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SERVICE DATE - NOVEMBER 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34252

UNION PACIFIC RAILROAD COMPANY–  
OPERATION EXEMPTION–IN YOLO COUNTY, CA

Decided: November 7, 2002

By notice filed on October 21, 2002, Union Pacific Railroad Company (UP) invokes the Board's class exemption at 49 CFR 1150, Subpart D. The notice affects UP's operations over approximately 6.3 miles of track owned by the Sacramento-Yolo Port District (the Port) and by UP in Yolo County, CA. The notice is scheduled to become effective on November 11, 2002. On October 28, 2002, Yolo Shortline Railroad Company (Yolo) filed a petition to reject UP's notice of exemption or, alternatively, to stay the exemption's effectiveness. On November 1, 2002, UP filed a reply to the petition.

In its notice, UP notes that it is "currently operating over the subject trackage as exempt<sup>1</sup> industrial trackage" and states that "[t]he effect of this transaction will be to change the legal status of these operations to regulated common carrier service." Yolo Shortline Railroad Company (Yolo), which leased a portion of the track in question from the Port on October 10, 2001,<sup>2</sup> has filed a petition to reject the notice on the grounds that it does not describe a transaction that falls within the scope of 49 U.S.C. 10901, or the class exemption at 49 CFR Part 1150, Subpart D. Yolo argues that the UP notice is an abuse of the Board's procedures in an attempt to avoid termination of UP's contract to operate at the Port.<sup>3</sup> In the alternative, Yolo has asked the Board to stay the effective date of the UP notice pending the establishment of a procedural schedule in this proceeding. The Burlington Northern and Santa Fe Railway Company filed a comment on November 1, 2002.

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<sup>1</sup> Although UP refers to its operations as "exempt," the proper term for its operations under 49 U.S.C. 10906 is "excepted."

<sup>2</sup> Yolo Shortline Railroad Company–Lease and Operation Exemption–Port of Sacramento, STB Finance Docket No. 34114 (STB served Nov. 20, 2001).

<sup>3</sup> On November 1, 2001, Yolo gave UP one year's notice of termination of UP's operating rights pursuant to the contract's terms.

In order to permit consideration by the Board of the arguments made in Yolo's petition and UP's reply, the effective date of UP's exemption will be stayed pending consideration of these arguments and further Board action. The Board intends to act on the petitions as soon as possible. In the meantime the Board urges the parties to maintain the status quo until this agency acts on Yolo's petition to reject UP's notice.

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

It is ordered:

1. The effectiveness of the exemption covered by the notice filed on October 21, 2002, is stayed pending consideration of the numerous arguments made in Yolo's petition and UP's reply and further Board action.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary