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SERVICE DATE – LATE RELEASE JANUARY 21, 2016

SURFACE TRANSPORTATION BOARD

Docket No. FD 35982

JACKSON COUNTY, MO.—ACQUISITION AND OPERATION EXEMPTION—UNION  
PACIFIC RAILROAD COMPANY

Decided: January 21, 2016

On December 23, 2015, Jackson County, Mo. (Jackson County), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Union Pacific Railroad Company (UPRR) and to operate, approximately 17.7 miles of rail line between milepost 288.3 and milepost 270.6, in Jackson County, Mo. (the Line). In its verified notice, Jackson County states that upon consummation of the transaction, it would become a Class III carrier and that, if a customer requires service, Jackson County would provide service by engaging a contract operator. The notice of exemption was served and published in the Federal Register on January 8, 2016 (81 Fed. Reg. 992). The exemption is scheduled to become effective on January 22, 2016.

On January 15, 2016, CenturyLink Communications, LLC (CenturyLink), filed a petition for a housekeeping stay of the notice of exemption to acquire and operate the Line, arguing that the Board needs more information to determine whether the notice of exemption process is appropriate for this transaction. CenturyLink is a global communications, hosting, cloud, and information technology services company and maintains a fiber optic telecommunications network that, in part, runs along the Line, pursuant to a confidential Easement Agreement with UPRR's predecessor, Southern Pacific Transportation Company. CenturyLink expresses concern that its rights under the Easement Agreement (and a related court order) could be affected by UPRR's sale to Jackson County and are, thus, inextricably intertwined with rail transportation issues that need to be resolved prior to this exemption becoming effective. CenturyLink also alleges that "the issue of whether the [Line] will remain an operating rail line by a bona fide railroad, or whether UPRR will retain any interest therein, is critical to CenturyLink." CenturyLink suggests that Jackson County may not be a bona fide railroad because of reports that it intends to use the Line for trail purposes.

In a reply filed on January 19, 2016, Jackson County contends that CenturyLink's contract claims under the Easement Agreement and the related court order are not within the Board's jurisdiction. Jackson County also argues that, although it plans to use the Line for a recreational trail and possibly commuter rail service, neither of those uses are inconsistent with its freight service obligation. Jackson County states that it has no plans to remove track for the trail, and it specifically reiterates that it "will provide service if a freight customer requires service, through a contract operator."

To provide sufficient time for the Board to address the arguments presented, the effective date of the exemption will be postponed until further order of the Board. The Board anticipates issuing a decision by February 4, 2016.

It is ordered:

1. The effective date of the exemption is postponed until further order of the Board.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.