

Surface Transportation Board Acts to Accommodate Both Railroad Passenger & Freight Service; Finds Its Approval Not Needed for Utah Transit Authority's Acquisition of "Union Pacific" Right-of-Way Under an Agreement Between the Parties

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision granting the Utah Transit Authority's (UTA) motion to dismiss, as unnecessary, its verified notice of exemption from Board regulation to acquire almost 63 miles of the Union Pacific Railroad Company's (UP) railroad right-of-way and certain related improvements located in Davis, Webster, Salt Lake and Utah Counties, Utah.

As noted in the Board's decision, UTA (a public agency) has entered into an agreement with UP to acquire a portion of UP's right-of-way and certain rail improvements on it for possible passenger rail operations. UTA will not conduct freight rail operations on the right-of-way; rather, UP will retain an exclusive, perpetual easement on the rail lines at issue for freight operations, while UTA will be limited to passenger operations. UTA and UP will enter into a trackage rights agreement setting forth the terms and conditions that will govern their respective, concurrent operations on the lines.

The primary issue before the Board in this case was whether or not the proposed acquisition by UTA (a "noncarrier") of these rail assets of UP (a "carrier") required regulatory authorization. It is well established that when a noncarrier, including a state, acquires a freight line that has not been abandoned, it must seek Board approval under Section 10901 of Title 49, United States Code (49 U.S.C. 10901). This approval is not required, however, when only the physical assets will be conveyed and the "common carrier" rights and obligations (in offering transportation service to the public) attached to the line will not be transferred. The Board found that no common carrier obligations are being transferred in this instance, and that UP's ability to fulfill its common carrier obligations would not be impaired by possible passenger operations over the lines. Therefore, the Board concluded, UTA does not need the agency's approval to acquire UP's assets.

The Board reached the same conclusion in a decision issued in November 2001 in a similar situation in which a freight carrier (UP, as in this case) reached an accommodation with a public agency to facilitate passenger service (see the Board's decision in the case entitled *Santa Clara Valley Transportation Authority--Acquisition Exemption--Union Pacific Railroad Company*, STB Finance Docket No. 34094, issued to the public on November 16, 2001, and Surface Transportation Board "News" release No. 01-62 issued that date).

The Board issued its decision today in *Utah Transit Authority--Acquisition Exemption--Union Pacific Railroad Company*, STB Finance Docket No. 34170. A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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