

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33796

SACRAMENTO REGIONAL TRANSIT DISTRICT--  
PETITION FOR DECLARATORY ORDER REGARDING CARRIER STATUS

Decided: June 29, 2000

By petition filed on February 11, 2000, the Sacramento Regional Transit District (RT) requests a declaratory order to determine whether its purchase of a portion of Union Pacific Railroad Company's (UP) right-of-way between R Street and Meadowview Road in Sacramento, CA, required Board approval and whether RT thereby became a carrier subject to the Board's jurisdiction.<sup>1</sup> Although, under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board may issue a declaratory order to terminate a controversy or remove an uncertainty, the petition will be denied because it is well established that the described transaction does not require Board approval.

BACKGROUND

RT, a noncarrier, is a public corporation formed under the laws of the State of California. It entered into a series of agreements<sup>2</sup> with UP to acquire a portion of UP's 6.15-mile right-of-way in order to construct the South Sacramento Corridor Light Rail Project (the LRT Project), and operate light rail passenger service in Sacramento. Pursuant to the Purchase Agreement, RT acquired all of UP's right, title, and interest in the west side of the right-of-way, extending from milepost 138.03 on the north to milepost 131.88 on the south. UP specifically retained its common carrier obligation to provide service to shippers on both sides of the right-of-way along with the right to construct, maintain, and operate industrial or spur tracks across RT's property to serve customers located on the west side. RT did not acquire the right or obligation to conduct rail freight service, and will operate light rail passenger service exclusively on its own track on the west side.

Under the Construction Agreement, RT will build the new light transit line on the acquired right-of-way and UP will relocate its tracks to the east side of the right-of-way. The agreement contains mutual promises and protections against any unreasonable interference with the parties' respective operations. Under the Maintenance Agreement, RT will have exclusive

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<sup>1</sup> On March 22, 2000, UP filed a statement in support of RT's petition.

<sup>2</sup> The agreements are: the Purchase and Sale Agreement (Purchase Agreement); the Railroad Relocation and Construction Agreement (Construction Agreement); and the Operations and Maintenance Agreement (Maintenance Agreement).

control over dispatching and operations on its property, and UP will continue to be responsible for its own dispatching, operations, and maintenance.<sup>3</sup>

## DISCUSSION AND CONCLUSIONS

The petition will be denied because RT's acquisition of UP's excess portion of the subject right-of-way for the sole purpose of providing commuter passenger service does not require Board approval or otherwise make it a carrier subject to the Board's jurisdiction. In Southern Pac. Transp. Co.--Aban.--L.A. County, CA, 9 I.C.C.2d 385, 390 (1993), the Board's predecessor, the Interstate Commerce Commission (ICC), stated: "[w]e have never asserted jurisdiction over the ability of railroads to allow non-carriers to conduct non-jurisdictional activities, such as rail commuter service, on their excess real estate when regulated rail service will not be affected thereby." Nothing has been presented here to suggest that a different result is warranted in this case. The three agreements between RT and UP give RT the property and contract rights it requires to construct and operate the LRT Project, but preserve for UP the property and contract rights it requires to provide rail common carrier service. The agreements show that RT will not conduct freight operations, or hold itself out to the public as being willing or able to do so, and that RT's construction project will not unreasonably interfere with UP's operations. Under these circumstances, prior approval from the Board is not required.

UP's relocation of its tracks is also a project that does not trigger the need for our prior approval. The replacement of an existing track with a substituted track constructed nearby is not subject to the prior approval requirements of 49 U.S.C. 10901, if there is no effect on: (1) service to shippers; (2) the carrier's territory or traffic; (3) competition; or (4) the carrier's revenue or operating expenses. See Denver & R.G.W.R. Co.--Jt. Proj.--Relocation Over BN, 4 I.C.C.2d 95, 97-99 (1987). The transaction here will not affect any of these factors and is similar to the situation that the ICC addressed in The State of Texas, Department of Transportation--Petition for Declaratory Order Regarding Highway Construction in Tarrant County, TX, Finance Docket No. 32589 (ICC served Feb. 7, 1995), where it found no need for the prior approval of a similar track relocation project by a single carrier. Accordingly, no prior approval by the Board is required for UP's track relocation project along the corridor.

As a result, there is no need for a proceeding to examine the matters raised by petitioner. Therefore, the petition for institution of a declaratory order proceeding will be denied.

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<sup>3</sup> RT does not have the right to enter or use UP's property, except for limited purposes related to the construction and maintenance of the buffer walls between the properties, and the maintenance of the Broadway Signal House.

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

It is ordered:

1. The petition for declaratory order is denied.
2. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary