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SERVICE DATE – AUGUST 20, 2010

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35394]

Regional Transportation District—Acquisition Exemption—Union Pacific Railroad Company in Adams, Denver, and Jefferson Counties, Colo.

Regional Transportation District (RTD)¹ has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Union Pacific Railroad Company (UP) the physical assets and associated rights of way comprising an approximately 40-foot wide segment of each of 2 rail lines totalling approximately 11.18 miles: (1) a portion of the Limon Subdivision extending approximately 8.96 miles, from milepost 628.50, in Adams County, Colo., to milepost 637.46 in the City and County of Denver, Colo. (the East Corridor Segment); and (2) a portion of the Moffat Tunnel Subdivision extending approximately 2.22 miles, from milepost 4.28, in the City and County of Denver, to milepost 6.50 in Jefferson County, Colo. (the Gold Line Segment).² RTD states that, on both segments, UP will retain the remaining rights-of-way not acquired by RTD.

According to RTD, on the East Corridor Segment, RTD will relocate UP's existing track

¹ RTD is a political subdivision of the State of Colorado.

² RTD states that it will also acquire UP's interest in discrete parcels not integral to UP's existing freight operations at 5 locations along UP's Limon, Greeley, and Moffat Tunnel Subdivisions for access, private roadway crossings, and similar purposes ancillary to RTD's use of the lines. In addition, UP will grant RTD 4 aerial easements over UP's lines for rail or pedestrian flyovers. RTD and UP are also concluding the negotiation of an exchange of property to accommodate the relocation of UP's lead accessing its Burnham Shop in the City and County of Denver.

both to enable UP to provide uninterrupted freight service and to accommodate the construction and operation of RTD's facilities. RTD states that, on the Gold Line Segment, UP will retain the tracks on which it currently operates. RTD also states that UP will retain the exclusive right to operate freight service on both the East Corridor Segment and the Gold Line Segment.

On June 25, 2009, RTD and UP executed the FasTracks Project Property Transfer and Railroad Relocation Agreement (Transfer Agreement), which provides a framework for a series of transactions through which RTD is acquiring rail corridors, yard track, and other property from UP. Prior to consummating the acquisition, RTD states that RTD and UP intend to execute 4 additional agreements in conjunction with this transaction. These agreements include: (1) Addenda C and D to the Transfer Agreement;³ (2) Relocation and Construction Agreement; (3) Operations Agreement for the East Corridor Segment; and (4) Operations Agreement for the Gold Line Segment. RTD states that the parties plan to execute the purchase and sale agreements for the transfer of the Gold Line Segment and the East Corridor Segment on or about August 4, 2010. RTD also states that RTD and UP anticipate that they will consummate the acquisition of the Gold Line Segment on or about September 30, 2010, and the acquisition of the East Corridor Segment during or after late 2013. Thus, according to RTD, the parties will consummate both acquisitions after the September 3, 2010, effective date of the exemption (30 days after the exemption was filed). According to RTD, it will acquire no

³ Addendum C addresses RTD's acquisition of the East Corridor segment. Addendum D addresses RTD's acquisition of the Gold Line Segment.

right or obligation to provide freight rail service on the East Corridor Segment or the Gold Line Segment, and it is acquiring the property for the purpose of providing intrastate passenger commuter rail operations.⁴ RTD certifies that, because it will conduct no freight operations on the line segments being acquired, its annual revenues from freight operations as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

If the 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 does not automatically stay the transaction. Petitions for stay must be filed no later than August 27, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35394, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036.

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

Decided: August 17, 2010.

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

⁴ RTD has filed a motion to dismiss in this proceeding. It avers that it will not become a rail carrier providing transportation subject to Board jurisdiction. The motion will be addressed in a subsequent decision.