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SERVICE DATE – SEPTEMBER 7, 2007

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: September 7, 2007

By notice of exemption filed on August 9, 2007, Northwestern Pacific Railroad Company (NWPCO), a noncarrier, seeks a change in operators from Northwestern Pacific Railway Co., LLC (NWPY) to NWPCO on a line of railroad owned by North Coast Railroad Authority (NCRA) and Sonoma-Marín Area Rail Transit District. The line, entirely within California, includes: (1) the Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22, near Healdsburg; (2) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg to NWP milepost 26.96 near Novato; (3) the Novato Segment extending from NWP milepost 26.96 near Novato to NWP milepost 25.6 near Ignacio; and (4) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, SP milepost 63.4. NWPCO indicates that it intends to consummate the transaction on or after September 8, 2007, which is the earliest the transaction can be consummated.

On August 31, 2007, Mendocino Railway (Mendocino) filed a petition for stay of the effective date of the proposed transaction pending the Board's resolution of issues it raises.<sup>1</sup> NWPCO opposed the requested stay in a pleading filed on September 4, 2007. The stay request will be denied.

DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay are: (1) whether there is a strong likelihood that petitioner will prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power

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<sup>1</sup> Mendocino claims that it has trackage rights to operate over the line between the junction with the Mendocino Railway and the Willits Depot and on Tracks 20, 24, 25, 26, and 27 in the Willits Yard. These rights afford Mendocino a connection with the national rail system.

Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for a stay. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). As discussed below, Mendocino has not made the showing required under these standards.

Here, Mendocino has neither cited the criteria for a stay nor met them. Mendocino merely asserts that the notice of exemption contains two false statements that render the notice void ab initio. The first alleged misstatement is that NWPCO will replace NWPY, “which has been operating over [the line]. . . .”<sup>2</sup> Mendocino points out that NWPY has not operated over the line because of safety orders issued by the Federal Railroad Administration (FRA) forbidding such operations. As NWPCO points out in reply, the assailed statement more accurately might have read that “NWPCO will replace [NWPY], which has the authority to operate over [the line].”<sup>3</sup> But even if the original wording in the notice 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. Thus, the statement does not constitute false or misleading information within the meaning of 49 CFR 1150.34. See Central Illinois Railroad Company—Lease and Operation Exemption—Lines of The Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL, STB Finance Docket No. 33960, slip op. at 4 (STB served Sept. 12, 2002) (errors that are trivial, not misleading, and not material to the grant of an exemption are not a basis for rejection).

The second alleged misstatement is that the proposed transaction would not exceed the thresholds for environmental review under the regulation at 49 CFR 1105.7. That statement is factually correct, however. Where there have been no operations over a rail line, the applicable threshold is an increase of eight trains per day over any section of the line to be operated. 49 CFR 1105.7(e)(5)(i)(C); 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). NPWCO certifies that operations will not exceed the threshold of eight trains per day. Therefore, under the regulation, no environmental review is required.

Accordingly, Mendocino has not met its burden of showing a likelihood of success on the merits. Also, Mendocino has not justified the remaining elements required for a stay. Therefore, its request for a stay of the notice of exemption will be denied.

In the alternative, Mendocino also argues that the notice of exemption should include conditions (1) permitting Mendocino to continue the operations previously described and (2) requiring NCRA and/or NWPCO to maintain the tracks and reimburse Mendocino for previous maintenance expenditures. These conditions concern a trackage rights agreement that Mendocino admits is beyond the Board's regulatory authority because that agreement largely

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<sup>2</sup> Notice of Exemption, Exhibit 4 at 1.

<sup>3</sup> NWPCO Reply at 4.

covers the right to operate over switching, yard, and other track that is excepted from the Board's licensing regulation within the meaning of 49 U.S.C. 10906. In light of the excepted status of the track at issue, no conditions concerning these trackage rights would be appear to be warranted. Likewise, the Board may not resolve any dispute over the payment for maintenance of the excepted track because courts are the proper forum for the interpretation of such private agreements. See Saginaw Bay Southern Railway Company – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc., STB Finance Docket No. 34729, slip op. at 3 (STB served May 5, 2006) (Board is not proper forum to resolve private contractual disputes).<sup>4</sup>

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

It is ordered:

1. The request for stay is denied.
2. This decision is effective on its service date.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams  
Secretary

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<sup>4</sup> Another entity, Baywood Partners, Inc. of Santa Rosa, CA, filed a request on August 30, 2007, seeking imposition of a condition on any approval of the proposed transaction. NWPCO opposed the request in a pleading filed on August 30, 2007. Baywood claims that it has title to the real estate underlying a 1,000-foot segment of the line. Baywood seeks a requirement that NCRA and/or NWPCO negotiate with Baywood to arrive at a rental payment for NWPCO's use of that real estate. As with the conditions sought by Mendocino, a court is the proper forum for establishing any such rental payment.