

July 29, 2014

VIA MESSENGER DELIVERY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

236366
ENTERED
Office of Proceedings
July 29, 2014
Part of
Public Record



Re: STB Finance Docket No. 35846, *Metropolitan Transit Authority of Harris County, Texas--Acquisition Exemption--Union Pacific Railroad Company's Right to Restore Service over Rail Banked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas*

Dear Ms. Brown:

Enclosed please find one (1) original and ten (10) copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.31 for filing with the Board in the above-referenced proceeding. Enclosed please also find one (1) additional copy that we would appreciate you file, time, and/or date-stamping and returning to us via our courier.

Metropolitan Transit Authority of Harris County, Texas is a metropolitan transit authority created under the laws of Texas as a public body corporate and politic, and as such, is a state or local government entity for which filing fees are waived pursuant to 49 C.F.R. § 1002.2(e)(1).

Very truly yours,

Thompson Coburn LLP

By 
Thomas Sean McGowan

Enclosures

FEE RECEIVED
July 29, 2014
SURFACE
TRANSPORTATION BOARD

FILED
July 29, 2014
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Metropolitan Transit Authority)
of Harris County, Texas – Acquisition)
Exemption -- Union Pacific Railroad)
Company’s Right to Restore Rail)
Service over Rail Banked)
Right-of-Way in Harris, Fort Bend,)
Austin, Wharton, and Colorado)
Counties, Texas)

Finance Docket No. 35846



**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Sean McGowan
Kathleen E. Kraft
Thompson Coburn LLP
1909 K St. NW, Suite 600
Washington, D.C. 20006
(202) 585-6900
(202) 585-6969 (fax)
smcgowan@thompsoncoburn.com
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Attorneys for Metropolitan Transit
Authority of Harris County,
Houston, Texas

Dated: July 29, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Metropolitan Transit Authority)	
of Harris County, Texas – Acquisition)	
Exemption -- Union Pacific Railroad)	
Company’s Right to Restore Rail)	Finance Docket No. 35846
Service over Rail Banked)	
Right-of-Way in Harris, Fort Bend,)	
Austin, Wharton, and Colorado)	
Counties, Texas)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, the Metropolitan Transit Authority of Harris County, Texas (METRO), a non-carrier, hereby provides this verified notice of exemption for its acquisition from Union Pacific Railroad Company (UP) of the right to restore rail service (restoration right) over a rail banked right-of-way for the line between the Bellaire Branch’s milepost 3.48 near Bellaire Junction in Houston, Harris County, Texas, to milepost 61.2 near Eagle Lake, in Colorado County, Texas, a distance of 57.72 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas (the Westpark Line).

BACKGROUND

In 1992, Southern Pacific Transportation Company (SP) conveyed to METRO multiple pieces of property, including portions of the Westpark Line. SP retained an operating easement to conduct freight operations and to otherwise fulfill SP’s obligations as a common carrier railroad over the Westpark Line (the Railroad Easement). *See generally Metropolitan Transit Authority of Harris County, TX-Petition for Declaratory Order, 9 I.C.C.2d 559, F.D. 32260*

(Apr. 15, 1993) (finding that METRO-SP transaction was not subject to the jurisdiction of the Commission).

In 1996, UP became the successor in interest to SP pursuant to the Board's authority granted in *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996). UP succeeded to SP's rights under the Railroad Easement. UP continued providing rail operations over the Westpark Line pursuant to the Railroad Easement until 2001, when UP sought to abandon the common carrier obligation that it had inherited from SP with respect to a portion of the Westpark Line. *Union Pacific Railroad Company--Abandonment--In Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tx*, AB-33 (Sub-No. 156). Two requests for certificates of interim trail use were filed in the abandonment proceeding. On November 8, 2000, the Board issued its decision and Certificate of Interim Trail Use for the portion of the Westpark Line stretching from milepost 3.48 near Bellaire Junction in Houston, to milepost 52.9, near Chesterville (the Sub-No. 156 ROW).

In May 2001, UP and METRO reached an agreement for rail banking and interim trail use of the Sub-No. 156 ROW. The rail banking agreement was accompanied by a deed without warranty, pursuant to which UP conveyed the Railroad Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 156 ROW, to METRO, subject to certain conditions and exceptions. Thus, pursuant to the rail banking agreement and deed without warranty, METRO became the interim trail user and the holder of the restoration rights for the Sub-No. 156 ROW. The Sub-No. 156 ROW remains rail-banked, and METRO has not operated over the line.

In 2008, UP filed a notice of exemption seeking authority to abandon the remaining 8.3 miles of the Westpark Line, between milepost 52.9 near Chesterville in Wharton County, Texas, and milepost 61.2 near Eagle Lake in Colorado County, Texas (the Sub-No. 253X ROW, and together with the Sub-No. 156 ROW, the Subject ROW). *Union Pacific Railroad Company—Abandonment Exemption—In Colorado and Wharton Counties, Tx*, AB-33 (Sub-No. 253X). METRO filed a petition for trail use/rail banking condition for the Sub-No. 253X ROW. On March 24, 2008, the STB issued its decision and Notice of Interim Trail Use for the Sub-No. 253X ROW.

In December 2008, UP and METRO reached an agreement for rail banking and interim trail use of the Sub-No. 253X ROW. The rail banking agreement was accompanied by a deed without warranty, pursuant to which UP conveyed the Railroad Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 253X ROW, to METRO, subject to certain conditions and exceptions. Thus, pursuant to the rail banking agreement and deed without warranty, METRO became the interim trail user and the holder of the restoration rights for the Sub-No. 253X ROW. The Sub-No. 253X ROW remains rail-banked, and METRO has not operated over the line.

Acquisition by a non-carrier of the restoration rights over a rail banked right-of-way requires an exemption from 49 U.S.C. § 10901 under 49 C.F.R. § 1150.31, *et seq.* See *Norfolk and Western Railway Company—Abandonment Between St. Mary's and Minister in Auglaize County, OH*, 9 I.C.C.2d 1015 (1993); *King County, Wash.—Acquisition Exemption—BNSF Railway*, STB Finance Docket No. 35148 (STB served Sept. 18, 2009). Not having been aware of the requirement, METRO failed to obtain such an exemption. That requirement was recently

brought to METRO's attention. Accordingly, METRO hereby seeks an exemption for its acquisition from UP of the restoration rights over the Subject ROW.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant:

Applicant is the Metropolitan Transit Authority of Harris County, Texas, 1900 Main St., Houston, TX 77002.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

Applicant's representative is Sean McGowan, Thompson Coburn, LLP, 1909 K St. NW, Suite 600, Washington, DC 20006, (202) 585-6900, smcgowan@thompsoncoburn.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached:

The agreements between UP and METRO for METRO's acquisition of UP's right to restore rail service over the Subject ROW were reached in May 2001 and December 2008. Exemptions were not sought at the time of the acquisitions, however, because METRO was not aware of the requirement for the exemptions.

(d) The operator of the property:

The Subject ROW is a rail banked right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d). There will be no operator of the property, unless and until rail service is restored.

(e) A brief summary of the proposed transaction, including

(1) The name and address of the railroad transferring the subject property:

The railroad that transferred the right to restore rail service over the right-of-way is Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179.

(2) The proposed time schedule for consummation of the transaction:

METRO's acquisitions of the right to restore rail service over the Subject ROW were consummated in 2001 and 2008.

(3) The mile-posts of the subject property, including any branch lines:

The Subject ROW extends between the Bellaire Branch's milepost 3.48 near Bellaire Junction in Houston, Harris County, Texas, to milepost 61.2 near Eagle Lake, Colorado County, Texas.

(4) The total route miles being acquired:

The right to restore rail service over 57.72 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas was acquired by METRO from UP in 2001 and 2008.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:

A map that clearly indicates the Subject ROW, where the acquired restorations right lie, is attached as **Appendix 1**.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier:

Per 49 C.F.R. § 1201, the amount of projected revenues that exceed qualification as a Class III carrier are \$20 million after applying the railroad revenue deflator formula. METRO became the holder of the restoration rights over the Subject ROW pursuant to two transactions with UP. METRO is not a railroad with a common carrier obligation to provide freight service over the Subject ROW and has not, and does not intend to, operate over the Subject ROW. A certificate that METRO has no revenues from freight operations is attached as **Appendix 2**.

(h) Transactions imposing interchange commitments:

This information is not applicable here.

The remaining required information is attached to this notice or has been provided by other parties.¹ A verification is attached as **Appendix 3**. The required Caption Summary is attached as **Appendix 4**. A certification that the annual freight revenues that would result from the transaction would be less than \$5 million is attached as **Appendix 5**. Copies of the Verified Notice and attachments are being served simultaneously on counsel for UP.

CONCLUSION AND REQUESTED RELIEF

METRO respectfully requests that the Director of the Board's Office of Proceedings publish a notice in the Federal Register within sixteen (16) days of this filing per 49 C.F.R. § 1150.32(b). METRO notes that the exemption will be effective thirty (30) days after this filing.

¹ The proposed acquisition does not require environmental or historic reporting or assessment. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1). By virtue of 49 U.S.C. § 10901(c), labor protections do not apply to this transaction.

Respectfully submitted,



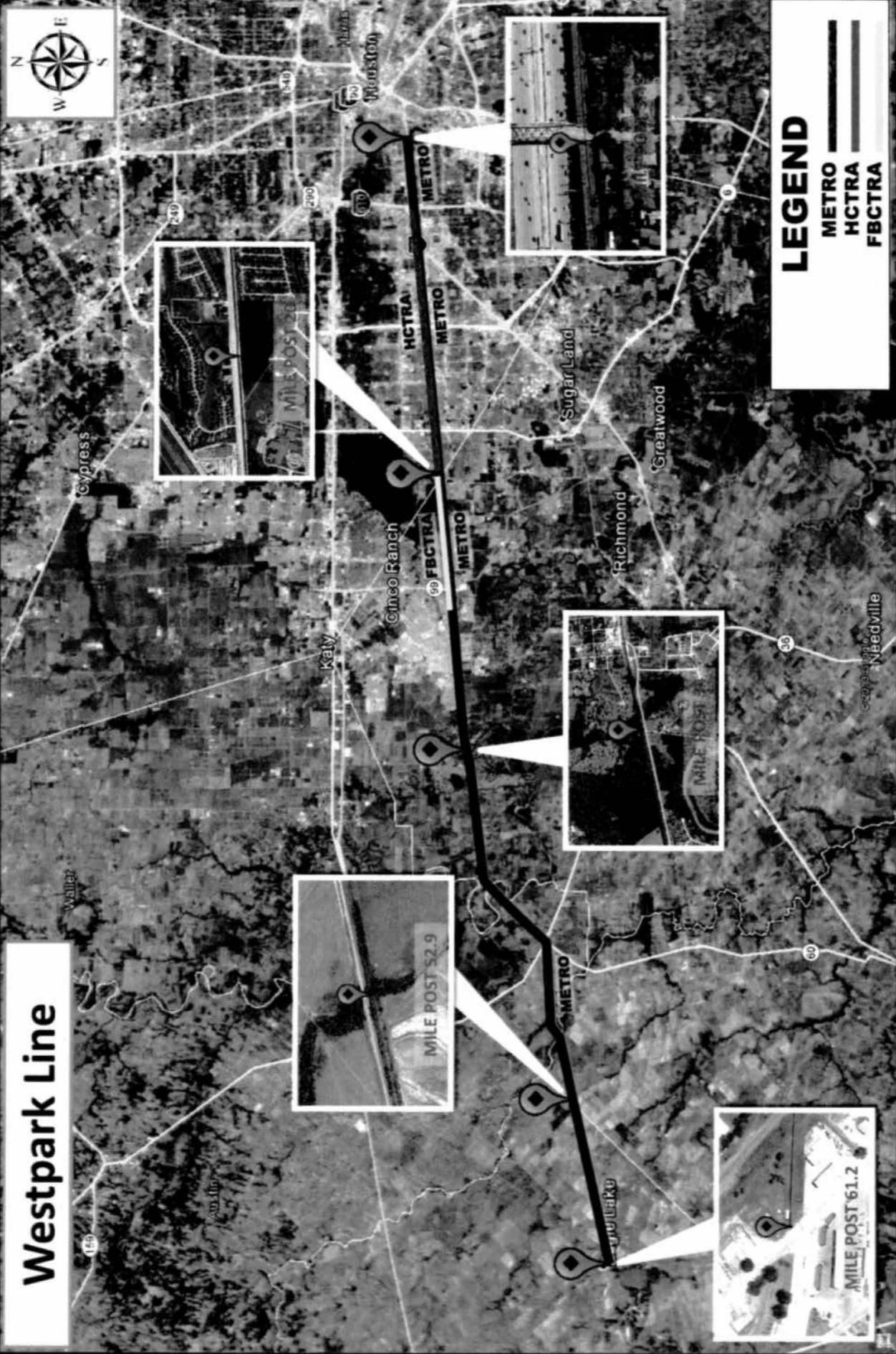
Sean McGowan
Kathleen E. Kraft
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Attorneys for Metropolitan Transit
Authority of Harris County,
Houston, Texas

Dated: July 29, 2014

Map of the Subject ROW

Westpark Line



LEGEND

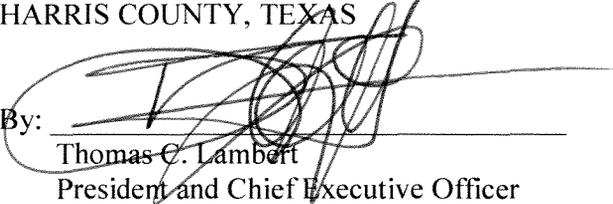
- METRO
- HCTRA
- FBCTRA

Certificate per 49 C.F.R. 1150.33(g)

I, Thomas C. Lambert, hereby certify that the Metropolitan Transit Authority of Harris County, Texas (METRO) will not conduct freight operations on the line segment involved in this proceeding, and therefore, METRO will not have any revenues from freight operations.

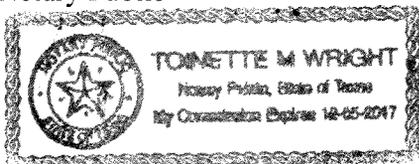
METROPOLITAN TRANSIT AUTHORITY OF
HARRIS COUNTY, TEXAS

By: _____


Thomas C. Lambert
President and Chief Executive Officer

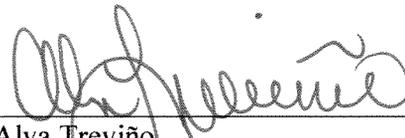
SUBSCRIBED and SWORN to
before me this 27th day of July, 2014.


Notary Public



Verification

I, Alva Treviño, being duly sworn, state that I am familiar with the facts asserted in this Verified Notice of Exemption and that all facts are true and correct.

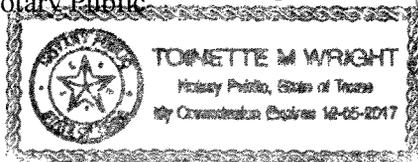


Alva Treviño
General Counsel
Metropolitan Transit Authority of
Harris County, Texas

SUBSCRIBED and SWORN to
before me this ^{29th} ~~27th~~ day of July, 2014.



Notary Public



SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 35846

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

--ACQUISITION EXEMPTION--

**UNION PACIFIC RAILROAD COMPANY'S RIGHT TO RESTORE RAIL SERVICE OVER RAIL
BANKED RIGHT-OF-WAY IN HARRIS, FORT BEND, AUSTIN, WHARTON, AND COLORADO
COUNTIES, TEXAS**

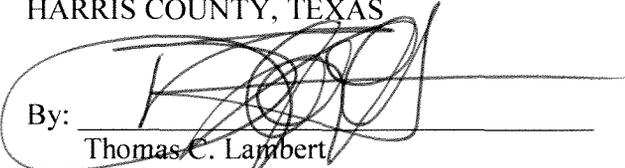
The Metropolitan Transit Authority of Harris County, Texas has filed a notice of exemption to acquire Union Pacific Railroad Company's right to restore rail service over rail banked right-of-way on the portion of the Westpark Line from milepost 3.48 near Bellaire Junction in Houston, Harris County, Texas, to milepost 61.2 near Eagle Lake, Colorado County, Texas, a distance of 57.72 miles in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas. Comments must be filed with the Board and served on Sean McGowan, Thompson Coburn LLP, 1909 K St. NW, Suite 600, Washington, DC 20006, (202) 585-6900 (phone). The Notice is filed under § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certification

I, Thomas C. Lambert, hereby certify that the annual revenues for freight operations that would result from the transaction involved in this proceeding would be less than \$5 million because the line segment involved in this proceeding is rail banked under the National Trails System Act (Trails Act) and METRO has not and does not intend to conduct freight operations on the line segment involved in this proceeding.

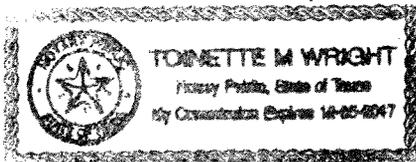
METROPOLITAN TRANSIT AUTHORITY OF
HARRIS COUNTY, TEXAS

By: _____


Thomas C. Lambert
President and Chief Executive Officer

SUBSCRIBED and SWORN to
before me this 25th day of July, 2014.


Notary Public



Certificate of Service

I hereby certify that on July 29, 2014, I served a copy of the foregoing Verified Notice of Exemption under 49 C.F.R. § 1150.31 by first class mail, postage prepaid on the following:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
Attn: Counsel's Office



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Kathleen E. Kraft
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