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SERVICE DATE - FEBRUARY 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34114

YOLO SHORTLINE RAILROAD COMPANY–
LEASE AND OPERATION EXEMPTION–
PORT OF SACRAMENTO

Decided: January 31, 2003

This decision denies a petition by Union Pacific Railroad Company (UP) to reject a notice of exemption filed by Yolo Shortline Railroad Company (Yolo) in 2001 or to revoke the exemption authority that became effective as a result of that notice.

BACKGROUND

On October 10, 2001, the Sacramento-Yolo Port District (Port) and Yolo, a Class III rail carrier, entered into a lease and operating agreement under which the Port granted to Yolo a leasehold property right in an approximately 3.1-mile segment of its trackage (Port trackage), and exclusive occupancy and operating rights thereon. Also under the agreement, the Port assigned to Yolo its rights and obligations under a February 12, 1951 agreement,¹ pursuant to which the Port had granted SP (now UP)² the right to serve industries from the Port trackage. On October 17, 2001, Yolo filed with the Board a notice of exemption under 49 U.S.C. 10502 and 49 CFR 1150.41 to lease from the Port and to operate this 3.1-mile segment, known as the Sacramento-Yolo Port Belt Railroad, in West

¹ The 1951 agreement is one of several agreements in which the Port granted trackage rights to Southern Pacific Transportation Company (SP) and Sacramento Northern Railway (SN). The other agreements include a May 24, 1950 agreement granting trackage rights to SN, a March 22, 1962 agreement granting to SN trackage rights over a remote segment of the Port track connecting to SP's Sacramento-Oakland mainline, and a September 1, 1966 agreement granting to SN and SP limited overhead trackage rights to reach their jointly owned West Sacramento Port Center track.

² UP acquired control of SP in 1996 and subsequently merged it into its system, thereby assuming SP's rights and obligations under the 1951 agreement. Under the terms of the merger, The Burlington Northern and Santa Fe Railway Company (BNSF) also obtained trackage rights over the Port trackage.

Sacramento, CA, pursuant to a class exemption from the licensing requirements of 49 U.S.C. 10902. The notice was served and published in the Federal Register on November 20, 2001 at 66 FR 58190. The exemption became effective on October 24, 2001.

On November 16, 2001, Yolo sent a letter to UP giving the required 1-year notice of the termination of UP's service on the Port trackage under the terms of the 1951 agreement. This 1-year period expired on November 16, 2002. On October 21, 2002, UP filed this petition to reject Yolo's notice or revoke Yolo's exemption³ in an attempt to prevent Yolo from unilaterally ending UP's service over this track.⁴ On November 6, 2002, Yolo filed a reply.

DISCUSSION AND CONCLUSIONS

UP seeks rejection of Yolo's notice of exemption or, alternatively, revocation of the exemption authority invoked by that notice. However, we conclude that UP has provided no basis for either form of relief, and therefore we will deny the petition.

Rejection. Under 49 CFR 1150.42(c), if a notice of exemption contains false or misleading information, we will reject the notice as void ab initio.

UP asks that we reject Yolo's notice because it is materially misleading. UP asserts that the notice creates the false impression that the substitution of Yolo for UP is voluntary, and that the notice hides the fact that the transaction described therein is actually a "forced discontinuance" of UP's operations on the Port trackage. UP also claims that Yolo has misled us as to its rights to access the Port trackage because there is no physical connection between Yolo's lines and that trackage.

Yolo disputes UP's allegations. Yolo asserts that the notice contained all of the information required by our class exemption regulations, 49 CFR 1150 Subpart E, and that such information was accurate. Yolo further argues that the information that UP claims was withheld—Yolo's intent to

³ UP styled this pleading as a petition to revoke. However, UP also included a request for relief that, if granted, would require rejection of Yolo's notice, which we will treat as a petition to reject.

⁴ In another attempt to gain Board protection against its removal from the Port trackage, on October 21, 2002, UP filed a notice of exemption seeking to change the legal status of its operations over the Port trackage from excepted operations over industrial track under 49 U.S.C. 10906 to operations subject to our licensing authority under 49 U.S.C. 10901. We rejected UP's notice, finding that UP had not shown that its activities on the Port trackage are subject to our licensing authority. See Union Pacific Railroad Company—Operation Exemption—in Yolo County, CA, STB Finance Docket No. 34252 (STB served Dec. 5, 2002).

terminate UP's right to conduct operations and Yolo's ability to access the Port trackage⁵—is not relevant to the exemption authority which Yolo sought. Yolo adds that, contrary to UP's position, there is no requirement under our rules that a substitution of carriers in this situation be "voluntary."⁶

Our review of Yolo's notice leads us to conclude that it contains no false or misleading information. Our regulations do not require that an existing operator be named in the new operator's notice of exemption or that the new operator specify how it plans to access the involved track.⁷ Nor does Yolo's decision to terminate UP's operations on the Port trackage bear any relation to the question of whether Yolo's notice should be rejected. The two situations are independent, and our ultimate decision on whether to reject Yolo's notice (or revoke its exemption) will not affect the validity under state law of Yolo's contractual right to remove UP from the track. Thus, the fact that Yolo did not address these matters in its filing does not make its filing false or misleading. We conclude that UP has shown no basis to reject Yolo's notice, and we will not do so.

Revocation. Under 49 U.S.C. 10502(d), we may revoke an exemption, in whole or in part, if we find that regulation of a transaction is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101. To justify revocation, a petitioner must demonstrate reasonable, specific concerns addressing the revocation criteria.

UP asks that we revoke Yolo's exemption to allow for the increased regulatory scrutiny that would be given to an individual petition for exemption or a formal application. This increased scrutiny, UP argues, is necessary because of the non-routine nature of this transaction, particularly the alleged adverse effect on it and Port shippers. UP claims that its removal from the Port trackage and the

⁵ According to Yolo, section 10902 can apply whether or not the acquiring carrier has either direct physical access or contractual access via another carrier to the additional line being acquired. It cites, in support, Sault Ste. Marie Bridge Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33290 (STB served Jan. 24, 1997).

⁶ In any event, Yolo asserts that, contrary to UP's position, the substitution was, in fact, voluntary because the Port freely chose to replace UP's service with Yolo's. Yolo adds that both the Port and Yolo freely chose the terms by which the latter obtained the right to lease and operate the Port trackage.

⁷ See Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc., STB Finance Docket No. 33905 (embracing Delaware—Lackawanna Railroad Co., Inc.—Operation Exemption—Lackawanna County Railroad Authority, STB Finance Docket No. 33906) (STB served Oct. 22, 2001) at 5-6.

substitution of Yolo as an expensive and unwanted middleman between UP and Port shippers⁸ will decrease the efficiency of transportation through the Port and unnecessarily increase costs to shippers. UP further argues that we have previously granted petitions to revoke under similar non-routine circumstances, citing, e.g., Riverview Trenton R. Co.–Acquisition and Operation Exemption, STB Finance Docket No. 33980 (STB served Feb. 15, 2002) (Riverview Trenton); and SF&L Ry. Co.–Acquisition and Operation Exemption–TP&W Ry. Co., STB Finance Docket No. 33995 (STB served Oct. 17, 2002) (SF&L).

Yolo counters that revocation is not warranted. According to Yolo, use of the class exemption was proper here because the transaction is routine, consistent with the public interest, and limited in scope, and because it will not result in an abuse of market power.⁹ Yolo also argues that the fee for its services is reasonable but, in any event, is not a basis for revoking its exemption.¹⁰

We can discern no basis on the record before us to revoke Yolo's exemption. UP has failed to establish that greater scrutiny of this transaction is necessary. We see no reason to prevent the Port from determining which carrier it wants to have operating over its track. UP argues that Yolo's acquisition is similar to acquisitions at issue in Riverview Trenton and SF&L. But those cases are distinguishable and do not support UP's request for more regulatory scrutiny of this matter. The principal argument of the opponents of the acquisition in Riverview Trenton is that the acquisition of the line is an improper attempt to forestall condemnation. In contrast, there is nothing improper about Yolo's proven intent to acquire the trackage in order to provide rail service. Moreover, in revoking the class exemption in Riverview Trenton, we found substantial controversy and opposition to the transaction, including opposition from a number of public agencies. We also found that substantial factual and legal issues had been raised, including environmental issues, and the extent to which local agencies could retain control of the line that was the subject of the notice of exemption. We determined that these factors required additional scrutiny and the development of a more complete record and,

⁸ UP notes that Farmers Rice Cooperative, the principal shipper served by the Port trackage, supports UP here and in the related STB Finance Docket No. 34252 proceeding.

⁹ UP has asserted that the regulatory status of Yolo's operations over the Port trackage at issue must be the same as that of UP's operations over the same track. But as we noted in our December 5, 2002 decision in STB Finance Docket No. 34252, at 3 n.8, it is well-settled that track may have different regulatory status for different users. UP has not, by its bare assertion, demonstrated that Yolo's operations over this track are not entitled to a license.

¹⁰ Yolo points out that if UP is correct that its \$200 switching fee is too high, market forces will dictate an adjustment. It notes, however, that BNSF has expressed a willingness to absorb the fee on traffic to and from the Port.

therefore, revoked the class exemption to allow for further consideration of the merits of the proposal. This case, by contrast, does not raise any significant issues. The only opposition is from UP, which seeks to avoid termination of its services under a contract with the support of a single shipper that merely prefers UP's service over Yolo's.

And in revoking the class exemption in SF&L, we concluded that respondents had acquired the line with the intention of degrading service to shippers and ultimately abandoning the line and salvaging the track – a course of conduct we found would undercut the class exemption's purpose of facilitating continued service to shippers and maintaining the rail transportation network. Here, in contrast, the evidence supports a finding that Yolo clearly intends to provide common carrier service on the issue trackage.

There is also no evidence to support UP's charge that the Port's and Yolo's actions here are improper. The Port, which indicates that it was dissatisfied with UP's service, had the contractual right to grant Yolo exclusive rights to operate on its trackage. UP has asked us to revoke Yolo's exemption to prevent Yolo from unilaterally discontinuing UP's services on the Port trackage. However, Yolo's actions with regard to UP's excepted operations conducted under the 1951 agreement do not provide a basis for revoking Yolo's exemption. Additionally, UP has failed to show that its removal from the line would harm the public or that Yolo's service in the Port would unreasonably burden shippers. Although one Port area shipper supports UP's request, the mere preference by a shipper for one carrier's service over another is not grounds for revocation.

For these reasons, we conclude that Yolo's notice is not defective on its face, and thus rejection is not warranted. Moreover, the exemption is not contrary to the public interest, and thus revocation is not warranted. Accordingly, we will deny UP's requests for either type of relief.

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

It is ordered:

1. UP's petition to reject the notice as void ab initio is denied.
2. UP's petition to revoke the exemption is denied.

3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary