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SERVICE DATE - OCTOBER 3, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34405]

Transportation Agency for Monterey County—Acquisition Exemption—Line of Union Pacific  
Railroad Company

The Transportation Agency for Monterey County (TAMC),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) the real estate and rail assets of a 13.1-mile line of railroad, known as the Seaside Industrial Lead, extending from Castroville, CA (milepost 110.2), to Seaside, CA (milepost 123.3). TAMC proposes to acquire the line from UP for the purpose of instituting intrastate rail passenger service on the line.<sup>2</sup> TAMC states that it will not provide freight rail

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<sup>1</sup> TAMC is public agency created pursuant to the State of California Government Code Section 67930 et seq.

<sup>2</sup> TAMC apparently believes that its operation of the line will not be subject to the Board's jurisdiction. However, the acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). The Board's authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. See Maine, DOT—Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835, 836-37 (1991).

While TAMC did not attach a copy of the terms of its agreement with UP to this notice of exemption or file a motion to dismiss the notice, it appears on the current record that TAMC  
(continued...)

service and that UP will retain trackage rights over the line to provide freight service.<sup>3</sup> TAMC certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

According to TAMC, TAMC and UP have concluded a Purchase and Sale Agreement, which was expected to be executed by September 10, 2003, and consummation of the transaction was expected to occur on or about September 12, 2003.

If the notice contains false or misleading information, the exemption is void ab initio. A petition 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34405, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, 333 Market Street, Suite 2300, San Francisco, CA 94105-2173.

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<sup>2</sup>(...continued)

acquired a common carrier obligation to provide freight service when it acquired the line. Compare Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority–Acquisition Exemption–Los Angeles County Metropolitan Transportation Authority, STB Finance Docket No. 34076 (STB served Sept. 3, 2003).

<sup>3</sup> TAMC stated in its notice that UP intended to file a petition for exemption to permit UP to abandon its remaining interest in the line. However, on September 22, 2003, UP filed a verified notice of exemption in STB Docket No. AB-33 (Sub-No. 157X) to discontinue trackage rights on the line.

Board decisions and notices are available on our website at

“WWW.STB.DOT.GOV.”

Decided: September 29, 2003.

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

Vernon A. Williams

Secretary