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SERVICE DATE – APRIL 24, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35008]

Utah Transit Authority—Acquisition Exemption—Union Pacific Railroad Company

Utah Transit Authority (UTA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31<sup>1</sup> to acquire from Union Pacific Railroad Company (UP) the “remaining width”<sup>2</sup> of a portion of the Bingham Industrial Lead (Lead) extending from milepost 0.0. at Midvale to milepost 6.60 at Bagley, in Salt Lake County, UT. UTA attached a copy of the agreement with UP, captioned “Eighth Amendment to Purchase and Sale Agreement.” UTA maintains that the acquisition does not require Board authorization and, on April 20, 2007, filed a motion to dismiss the notice of exemption and also filed a copy of its Administration and Coordination Agreement with

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<sup>1</sup> The notice was filed on March 27, 2007, and, at the Board’s request, was supplemented on April 16, 2007, with a letter describing the trackage to be acquired. April 16, 2007 will be considered the filing date and the basis for all due dates.

<sup>2</sup> According to UTA, the remaining width is a 35-foot wide strip of land, the portion of the right-of-way on which the rail and supporting operating infrastructure are located. UTA previously acquired a 35-foot wide strip of the Bingham Industrial Lead right-of-way. See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34170 (STB served May 22, 2002).

Savage Bingham & Garfield Railroad Company (SBGR), the carrier that is to operate the Lead.

Previously, on February 27, 2007, SBGR, a noncarrier, invoked the class exemption to acquire from UP and operate freight easements upon, over, and across a number of rail lines and track, including the Lead between milepost 0.18 at Midvale and milepost 6.60 at Bagley Spur. See Savage Bingham & Garfield Railroad Company—Acquisition and Operation Exemption, STB Finance Docket No. 35002, served and published in the Federal Register on March 15, 2007 (72 FR 12261) (Savage Bingham).

In the notice of exemption, SBGR stated that in a separate transaction UP would: (1) convey the right-of-way of the Lead to UTA; (2) reserve an operating easement over the Lead; and (3) convey the operating easement over the Lead to SBGR. SBGR also stated that it would enter into an Administration and Coordination Agreement with UTA to govern the rail freight services SBGR would provide over the Lead during specified periods when UTA's planned passenger light rail services would operate.<sup>3</sup>

UTA 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.

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<sup>3</sup> That exemption was scheduled to become effective on March 29, 2007, but was stayed at the request of Utah Shipper Coalition (Coalition) in a decision served on March 28, 2007, pending further action by the Board. The Board stated that UTA must obtain Board approval or a finding that Board approval is not needed for it to acquire the Lead before SBGR may proceed with the acquisition in STB Finance Docket No. 35002. Additionally, the Board stated that UTA's submission should include a copy of the Administration and Coordination Agreement it plans to enter into with SBGR and a copy of any other related agreements not previously submitted that would allow the Board to ascertain whether the proposed transaction would allow SBGR to fulfill the common carrier obligation it seeks to acquire.

The earliest this transaction may be consummated is May 16, 2007, the effective date of the notice of exemption, as supplemented (30 days after the exemption was filed).

If the verified 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 will not automatically stay the transaction. Petitions for stay must be filed no later than May 9, 2007 (at least 7 days before the exemption becomes effective).<sup>4</sup>

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35008, 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, 1001 Connecticut Avenue, N.W., Suite 905, Washington, DC 20036.

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<sup>4</sup> An April 17, 2007 filing by the Coalition asks that the notice be stayed, pointing out that a notice in a related proceeding, Savage Bingham, was stayed at the Coalition’s request on March 28, 2007. See supra note 3. UTA replied in opposition. The Coalition recites no stay criteria and acknowledges that the stay imposed in Savage Bingham operates to prevent the transaction in STB Finance Docket No. 35008 from going forward. No action will be taken on this request.

Decided: April 23, 2007.

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

Vernon A. Williams

Secretary