

SERVICE DATE – FEBRUARY 1, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY—CHANGE IN
OPERATORS EXEMPTION—NORTH COAST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND
NORTHWESTERN PACIFIC RAILWAY CO., LLC

Decided: January 31, 2008

In a petition filed on October 1, 2007, Friends of Eel River (FOER) seeks revocation of the notice of exemption served and published on August 24, 2007 (72 FR 48729), as corrected in a notice served and published on August 30, 2007 (72 FR 50161) (Notice), which authorized a change of operators from Northwestern Pacific Railway Co., LLC (NWPY), to Northwestern Pacific Railroad Company (NWPCO), on a line of railroad owned by North Coast Railroad Authority and Sonoma-Marin Area Rail Transit District. NWPCO filed a reply on October 19, 2007. The line, consisting of four distinct segments entirely within California, extends from NWP milepost 142.5 near Outlet Station to SP milepost 63.4 at Lombard Station, Napa County, a total distance of approximately 142.2 miles.¹ The petition for revocation will be denied.

BACKGROUND

In 1998, the Federal Railroad Administration (FRA) ordered the shut down of operations on the line because of its unsafe condition.² That order was in effect when NWPY acquired the common carrier obligation to transport freight on the line³ and continues in effect. Consequently, NWPY did not conduct any operations on the line.

¹ See Northwestern Pacific Railway Company—Change in Operators Exemption—North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC, STB Finance Docket No. 35703, slip op. at 1 (STB served Aug. 24, 2007), for a full description of these segments, including milepost designations.

² See FRA Emergency Order No. 21, Notice No. 1, published at 63 FR 67976 (Dec. 9, 1998). At the time, Northwestern Pacific Railroad owned the line. In 1999, FRA modified the emergency order to permit the trains of California Western Railroad, Inc. (CWR) to operate over a 1.5-mile segment of the line and in a rail yard at Willits, CA, to give CWR access to the national rail system. Id., Notice No. 2, published at 64 FR 30557-58 (June 8, 1999).

³ See Northwestern Pacific Railway Co., LLC—Lease and Operation Exemption—North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge,

(continued . . .)

In the Notice, NWPCO invoked the Board's authority to acquire the common carrier obligation and, after repairs, to conduct rail operations on the line. NWPCO stated that its anticipated operations would be below the threshold requiring the Board's environmental review. See 49 CFR 1105.6(c)(2)(i); 1105.7(e)(5).

Mendocino Railway (Mendocino), a successor to CWR, sought a stay of the exemption, arguing that NWPCO made two misstatements that render the Notice void ab initio, and that environmental review was required prior to reinstating rail service on the line. In a decision served on September 7, 2007 (Stay Decision), no material misstatements were found in the Notice and Mendocino's petition for stay was denied. Consequently, the exemption took effect on September 8, 2007.

FOER states that it is an organization dedicated to the protection of the Eel River in California and is concerned about environmental impacts associated with NWPCO's restart of operations on the line.

DISCUSSION AND CONCLUSIONS

A provision of the Interstate Commerce Act, as amended, at 49 U.S.C. 10502(a), favors exemptions from regulation whenever appropriate, and directs us to grant exemptions to the maximum extent consistent with that Act. Once an exemption has been granted, we may revoke it when we find that regulation is necessary to carry out the rail transportation policy (RTP). 49 U.S.C. 10502(d). Reconciling the RTP with the statutory admonition to be liberal in granting exemptions when regulation is not necessary to protect against abuse of market power, we have held that the extent of railroad market power is an essential issue in exemption-revocation proceedings. Rail Exemption Misc. Agricultural Commodities, 8 I.C.C.2d 674, 682 (1992).

Here, FOER does not allege or demonstrate that revocation of the exemption would carry out the RTP or that NWPCO has market power. Instead, FOER alleges harm and seeks revocation of the exemption because the Board did not conduct a review of the environmental effects of the resumption of train operations on the line. FOER argues that, because the line had no traffic in recent years, NWPCO's plans to reopen the line necessarily will result in an increase in train traffic in excess of the limits set in 49 CFR 1105.7(e)(5) (a claimed 100 percent increase because no traffic currently moves over the line)⁴ and requires the Board to perform an

(. . . continued)

Highway and Transportation District, STB Finance Docket No. 33998 (STB served Feb. 6, 2001).

⁴ FOER's reference to 49 CFR 1105.7(c)(5) apparently is a typographical error; the relevant threshold for environmental review is at 49 CFR 1105.7(e)(5).

environmental assessment. FOER cites a public document indicating that NWPCO intends to operate three round-trip trains per week.⁵

However, as explained in Stay Decision, the 100 percent threshold does not apply where there recently have been no operations over a rail line. See Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33508, et al., slip op. at 7 (STB served Apr. 30, 1998), aff'd sub nom. Lee's Summit, Mo. v. STB, 231 F.3d 39 (D.C. Cir. 2000). Thus, the 100 percent threshold does not apply in this case, in which there have been no operations over the line in recent years (except for a 1.5-mile segment over which Mendocino has authority to operate). And, because only three round-trip trains will be operated per week, NWPCO's operations will not exceed the eight trains per day threshold for environmental review, which is the applicable threshold when there have been no operations over a rail line. 49 CFR 1105.7(e)(5)(i)(C).

FOER seeks revocation of the exemption on the additional ground that it contains an inaccurate statement: that NWPY "has been operating over [the line] . . ." ⁶ As explained in Stay Decision, slip op. at 2, NWPCO concedes that it would have been more accurate to state in the Notice that NWPY "has the authority to operate over the line." We agree with the judgment in Stay Decision that, even if the original wording could be considered a misstatement, it was not material to the authorization sought by NWPCO to replace NWPY as the entity authorized to provide service over the line and therefore does not constitute false or misleading information within the meaning of 49 CFR 1150.34. Id.

Accordingly, for these reasons, the request to revoke the exemption will be denied.

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 to revoke the exemption is denied.

⁵ See Petition at 3 and attached Exhibit B, "Initial Study North Coast Railroad Authority Russian River Division Freight Rail Project" at 2-9 – 2-10. The study indicates that, at some unspecified future time, the region's economy could possibly support two trains per day, 6 days a week.

⁶ Notice of Exemption, Exhibit 4 at 1.

2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary