

SERVICE DATE - MAY 22, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34170

UTAH TRANSIT AUTHORITY—ACQUISITION EXEMPTION—CERTAIN ASSETS OF
UNION PACIFIC RAILROAD COMPANY

Decided: May 17, 2002

On January 28, 2002, the Utah Transit Authority (UTA),¹ a noncarrier, filed a verified notice of exemption² under 49 CFR 1150.31 to acquire from the Union Pacific Railroad Company (UP) several railroad rights-of-way and related improvements located in Davis, Weber, Salt Lake and Utah Counties, UT (the Lines).³ Consummation of the transaction is expected to occur on or about May 30, 2002. UTA concurrently filed a motion to dismiss the notice of exemption, claiming that the transaction, as described in the notice and as set forth in the trackage rights agreement and quitclaim deed attached to its motion, is not subject to the Board's jurisdiction.⁴ We agree and will grant the motion to dismiss.

¹ UTA is a public transit district organized under Title 17A, Chapter 2, Part 10 of the Utah Code Annotated 1953.

² Notice of the filing was served and published in the Federal Register on February 22, 2002 (67 FR 8334-35).

³ UTA proposes to acquire the following segments of UP's right-of-way, totaling some 62.77 route miles: (1) the Salt Lake Subdivision, between approximately milepost 754.31 in Bountiful and approximately milepost 778.00 in Ogden; (2) the Provo Industrial Lead, between approximately milepost P-775.23 in Point of Mountain and approximately milepost P-762.00 in Hardy; (3) the Sharp Subdivision, between approximately milepost P-752.41 in Provo and approximately milepost P-757.25 in Lakota Junction; (4) the Tintic Industrial Lead, between approximately milepost 0.00 in Springville and approximately milepost 13.06 in Payson; (5) the Sugarhouse Spur, between approximately milepost 0.00 and approximately milepost 2.74 in Salt Lake City; and (6) the Bingham Industrial Lead, between approximately milepost 6.60 in Bagley and approximately milepost 11.81.

⁴ UTA submitted copies of the proposed trackage rights agreement and quitclaim deed as Exhibits A and B to its motion to dismiss.

BACKGROUND

UTA entered into a purchase and sale agreement with UP to acquire UP's right, title and interest in the Lines, together with associated buildings, improvements, fixtures and appurtenances, as well as UP's interest in certain leases, easements, licenses, permits and other agreements pertaining to the Lines.⁵ UTA states that it is acquiring the Lines for possible passenger rail operations, and does not intend to conduct freight rail operations on them. Pursuant to the quitclaim deed submitted by UTA, UP will retain an exclusive, perpetual easement on the Lines to conduct freight rail operations. UTA and UP will enter into a trackage rights agreement that sets forth the terms and conditions that will govern their respective rail operations on the Lines.⁶

Generally, UTA and UP trains will operate on the six segments of the involved UP rights-of-way during the same time periods and will be treated equally with respect to

⁵ UTA also proposes to acquire from UP 20 to 35 foot-wide portions of the following rail corridor rights-of-way: (1) the Salt Lake Subdivision between approximately milepost 782.48 in Salt Lake City, and approximately milepost 818.05 in Ogden; (2) the Provo Subdivision between approximately milepost 705.71 at Lakota Junction and approximately milepost 729.29; (3) the Provo Subdivision between approximately milepost 729.50 and approximately milepost 745.50 in Salt Lake City; (4) the Sharp Subdivision between approximately milepost P-752.41 in Provo and approximately milepost 750.81; (5) the Sharp Subdivision between approximately milepost P-749.99 in Provo, and approximately milepost 745.82 in Spanish Fork; and (6) the Bingham Industrial Lead between approximately milepost 0.00 in Midvale, and approximately milepost 6.60 at Bagley. In these instances, UTA is not acquiring the rights-of-way, but rather only part of the width of the right-of-way which does not appear necessary for UP to carry out its common carrier obligation to provide freight service. UTA asserts that acquisition of these excess portions of rail rights-of-way for possible passenger operations does not constitute an acquisition of a line of railroad, and, therefore, is not subject to our jurisdiction, citing Sacramento Regional Transit District–Petition For Declaratory Order Regarding Carrier Status, STB Finance Docket No. 33796 (STB served July 5, 2000); and Southern Pacific Transportation Company–Abandonment Exemption–Los Angeles County, CA, 9 I.C.C.2d 385, 390 (1993). We agree with UTA on this issue for the reasons set forth in those decisions. We will accept UTA's representations that this acquisition will not diminish UP's ability to carry out its common carrier obligations, but we reserve jurisdiction to take appropriate remedial action if UP's ability is adversely affected.

⁶ The trackage rights agreement submitted with the motion does not apply to those portions of the Lines on the Sugarhouse Spur and the Bingham Industrial Lead. UTA states that it and UP intend to enter into substantially similar agreements with respect to those line portions.

dispatching.⁷ Initially, UP will be responsible for dispatching trains over the Lines. Once UTA commences passenger rail operations on a segment of the line, it will assume responsibility for dispatching on that segment.

Under the retained easement, UP will have the right to make changes in or additions to the Lines. UP will also be able to operate, use, construct, reconstruct, maintain, repair, relocate, or remove existing or future railroad, rail and railroad-related equipment, facilities, transportation systems and property rights necessary for and related to UP's freight rail operations. Although UTA may make changes or additions to the Lines, it will be required to ensure that these modifications do not interfere with the safe and efficient operations of the line or UP's industry track. Prior to the date passenger operations are commenced on a line segment, UP will be responsible for its maintenance, renewal and repair. After passenger operations begin, UTA will be responsible for these matters.

According to UTA, the asset acquisition involved here is not subject to Board jurisdiction and its consummation would not make UTA a common carrier because it will not conduct freight operations or hold itself out to the public as willing or able to do so, citing Maine, DOT-Acq. Exemption, ME. Central R. Co. 8 I.C.C.2d 835 (1991) (State of Maine). UTA states that UP will continue to be the only common carrier on the Lines performing freight operations after consummation of the transaction.

DISCUSSION AND CONCLUSIONS

UTA's motion to dismiss will be granted and the proceeding will be discontinued. The primary issue here is whether the proposed acquisition by UTA (a noncarrier) of certain rail assets of UP (a rail carrier) requires regulatory authorization. It is well established that when a noncarrier, including a state, acquires a freight rail line that has not been abandoned, it must seek our approval under 49 U.S.C. 10901. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Our authorization is not required, however, when only the physical assets will be conveyed and the common carrier rights and obligations that attach to the line will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

⁷ Under the proposed trackage rights agreement, UTA and UP will establish exclusive passenger operating windows and freight operating windows for operations over the segment of the Lines located between Point of Mountain, milepost P-775.23, and Lindon, milepost P-762.00. On this segment, UTA will have the exclusive right to operate passenger service between the hours of 5:01 a.m. and 11:59 p.m., Monday through Friday, and all day Saturday and Sunday, and UP will have the exclusive right to operate freight rail service on it between the hours of 12:00 midnight and 5:00 a.m., Monday through Friday, unless special permission is given by the dispatcher.

In the typical sale of a non-abandoned rail line, the new owner is presumed to succeed the former owner in assuming the obligation to ensure that freight rail service continues over the line. Here, however, no common carrier rights or obligations are being transferred, and UTA will not hold itself out as a common carrier performing freight rail service.⁸ Rather, UTA will acquire only the railroad right-of-way and certain related improvements for possible passenger rail operations, while UP will retain a permanent easement to conduct freight railroad operations on the Lines. Although UTA will have the right to make changes and/or additions to the Lines, and may eventually control the dispatching of trains on the line, this will not materially interfere with UP's ability to upgrade its trackage or its overall ability to provide freight rail service to current or future customers. UP's retained easement will ensure its ability to continue to provide freight service over the Lines, and the transaction will not interfere with UP's fulfillment of its common carrier obligations.

On the basis of representations made by UTA that it will not hold itself out as a common carrier of freight, as well as our review of the proposed trackage rights agreement and quitclaim deed submitted into the record, which demonstrate that this transaction will not impair UP's ability to fulfill its common carrier obligations, we find that our authorization is not required for the transfer of the rail assets in this case. Therefore, we will dismiss UTA's notice of exemption and discontinue this proceeding.

UTA has requested expedited consideration of its motion to dismiss so that a decision can be rendered prior to the proposed consummation date. Although UTA has not provided a persuasive rationale for this request, we are issuing this decision in advance of that date and will make it effective on its service date.

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

It is ordered:

1. UTA's motion to dismiss the verified notice of exemption in this proceeding is granted.
2. The proceeding is discontinued.

⁸ Accordingly, UTA will not become a common carrier as a result of this transaction.

3. This decision is effective on its service date

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary