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SERVICE DATE – DECEMBER 21, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35091

PACIFIC UNIFIED RAILROAD CORPORATION—OPERATION EXEMPTION—KAISER
EAGLE MOUNTAIN RAILROAD

Decided: December 20, 2007

On November 23, 2007, Pacific Unified Railroad Corporation (PURC), a noncarrier, filed a verified notice of exemption to permit PURC to operate, pursuant to an agreement with Kaiser Eagle Mountain Railroad (KEM), KEM's approximately 52-mile rail right-of-way and trackage (the KEM trackage) between milepost 52.0 in Eagle Mountain and milepost 0.0 at Ferrum Junction, in Riverside County, CA.¹ On December 7, 2007, notice of the exemption in this proceeding was served and published in the Federal Register (72 FR 69283-84). The exemption was scheduled to become effective on December 23, 2007. Union Pacific Railroad Company (UP), however, filed a petition to stay the effective date of the exemption and requested that the Board commence a proceeding to determine whether PURC is using the Board's class exemption procedures for purposes other than the operation of a legitimate common carrier railroad. On December 18, 2007, PURC filed a request to withdraw its notice of exemption.

In its petition for stay, UP claims that, based on its information, there is a strong probability that this transaction is an attempt by PURC to gain "railroad police" status for PURC's private security business, which, if obtained, could confer on them the traditional rights and privileges afforded to law enforcement agencies, such as arrest powers. See 49 U.S.C. 28101 and 49 CFR part 207. UP provides evidence that PURC already has held itself out as a railroad police organization, and has sought state commissioning of its police organization in Tennessee and California, despite PURC's admission that it is not now a rail carrier. See 49 CFR 207.3.

UP also questions whether PURC even has an agreement with KEM for rail operation over the KEM trackage. In a filing submitted on December 17, 2007, Kaiser Ventures LLC, KEM's owner, states that KEM does not have any pending transactions with PURC.

¹ On November 16, 2007, PURC filed a notice of exemption from 49 U.S.C. 11323 to acquire trackage rights over the KEM trackage, but sought to withdraw that notice and replace it with a notice of exemption from 49 U.S.C. 10901 for operation over the KEM trackage because, as PURC states, it is not currently a rail carrier. In a decision served on December 5, 2007, the Board granted PURC's request to withdraw its notice of trackage rights exemption that had been submitted on November 16.

PURC's request to withdraw its notice of exemption will be granted, and UP's petition for stay will be denied as moot. The withdrawal of the notice of exemption, however, should alleviate UP's concerns that PURC could use any sort of Board authorization to obtain railroad police powers under state and federal law. PURC will remain a noncarrier without any authority from the Board.

The record in this case indicates that PURC attempted to acquire a license not to provide rail transportation, but rather solely to obtain color of right to operate a railroad police force or run a private security business. Under those circumstances, the Board will review with heightened scrutiny any future request by PURC or its principals for authority to commence rail operations, and will require, in any such future case, substantial information on plans for providing railroad operations, including obtaining the necessary equipment and personnel, as well as any other intended activities.

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

It is ordered:

1. PURC's request to withdraw its notice of operation exemption is granted.
2. UP's petition to stay is denied as moot.
3. This proceeding is discontinued.
4. This decision is effective on its date of service.
5. This decision is being served on the Federal Railroad Administration and appropriate officials in Tennessee and California.

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

Vernon A. Williams
Secretary