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SERVICE DATE – LATE RELEASE DECEMBER 30, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35331

SIERRA NORTHERN RAILWAY—LEASE AND OPERATION EXEMPTION—UNION
PACIFIC RAILROAD COMPANY

Decided: December 30, 2009

On December 1, 2009, Sierra Northern Railway (SNR), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate a line of railroad owned by Union Pacific (UP) and known as the Santa Cruz Branch. The Santa Cruz Branch consists of approximately 31.0 miles of line, as well as an additional 3.6 miles of sidings and spurs, located between milepost 0.433, at the east boundary of Salinas Road, near Watsonville Junction, CA, and milepost 31.39, at the end of UP's line near Davenport, CA, including the interconnection with the Santa Cruz and Big Trees Railroad at milepost 20.4 at Santa Cruz, CA. Pursuant to an interchange agreement, UP also is granting to SNR certain trackage rights over trackage in UP's Watsonville yard as necessary for interchange. Notice of the exemption was served and published in the Federal Register on December 18, 2009 (74 FR 67006-07). The exemption is scheduled to go into effect on December 31, 2009.

CEMEX, Inc. (CEMEX), owns a cement plant in Davenport, located at the northern end of the Santa Cruz Branch. On December 23, 2009, CEMEX filed a petition asking the Board to hold the notice of exemption in abeyance pending SNR's filing of additional information (December 23 pleading). In the December 23 pleading, CEMEX argued that SNR's notice of exemption was incomplete and asked the Board to require SNR to provide additional information about future plans for the Santa Cruz Branch, as well as assurances from SNR and UP that these plans will not affect the continuation of freight rail service on the line. CEMEX also expressed concerns that SNR intends to use the line for passenger service, possibly to the detriment of freight service.

On December 28, 2009, SNR filed a reply in opposition to CEMEX's petition. SNR contended that the information CEMEX is requesting was not required as part of the notice of exemption and that the information is not relevant to the proceeding at issue here. Regarding CEMEX's concerns that SNR does not intend to provide freight service, SNR responded that freight service is SNR's "priority" and that the text of the lease agreement between UP and SNR specifies that the lease is for freight operations only. SNR also noted that its eligibility for a short-line tax credit of \$100,000 is contingent upon SNR's taking possession of the line by December 31, 2009.

On December 28, 2009, CEMEX submitted a pleading (December 28 pleading) in which it stated that it was unaware of the time-sensitive tax credit. CEMEX now states that it does not wish to stand in the way of SNR's use of the tax credit. Therefore, CEMEX states that it does not oppose the transaction going forward as described in SNR's notice of exemption, as long as the Board maintains oversight of SNR's lease and operations and reminds the parties that the common carrier obligation for freight service can only be terminated by order of the Board.

CEMEX's December 28 pleading will be considered a request to withdraw its petition to hold the notice of exemption in abeyance, and this request will be granted. The exemption will be permitted to go into effect as scheduled.

Should concerns arise in the future, the Board continues to have jurisdiction to revoke this exemption if a party demonstrates that regulation of this transaction is necessary to carry out the rail transportation policy of 49 U.S.C. 10101.¹ See 49 U.S.C. 10502(d). The Board also reminds the parties that a common carrier obligation to provide freight service pursuant to 49 U.S.C. 11101 cannot be terminated without express permission from the Board pursuant to 49 U.S.C. 10903.

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

It is ordered:

1. CEMEX's request to withdraw its petition to hold the notice of exemption in abeyance is granted.
2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ Before seeking recourse under the Board's statutory authority, however, the parties should, if either one desires to involve the Board, consider first invoking the agency's informal procedures. The Board maintains a resource for just such a purpose in the Board's Rail Customer and Public Assistance Program (reachable at (866) 254-1792 or by e-mail at rpa@stb.dot.gov). Additional information on the program is available to rail customers, carriers, and other interested entities on the Board's website at www.stb.dot.gov). Parties may well find satisfactory resolution in the first instance through the informal assistance available from this Program, and the Board encourages them to do so.