needed. Chevron, the lessee, contractually agreed to maintain the tracks (or cause the tracks to be maintained) to Federal Railroad Administration (FRA) standards. The ICC in that case found enough assurance that Santa Fe and SP retained a common carrier obligation for the track, and retained the ability to step in and provide service as needed, that it could allow Chevron (or its contractor) to lease and operate the property in switching service  
(continued...)

SierraPine took over was operation of a 12-mile line of railroad. We are not declaring that switching operations could never extend over 12 miles of track. But the 12 miles of track involved here, in a rural area with little traffic, has always been a line of railroad, and it cannot be converted into excepted switching track solely through the railroad's unilateral decision or other circumstances that assertedly change the use of the track. See The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS, ICC Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991), at 10.

Citing precedent holding that the character of track (e.g., switching versus main line) depends on its use,<sup>8</sup> SierraPine's petition to revoke describes how traffic over this line has declined over the years, and how difficult (and presumably expensive) operations over the line are due to topography, curves, grades, etc. This information may be relevant to an abandonment petition (or abandonment exemption request), if one is ever filed, but it does not alter the licensing requirements for the line.

Accordingly, we conclude that good cause to revoke the exemption has not been shown.

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

It is ordered:

1. SierraPine's petition to revoke the exemption in this case is denied.

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<sup>7</sup>(...continued)

without prior approval. SierraPine has produced no comparable documentation. Although SierraPine's petition to revoke asserts (at 6) that "the common carrier obligation is retained by the track lessor (SPI in this case)," it also concedes that SPI has never performed common carrier operations over this track. Petition to Revoke at 3. Thus, we do not have the same assurance here that SPI stands ready and is capable of providing service over the line at any time.

<sup>8</sup> Nicholson v. ICC, 711 F.2d 364 (D.C.Cir. 1983), cert. denied 464 U.S. 1056 (1984); Effingham Railroad Company — Petition for Declaratory Order — Construction at Effingham, IL, STB Docket No. 41986 (STB served Sept. 18, 1998), aff'd, Effingham.

2. This decision is effective December 27, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary