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SERVICE DATE – MARCH 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34980

CITY OF COEUR d'ALENE
– ACQUISITION AND OPERATION EXEMPTION –
UNION PACIFIC RAILROAD COMPANY

Decided: March 29, 2007

On March 13, 2006, the City of Coeur d'Alene, ID (the City), filed what purports to be a verified notice of exemption under 49 CFR 1150.31. The City seeks authorization to acquire from the Union Pacific Railroad Company (UP) the right to restore rail service over a rail banked 5.25-mile railroad right-of-way extending between milepost 2.25 near Meyer Road and milepost 7.50 near Beebe Boulevard, all in Kootenai County, ID. This line of railroad was previously the subject of a proposal to abandon the line, in Union Pacific Railroad Company – Abandonment Exemption – in Kootenai County, ID, STB Docket No. AB-33 (Sub-No. 218X) (STB served Dec. 16, 2004, and Mar. 14, 2005). The North Idaho Centennial Trail Foundation (NICTF) subsequently was authorized to negotiate an interim trail use/rail banking agreement with UP pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). UP entered into a rail banking agreement with NICTF in February 2007, and the right-of-way currently is rail banked. The City specifically states that its notice is not intended to affect the rail banked status of the property.

The notice of exemption will be rejected. The record here does not afford sufficient information to show that the filing qualifies for the class exemption.

The only precedent cited by the City, BG & CM Railroad, Inc. – Acquisition and Operation Exemption – Camas Prairie Railnet, Inc., STB Finance Docket No. 34398 (STB served Oct. 17, 2003) (BG&CM), states that the right to reactivate rail service on a rail banked line does not transfer to the trail user “without the Board’s approval.” In BG&CM, the Board authorized BG&CM Railroad to reactivate service on the rail banked property at issue.

The City, however, is not a rail carrier and has provided no basis to enable the Board to find that the City is either able or willing to reactivate rail service. Nor does the City explain why it wishes to obtain UP’s right to reactivate rail service at this time. The record contains no indication that reactivation is imminent, or that the abandoning railroad, UP, is either unwilling or unable to reassert control to restore service on the line in the future. The City’s request thus is, at best, premature.

Moreover, by its terms, the class exemption applies to transactions that are otherwise subject to 49 U.S.C. 10901. Neither section 10901 nor the regulations at 49 CFR 1150.31 have been applied to transactions where, as here, a party seeks to acquire a carrier's right to reactivate service on a rail banked line at some point in the future.

Rail banking means that the previous operator (here UP) is relieved of the current obligation to provide service on the line, but that it or any other approved rail service provider may restore rail service over the line in the future. See Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996); Iowa Power – Const. Exemp. – Council Bluffs, IA, 8 I.C.C.2d 858, 866-67 (1990) (Iowa Power). An interim trail use arrangement is therefore subject to being cut off at any time by the reinstatement of rail service. 16 U.S.C. 1247(d); 49 CFR 1152.29(d)(2)-(3). Thus, even if the City were to acquire UP's right to reactivate rail service on this rail banked property, that acquisition would not foreclose another rail service provider that wished to reactivate rail service on this right-of-way from seeking authority to do so at that point. See Iowa Power. Under the Trails Act, the property must remain available at all times for such reactivation of rail service by any approved rail service provider.

It is ordered:

1. The notice of exemption is rejected.
2. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary