

232226

April 20, 2012

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

232227
ENTERED
Office of Proceedings
April 20, 2012
Part of
Public Record

RE: Joint Petition for Exemption for Union Pacific Railroad Company (“UP”) to discontinue trackage rights and abandon UP’s freight easement upon, and for Santa Clara Valley Transportation Authority (“VTA”) to abandon VTA’s residual common carrier obligation upon, the San Jose Industrial Lead from M.P. 7.35 near Warm Springs to M.P. 16.3 near San Jose, a distance of 8.95 miles in Alameda and Santa Clara Counties, California (the “Line”). The Line is to be abandoned for freight service but shall be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System (“BART”). The UP docket for this filing is AB-33 (Sub-No. 303X). The VTA docket for this filing is AB-980 (Sub-No. 1X)

And

Request Under 49 U.S.C. § 10502 to Exempt the Proposed Joint Petition for Exemption for UP to Discontinue Trackage Rights and Abandon UP’s Freight Easement Upon and for VTA to Abandon VTA’s Residual Common Carrier Obligation Upon the Above-Referenced Line from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and the Public Use Provisions of 49 U.S.C. § 10905 for Reasons of Overriding Public Need

**CORRECTION OF AND CLARIFICATION TO
JOINT PETITION FOR EXEMPTION**

It has been brought to the attention of UP and VTA that UP’s portion of this Joint Petition for Exemption should be limited to authority from the Board for abandonment of UP’s freight railroad easement upon the Line. UP’s portion of this Joint Petition seeking to discontinue alleged trackage rights on the Line is not applicable to UP’s existing common carrier by railroad authority to operate on the Line and in fact such alleged trackage rights do not exist.

UP’s sole and exclusive common carrier by railroad authority to operate on the Line arises under the reservation of an easement for freight railroad operating purposes under that certain Quit Claim Deed delivered by UP as Grantor to VTA as Grantee dated December 11, 2002 as authorized by the Board in its decision in FD 34292 – Santa Clara Valley Transportation

Authority – Acquisition Exemption – Union Pacific Railroad Company, having a service date of December 26, 2002 (the “Freight Railroad Easement”).

The reference to a “Trackage Rights Agreement” arises from the fact that in conjunction with the Freight Railroad Easement, UP and VTA entered into an operating agreement also dated December 11, 2002 which was unfortunately named, “Trackage Rights Agreement.” The Trackage Rights Agreement was not a trackage rights agreement in the traditional sense and was never intended to be nor was it ever filed with the Board. The Trackage Rights Agreement was merely an operating agreement outlining the contractual obligations of UP and VTA with regard to the maintenance, cost sharing, indemnification, insurance, dispute resolution and other operating matters. The Trackage Rights Agreement specifically acknowledges that, UP retained the exclusive Freight Railroad Easement over the freight trackage and the property. It is clear that such retained Freight Railroad Easement is the exclusive Board authorized interest UP has for providing common carrier freight railroad operations on the Line.

Wherefore, UP respectfully requests that this Joint Petition for Exemption be amended to reflect that UP is only seeking to abandon UP’s freight easement upon the Line, that all references to discontinuance of UP’s trackage rights be deleted as being inapplicable and that VTA’s portion of the Joint Petition for Exemption remain as stated and filed with the Board.

Respectfully submitted,



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