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SERVICE DATE - AUGUST 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33557

APPLICATION OF VENTURA COUNTY TRANSPORTATION COMMISSION  
FOR AN ORDER REQUIRING JOINT USE OF TERMINAL FACILITIES  
IN VENTURA COUNTY, CA

Decided: July 29, 1998

By application filed February 12, 1998, the Ventura County Transportation Commission (VCTC) seeks an order under 49 U.S.C. 11102(a) to require Union Pacific Railroad Company (UP) to permit VCTC to use certain of its terminal facilities and 18.6 miles of main line trackage for commuter rail operations, operated for VCTC by the Southern California Regional Rail Authority. By agreement of the parties, a procedural schedule was not adopted in order to allow the parties an opportunity to negotiate a settlement of this matter.<sup>1</sup>

On June 30, 1998, VCTC and UP jointly filed a petition for exemption from the statutory time limitation of 49 U.S.C. 11102(d), which requires that we complete any proceeding under 49 U.S.C. 11102(a) within 180 days after the filing of the request for relief. Accordingly, a final decision on VCTC's application is due on August 11, 1998. VCTC and UP request a 90-day extension of this statutory deadline, to and including November 9, 1998, so that they can negotiate a final agreement that reflects their agreement in principle.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, we must exempt a transaction or service from a provision of law when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the deadline in 49 U.S.C. 11102(d) is warranted under 49 U.S.C. 10502 because granting the exemption will permit VCTC and UP to negotiate a final resolution of their dispute, which will further the rail transportation policy of 49 U.S.C. 10101 by minimizing the need for Federal regulatory control over the rail transportation system. 49 U.S.C. 10101(2). Moreover, an exemption will not adversely affect other aspects of the rail transportation policy. No shipper will be affected by an extension of the statutory deadline in this proceeding.

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<sup>1</sup> According to a letter from VCTC filed February 25, 1998, as supplemented by a letter filed March 12, 1998, the parties had reached a tentative agreement.

The exemption is also of limited scope, because it involves only two parties in a single proceeding, both of which seek only a 90-day extension of the 180-day deadline. Given our limited scope finding, we need not make a market power finding.

Because the proposed exemption is consistent with the goals of the rail transportation policy and the exemption is of limited scope, we will exempt this proceeding from the 180-day completion deadline and extend that deadline for 90 days, through and including November 9, 1998.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt this proceeding from the requirement of 49 U.S.C. 11102(d) that it be completed within 180 days. The deadline for a decision is extended to November 9, 1998.
2. Notice of the exemption will be published in the Federal Register on August 11, 1998.
3. This decision will be effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary