

LAW OFFICE

DID # 0102076001

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ENTERED
Office of Proceedings

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

DEC 4 2002

Part of
Public Record

FEE RECEIVED

DEC 04 2002

December 4, 2002

(**Admitted in Ohio only)
(***Admitted in New York only)

**SURFACE
TRANSPORTATION BOARD**

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

206762



Re: Finance Docket No. 34292; *Santa Clara Valley Transportation Authority*
--*Acquisition Exemption -- Certain Assets of Union Pacific Railroad*
Company

FILED

DEC 04 2002

**SURFACE
TRANSPORTATION BOARD**

Dear Sir:

I am enclosing for filing the original and 10 copies the Notice Of Exemption of Santa Clara Valley Transportation Authority ("VTA") in the above-referenced proceeding.

I am also enclosing a check in the amount of \$ 2,700.00 as a filing fee for the Notice of Exemption. However, VTA hereby asks this Board to waive the filing fee and issue a refund. This is the procedure required by the applicable regulations. 49 C.F.R. §1002.2(e); STB Docket No. Ex Parte No. 542 (Sub-No. 4), *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--2002 New Fees* (Served August 29, 2002).

VTA, as a public agency created under California law and a non-carrier, seeks a waiver of the filing fee because it is a local government entity filing the Notice of Exemption on behalf of the general public. See STB Docket Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement, slip op.* (Served December 6, 2000) ("*2000 Fees Decision*"). In this matter, VTA will acquire approximately 14.88 miles of railroad right-of-way and related improvements known as the "WP Milpitas Line" located in Alameda and Santa Clara Counties, California from the Union Pacific Railroad Company ("UPRR"). VTA does not own nor does it propose to own a carrier, is not a shipper and is not coming before the board in that capacity, and will not acquire or retain a residual common carrier obligation. See *2000 Fees Decision* at 3. Accordingly, since it is acquiring this line to provide a public benefit, that is, to use in the construction of a

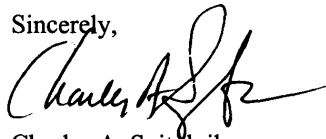
Hon. Vernon A. Williams
December 4, 2002
Page 2

public transportation system under the terms and conditions described in the transaction documents, the fee should be waived.

In accordance with the Board's regulations I am enclosing a diskette that includes the text of both of these documents. I have also enclosed one additional copy of the Notice of Exemption and of this letter that I ask you to date stamp and return to our messenger.

Thank you.

Sincerely,



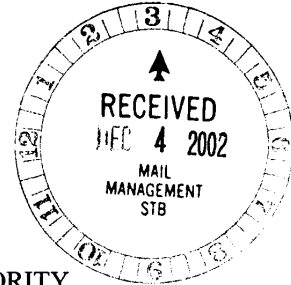
Charles A. Spitulnik

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34292

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
--ACQUISITION EXEMPTION --
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY



ENTERED
Office of Proceedings

NOTICE OF EXEMPTION
OF

DEC 04 2002 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

Part of
Public Record

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DEC 04 2002

SURFACE
TRANSPORTATION BOARD

Charles A. Spitulnik
Alex Menendez
McLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
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Attorneys for Santa Clara Valley
Transportation Authority

FILED

DEC 04 2002

SURFACE
TRANSPORTATION BOARD

Dated: December 4, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34292

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
--ACQUISITION EXEMPTION --
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

Pursuant to 49 C.F.R. § 1150.31 et seq., Santa Clara Valley Transportation Authority ("VTA"), a non-carrier¹, hereby files this Verified Notice of Exemption to acquire from Union Pacific Railroad Company ("UPRR") approximately 14.88 miles of railroad right-of-way and related improvements known as the "WP Milpitas Line" located in Alameda and Santa Clara Counties, California. VTA is a public agency created under California law and is a non-carrier. UPRR is a Delaware corporation and Class I rail carrier.

Pursuant to a Purchase and Sale Agreement to be entered into by and between VTA and UPRR, VTA will acquire UPRR's right, title and interest in approximately 14.88 miles, the WP Milpitas Branch and certain related improvements between a point north of Pasco Padre Parkway at approximately UPRR milepost 2.61 (former Western Pacific Railroad San Jose Branch MP 33.14) and William Street in San Jose, California at approximately UPRR milepost 17.49

¹ VTA has previously acquired a line of railroad from UPRR. VTA filed a Notice of Exemption with respect to that transaction along with a Motion to Dismiss, which the Board granted because VTA "will not hold itself out as a common carrier of freight" and because the "transaction ... [would] not impair UP's ability to fulfill its common carrier obligation." STB Finance Docket No. 34094, *Santa Clara V.T.A. - Acquisition Exemption - Union Pacific R. Co., slip op* (Service Date November 16, 2001) at 3. VTA will use the same procedure with respect to this transaction and will file a Motion to Dismiss and Vacate this Notice of Exemption on or before the date that the transaction closes.

(former WP San Jose Branch MP 48.02) ("the Line"), subject to the reservation by UPRR an exclusive permanent easement for the provision of freight railroad service. The Line is located in Alameda and Santa Clara Counties, California. VTA is acquiring the Line from UPRR in order to construct a public transportation system.

UPRR provides freight transportation service over the Line and will continue to do so after the subject transaction is consummated until such time as it secures authorization from this Board to abandon or discontinue such service. UPRR will retain an exclusive permanent easement for purposes of providing freight rail service on the Line. In order to accommodate construction of VTA's public transportation system, UPRR will at some point in the future relocate its freight operations to an adjacent line (the former SP Warm Springs Subdivision) and seek authority to abandon or discontinue its freight service on all or portions of the Line. Once that authorization is secured, VTA will construct a public transportation system on the right-of-way that is the subject of this transaction. VTA will not obtain the right or obligation to conduct freight rail service on any portion of the Line, and will not at any time hold itself out as a freight common carrier.

VTA will file very shortly in this docket a Motion to Dismiss and Vacate this Notice. VTA believes that the property and associated rights and obligations it is acquiring do not create a transfer of the common carrier obligation that is subject to this Board's jurisdiction. *See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991).

VTA submits the following information that is required by 49 C.F.R. § 1150.33.²

² VTA will not receive any revenues from freight or any other operations that are subject to the Board's jurisdiction. As a result, and as VTA will argue in the Motion to Dismiss and Vacate, neither the regulations at 49 C.F.R. § ... Footnote continued on next page

(1) **49 C.F.R. § 1150.32(e): Advance Notice**

VTa will conduct no freight rail operations on the Line, and therefore will receive no revenue from operations that are subject to this Board's jurisdiction. As a result, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction.

(2) **49 C.F.R. § 1150.33(a): Name and Address of Applicant**

The full name and address of the applicant is as follows:

Santa Clara Valley Transportation Authority
331 North First Street, Building C-2
San Jose, California 95134-7552

(3) **49 C.F.R. § 1150.33(b): Applicant's Representative**

VTa's representative to whom correspondence regarding this transaction should be addressed is as follows:

Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W., Suite 800
Washington, D.C. 20001
(202) 842-2345

(4) **49 C.F.R. § 1150.33(c): Statement Concerning Agreement**

VTa and UPRR will enter into a Purchase, Sale and Option Agreement providing for VTa's acquisition of the Line, subject to UPRR's retained permanent freight easement. VTa and UPRR also will enter into a Trackage Rights Agreement that will set forth the terms and conditions pursuant to which UPRR will provide freight rail service under its exclusive retained permanent easement, and an Engineering and Construction Agreement that will set forth the terms and conditions that will govern the construction of VTa's public transportation system and

1150.33 nor the regulations at 49 C.F.R. § 1150.35 apply here. However, for the purposes of this Notice, VTa is complying with the information requirements of § 1150.33.

the relocation of UPRR's freight operations. VTA and UPRR expect to complete negotiation and close the transactions by December 11, 2002.

(5) 49 C.F.R. § 1150.33(d): Operator of the Property

UPRR will operate the freight service that will be provided on the Line pursuant to a retained exclusive and permanent easement. VTA ultimately will construct and operate a public transportation system on the Line after UPRR has relocated freight rail service and has abandoned or discontinued operations.

(6) 49 C.F.R. § 1150.33(e): Summary of the Transaction

Pursuant to a Purchase and Sale Agreement to be entered into by and between VTA and UPRR on or about December 11, 2002, VTA will acquire UPRR's right, title and interest in the right-of-way and certain related improvements (including trackage, buildings, fixtures and other appurtenances located on the right-of-way) on the Line. In addition, VTA is acquiring an option to purchase subsequently the Option Property subject to all of the same terms and conditions as will govern the acquisition of and subsequent relationship of the parties with respect to the Line.

(7) 49 C.F.R. Part 1105: Environmental/Historic Preservation Data

The proposed acquisition of the Line by VTA is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations (i.e., changes which exceed the thresholds established in 49 C.F.R. § 1150.7(e)(4) or (5)). 49 C.F.R. § 1105.6(c)(2)(i). When UP seeks authority from this Board to abandon or discontinue its freight operations or any portion of the Line or the Option Property, it will provide any environmental documentation that may be appropriate at that time.

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition of the Line by VTA also is exempt from historic preservation reporting requirements. VTA's acquisition of the Line will

not disturb any existing rail carrier obligations on the Line. Further approval from this Board is required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to STB jurisdiction that are fifty years old or older.

(8) 49 C.F.R. § 1150.34: Caption Summary

A draft caption summary in the appropriate form is attached as Exhibit 1 to the Notice.

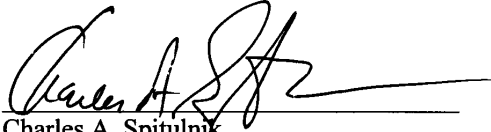
(9) 49 C.F.R. § 1150.33(g): Certification

The Certification required by 49 C.F.R. § 1150.33(f) is attached at Exhibit 2.

(10) 49 C.F.R. §1150.33 (f): Map

Copies of maps that provide the information required by 49 C.F.R. §1150,33(f) are attached at Exhibit 3.

Respectfully submitted,



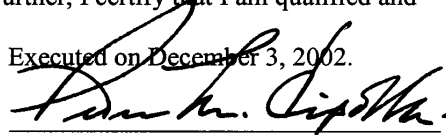
Charles A. Spitulnik
Alex Menendez
McLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Attorneys for Santa Clara Valley Transportation
Authority

Dated: December 4, 2002

VERIFICATION

I, Peter M. Cipolla, General Manager of the Santa Clara Valley Transportation Authority ("VTA") verify under penalty of perjury that the facts stated in the foregoing Notice of Exemption are true and correct. Further, I certify that I am qualified and authorized to file this Notice of Exemption. Executed on December 3, 2002.

A handwritten signature in black ink, appearing to read "Peter M. Cipolla", is written over a horizontal line.

Peter M. Cipolla
General Manager
Santa Clara Valley Transportation Authority

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34292

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
--ACQUISITION EXEMPTION --
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

**PROPOSED CAPTION SUMMARY REQUIRED BY
49 C.F.R. §1150.34**

Santa Clara Valley Transportation Authority ("VTA"), a non-carrier¹, has filed a Verified Notice of Exemption to acquire from Union Pacific Railroad Company ("UPRR") approximately 14.88 miles of railroad right-of-way and related improvements known as the "WP Milpitas Line" located in Alameda and Santa Clara Counties, California. VTA is a public agency created under California law and is a non-carrier. UPRR is a Delaware corporation and Class I rail carrier.

VTA will acquire UPRR's right, title and interest in approximately 14.88 miles of line, the WP Milpitas Line, and certain related improvements between a point north of Pasco Padre Parkway at approximately UPRR milepost 2.61 (former Western Pacific Railroad San Jose Branch MP 33.14) and William Street in San Jose, California at approximately UPRR milepost 17.49 (former WP San Jose Branch MP 48.02) ("the Line"), subject to the reservation by UPRR of an exclusive easement for the provision of freight railroad service. The Line is located in Alameda and Santa Clara Counties, California. VTA is acquiring the Line from UPRR in order

¹ VTA has previously acquired a line of railroad from UPRR. VTA filed a Notice of Exemption with respect to that transaction along with a Motion to Dismiss, which the Board granted because VTA "will not hold itself out as a common carrier of freight" and because the "transaction ... [would] not impair UP's ability to fulfill its common carrier obligation." STB Finance Docket No. 34094, *Santa Clara V.T.A. - Acquisition Exemption - Union Pacific R. Co., slip op* (Service Date November 16, 2001) at 3. VTA will use the same procedure with respect to this transaction.

to construct and operate a public transportation system and will itself operate no freight rail service. The transaction is scheduled to close on December 11, 2002.

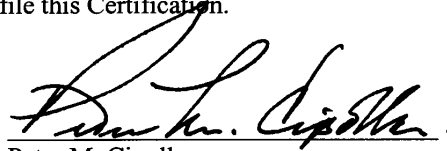
VTA will file in this proceeding a Motion to Dismiss and Vacate the Notice of Exemption. In that Motion, VTA states that it will argue that the STB has no jurisdiction over the transaction that is the subject of its Notice of Exemption because VTA is not acquiring sufficient rights and obligations with respect to the Line to trigger the STB's jurisdiction and because VTA is not holding itself out as a freight common carrier.

This notice is being filed under 49 C.F.R. §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. §10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION

Peter M. Cipolla, General Manager of the Santa Clara Valley Transportation Authority ("VTA") certifies that the consummation of the proposed transaction will not result in the creation of a carrier that has a volume of revenue that would be classified as a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Certification.

A handwritten signature in black ink, appearing to read "Peter M. Cipolla", is written over a horizontal line.

Peter M. Cipolla
General Manager
Santa Clara Valley Transportation Authority



SANTA CLARA VALLEY TRANSPORTATION AUTHORITY -- ACQUISITION EXEMPTION ...

