

STB FINANCE DOCKET NO. 32173 ET AL.<sup>1</sup>

ORANGE COUNTY TRANSPORTATION AUTHORITY  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
SAN BERNARDINO ASSOCIATED GOVERNMENTS  
SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD  
NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD  
--ACQUISITION EXEMPTION-- THE ATCHISON, TOPEKA  
AND SANTA FE RAILWAY COMPANY

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*Decided February 28, 1997*

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Under 49 U.S.C. 10505, the Board exempts the Transit Agencies' operation of the properties described in Appendix A from the provisions of 49 U.S.C. Subtitle IV.

BY THE BOARD:<sup>2</sup>

By petition filed with the ICC on July 15, 1994, five county transportation agencies in southern California<sup>3</sup> (the County Agencies) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) (jointly "the Transit Agencies") requested (1) an exemption from 49 U.S.C. Subtitle IV for all of the

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<sup>1</sup> This proceeding includes Finance Docket No. 32172, *Los Angeles County Transportation Commission--Acquisition Exemption--The Atchison, Topeka and Santa Fe Railway Company*.

<sup>2</sup> The *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 803 (*ICCTA*), enacted December 29, 1995, effective January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). Section 204(b)(1) of *ICCTA* provides that proceedings pending before the ICC on the effective date shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by *ICCTA*. This decision relates to a proceeding pending with the ICC prior to January 1, 1996, and to functions subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and other remaining regulatory provisions of 49 U.S.C. Subtitle IV.

<sup>3</sup> These agencies are: Orange County Transportation Authority (OCTA); Riverside County Transportation Commission; San Bernardino Associated Governments (SANBAG); San Diego Metropolitan Transit Development Board; and North San Diego County Transit Development Board.

properties acquired by the County Agencies in Finance Docket Nos. 32172 and 32173 (described in the Appendix) from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe);<sup>4</sup> (2) a "clarification" that the ICC's decision in *Orange County Transp.--Exempt.--Atchison, T. & S.F. Ry Co.*, 10 I.C.C.2d 78 (1994) (*Orange County*), granted a blanket exemption from *all* of 49 U.S.C. Subtitle IV (including the abandonment provisions) concerning OCTA's operation of the West Santa Ana Branch line;<sup>5</sup> and (3) the establishment of abandonment procedures for the County Agencies under the authority of their exemptions from 49 U.S.C. Subtitle IV.

On August 25, 1994, a group of railroad unions (the Unions) replied in opposition. The Unions argue that: (1) the ICC lacked authority to grant blanket exemptions from Subtitle IV; (2) even if the ICC had such jurisdiction, the Transit Agencies failed to satisfy the requirements of 49 U.S.C. 10505(a) for granting such an exemption; (3) the requested clarification should be denied because the ICC did not exempt any properties from Subtitle IV in *Orange County*; and (4) because the ICC lacked authority to grant blanket exemptions, it should not adopt procedures for implementing them. The ICC requested comments on the petition,<sup>6</sup> and statements were filed by the Transit Agencies, the Unions, the United Transportation Union, John W. Snyder, R.L. Banks & Associates, Inc., and the Florida Tri-County Commuter Rail Authority.

#### BACKGROUND

In 1992, the County Agencies jointly filed a notice of exemption with the ICC to acquire six railroad lines from Santa Fe.<sup>7</sup> The County Agencies asserted that, while they believed the ICC lacked jurisdiction, they were invoking the class exemption for the acquisitions because the ICC had asserted jurisdiction

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<sup>4</sup> On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into Burlington Northern Railroad Company. The name of the surviving corporation of the merger is The Burlington Northern and Santa Fe Railway Company. For purposes of this decision, we will continue to refer to the carrier as "Santa Fe" with respect to both past and future events.

<sup>5</sup> In particular, the line at issue is a portion of the West Santa Ana Branch running from milepost 495.14 near Paramount, to approximately milepost 507.84, the centerline of Beach Boulevard near Stanton.

<sup>6</sup> See, notice served November 14, 1994, and published at 59 Fed. Reg. 58,855 (1994).

<sup>7</sup> The lines are listed in the Appendix.

over similar acquisitions by the Los Angeles County Transportation Commission (LACTC).<sup>8</sup> The exemption became effective on October 23, 1992, and was served on November 20, 1992. In an April 8, 1993 decision, the ICC began an investigation of whether the five County Agencies' acquisitions from Santa Fe were subject to ICC jurisdiction. That investigation culminated in the *Orange County* decision. There, the ICC affirmed its jurisdiction over the acquisitions and refused to vacate the notice of acquisition exemption in that proceeding. The ICC also affirmed its jurisdiction over conveyances from Santa Fe to LACTC that had been exempted in another case involving similar issues.<sup>9</sup>

In addition, the ICC modified its earlier order in *Southern Pacific* by exempting the acquisition of two lines by two California state agencies.<sup>10</sup> Specifically, the ICC approved SANBAG's acquisition of the Baldwin Park Line and OCTA's acquisition of the West Santa Ana Branch. Finally, the ICC also allowed SANBAG and OCTA to benefit from the same exemptions from Subtitle IV that had been granted to LACTC in *Southern Pacific*.

#### PRELIMINARY MATTER

On January 23, 1995, the Unions tendered an additional statement and a motion to accept it into the record. The Transit Agencies replied that they did

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<sup>8</sup> See, *Southern Pac. Transp. Co. -- Aban. -- L. A. County, CA*, 8 I.C.C.2d 495 (1992), reconsidered and clarified 9 I.C.C.2d 385 (1993) (*Southern Pacific*). On April 1, 1993, LACTC merged with the Southern California Rapid Transit District to form the new entity, LACMTA.

<sup>9</sup> *Los Angeles County Transportation Commission -- Acquisition Exemption -- The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32172 (ICC served December 2, 1992). The property at issue there involved three separate lines:

- (1) the Pasadena Subdivision between milepost 104.2 and milepost 140.05 at Mission tower in Los Angeles County;
- (2) the San Bernardino Subdivision between milepost 140.05 at Mission Tower and milepost 143.19 in Los Angeles County; and
- (3) the Harbor Subdivision between milepost 0.05 at Redondo Junction and milepost 26.36 near Watson, but excluding Van Ness Yard, Malabar Yard, and El Segundo Yard, all in Los Angeles County.

<sup>10</sup> In *Southern Pacific*, the ICC had exempted SP's sale of the Baldwin Park Line and the West Santa Ana Branch to LACTC and had granted LACTC a blanket exemption from 49 U.S.C. Subtitle IV to operate the Baldwin Park Line. The ICC granted LACTC a conditional Subtitle IV exemption to operate the West Santa Ana Branch line and five other lines.

When the ICC decided *Southern Pacific*, the ICC had not been informed that these lines had been transferred to different agencies and that LACTC was not going to consummate the acquisition of these lines.

not object to the filing of the Unions' supplemental statement, but asked that we accept the Transit Agencies' reply even though it was filed one day late. We will accept both the Unions' supplemental statement and the Transit Agencies' reply.

Also, in a letter filed May 24, 1994, the County Agencies noted certain "typographical errors" in the decision in *Orange County*.<sup>11</sup> Because these errors did not affect the substance of the ICC's decision, we take this opportunity to correct them. The modification will be reflected in the official version of the decision appearing in the 10 I.C.C.2d bound volume of the ICC reports.

### DISCUSSION AND CONCLUSIONS

As noted, the Transit Agencies request: (1) a blanket exemption from 49 U.S.C. Subtitle IV; (2) clarification of the ICC's decision in *Orange County*; and (3) special abandonment procedures. Each of these matters is discussed below.

#### I. Exemption from 49 U.S.C. Subtitle IV

We are granting the requested exemption from 49 U.S.C. Subtitle IV. Under 49 U.S.C. 10505, an exemption shall be granted if: (1) regulation is not necessary to carry out the transportation policy of section 10101a; and (2) either (A) the transaction or service is of limited scope or (B) regulation is not needed to protect shippers from the abuse of market power. As detailed below, we find that regulation is not needed to carry out the transportation policy of section 10101a, that the transaction or "service" that is being exempted is of limited scope, and that regulation is not required to protect shippers from an abuse of market power.

When the ICC designated these Transit Agencies to be "rail carriers" in the first place, its only reason for doing so was to assure that they did not unduly interfere with the provision of common carrier freight service by carriers such as Santa Fe that were selling their underlying rights-of-way without eliminating

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<sup>11</sup> The County Agencies state that Footnote 4 of the April 7 decision in *Orange County* should be corrected as follows:

Line 1, Pasadena Subdivision milepost 82.60 should read as 82.62.  
Line 2, San Diego Subdivision milepost 267.61 should read as 267.70.  
Line 7, San Jacinto Subdivision milepost .34 should read as .30.  
Line 8, Redlands Subdivision milepost .05 should read as .12.

their common carrier obligation to provide service over them. The ICC never intended that these agencies be subjected to the full panoply of carrier obligations under the Interstate Commerce Act (Act). Because the Transit Agencies are not going to be operating as rail freight common carriers and do not hold themselves out to provide service over those lines, it makes no sense to subject them to the various requirements of the Act relating to freight service. Exempting them from these requirements merely removes unnecessary regulation that serves no purpose in carrying out the goals of section 10101a. Moreover, the transaction or "service" that is being exempted is extremely limited in scope. Indeed, the Transit Agencies are providing no "service" that we regulate; they have merely been given the obligation not to *interfere* unduly with the provision of rail freight service by the carrier that retains the obligation to do so. The Transit Agencies will continue to have that obligation.<sup>12</sup>

Santa Fe and other tenant carriers in the same position must continue to provide freight service over the lines until we allow them to abandon it. If Santa Fe seeks to abandon its freight service obligation over any of the lines at a future date, we will evaluate all of the needs of freight shippers, and all of the related labor, environmental, and historic preservation issues at that time. If we permit the freight carrier to abandon, we will not require the Transit Agencies to provide residual or fall-back freight service. There is no need for us to require the Transit Agencies to file an abandonment application in this situation. *See*, 49 U.S.C. 10101a(2). By helping local mass transit agencies avoid needless expense concerning the regulation of freight service, the requested exemption furthers mass transit service and thereby "encourage[s] and promote[s] energy conservation," and reduces unnecessary barriers to exit. 49 U.S.C. 10101a(7), (15). Other provisions of the rail transportation policy would not be implicated.

We also find that continued regulation of the Transit Agencies is not required to protect freight shippers from the abuse of market power because the Transit Agencies will not be providing freight service. Regulatory remedies with regard to Santa Fe, which will be providing freight service, remain, as do remedies with regard to the Transit Agencies if they unduly interfere with the railroad's ability to provide service.

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<sup>12</sup> If the Transit Agencies were to interfere unduly with such operations, we could take whatever remedial action is necessary to ensure continuation of adequate freight service for shippers.

We disagree with the Unions' argument that the ICC lacked authority to grant blanket exemptions from Subtitle IV. Section 10505 did not so limit the ICC's exemption power, so long as the statutory criteria were met, as here. By its terms, section 10505 allowed the ICC to exempt a "service." The exemption of a "service" exempts the carrier from all provisions of Subtitle IV applicable to that service, and the ICC and the STB have granted such exemptions where warranted. The legislative history of former section 10505 (now section 10502) indicates that the ICC was, and the Board is, to grant exemptions liberally and to correct problems after they arise. See, *Exemption from Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983).

## II. Clarification

As noted, the Transit Agencies request a "clarification" that the ICC's decision in *Orange County* granted a blanket exemption from *all* of 49 U.S.C. Subtitle IV, including the abandonment provisions, concerning the West Santa Ana Branch line acquired by OCTA. They are concerned about the following language (*Orange County*, 10 I.C.C.2d at 89):

[I]n keeping with our precedent in *Southern Pacific*, 8 I.C.C.2d at 511-513, we will on our own motion: (1) grant SANBAG a total exemption from 49 U.S.C. Subtitle IV concerning its operation of the Baldwin Park Line; and (2) grant OCTA the same limited exemption from Subtitle IV that was previously granted to LACTC in *Southern Pacific* at 8 I.C.C.2d at 513 concerning its operation of the West Santa Ana Branch.

Petitioners find the above-quoted language confusing because the ICC did not explain the distinction between a limited and a total exemption. Petitioners argue that both OCTA and SANBAG should be treated the same, and both should receive "total" Subtitle IV exemptions.

We will grant the requested clarification. In *Southern Pacific*, the ICC did not immediately grant LACTC a blanket Subtitle IV exemption for its future operation of the West Santa Ana Branch line and five other lines; see note 10 *supra*. Rather, the ICC subjected the Subtitle IV exemption for those six lines to a condition requiring that the Transit Agencies enter a shared use agreement with the freight carrier to allow continued freight service. The ICC said that (8 I.C.C.2d at 513):

If shared use arrangements are not made within 30 days, we will modify the Subtitle IV exemption to require LACTC to seek our approval before service is discontinued or abandoned.

Thus, if the agreements were made and submitted to the ICC, LACTC would receive a blanket Subtitle IV exemption. The ICC's decision in *Orange County*, 10 I.C.C.2d at 89, allowed OCTA to benefit from a similar Subtitle IV exemption. On reconsideration, the ICC noted that SP had submitted the required shared use agreements for the West Santa Ana Branch and three other lines. *Southern Pacific*, 9 I.C.C.2d at 389. The agencies thus acquired a blanket exemption from Subtitle IV.

### III. Future Action under Subtitle IV Exemptions

The Transit Agencies propose special abandonment procedures for meeting their obligations under the National Environmental Policy Act (NEPA) and the labor protective provisions of section 10903. They propose to file a notice reciting the labor protection that we are required to impose, and adopting whatever environmental and historic reports are filed by the SP, Santa Fe or other freight railroad in the proceeding in which the freight railroad seeks to discontinue freight service over the subject line.

This proposal is acceptable and we will adopt it. All of the issues pertaining to labor protection and environmental and historic issues can be adequately treated in the discontinuance proceeding and, if the reports filed reflect adequate treatment, we will adopt them. We note also that, in authorizing an exemption, we may not relieve a carrier of any statutorily mandated protection of its employees' interests. Therefore, if the properties involved in the exemption granted in this proceeding were involved in a future transaction, other than abandonment or discontinuance, that was subject to statutorily mandated employee protection, this exemption would not relieve the parties of their statutory duty to provide that protection.

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

*It is ordered:*

1. Under 49 U.S.C. 10505, we exempt the Transit Agencies' operation of the properties described in Appendix A from the provisions of 49 U.S.C. Subtitle IV.
2. Notice will be published in the *Federal Register* on March 12, 1997.
3. This exemption will be effective on April 11, 1997. Petitions to stay must be filed by March 24, 1997. Petitions to reopen must be filed by April 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

## APPENDIX

*Santa Fe Trackage Proposed For Blanket Subtitle IV Exemption*

## I. Lines Acquired Through Finance Docket No. 32173

1. Pasadena Subdivision between milepost 82.62 and milepost 140.05 at Mission Tower;
2. San Diego Subdivision between milepost 267.70 in San Diego and milepost 165.55 at Fullerton, including the Fallbrook Yard but excluding interchange tracks at Anaheim and Santa Ana and the Tustin Spur Track;
3. Olive Subdivision from milepost 0.14 at Atwood to milepost 5.37 at Olive Junction;
4. Escondido Subdivision between milepost 0.10 at Escondido Junction and milepost 21.31 in Escondido;
5. San Jacinto Subdivision between milepost 0.30 at Highgrove and milepost 38.33 at San Jacinto; and
6. Redlands Subdivision between milepost 0.12 at San Bernardino and milepost 13.40 at or near Mentone.

These mileposts reflect the County Agencies' corrections to their prior statement of them brought to our attention by a letter filed May 26, 1994 (*compare* the unbound decision in *Orange County*, 10 I.C.C.2d at 80 n.4).

## II. Lines Acquired Through Finance Docket No. 32172

1. Pasadena Subdivision between milepost 104.2 and milepost 140.05 at Mission tower in Los Angeles County;
2. San Bernardino Subdivision between milepost 140.05 at Mission Tower and milepost 143.19 in Los Angeles County; and
3. Harbor Subdivision between milepost 0.05 at Redondo Junction and milepost 26.36 near Watson, but excluding Van Ness Yard, Malabar Yard, and El Segundo Yard, all in Los Angeles County.