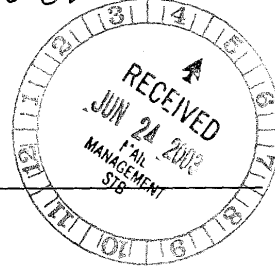


208172

**Before the
Surface Transportation Board**



Finance Docket No. 34076

**LOS ANGELES TO PASADENA BLUE LINE CONSTRUCTION AUTHORITY
NOTICE OF EXEMPTION – ACQUISITION FROM
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**MOTION OF LOS ANGELES TO PASADENA
BLUE LINE CONSTRUCTION AUTHORITY
TO DISMISS NOTICE OF EXEMPTION**

**ENTERED
Office of Proceedings**

JUN 24 2003

**Part of
Public Record**

The Los Angeles To Pasadena Blue Line Construction Authority, a public agency existing under the authority of the laws of the state of California¹, as a trustee of the Los Angeles-The Authority Blue Line Governmental Purpose Property Trust u/d/t dates August 19, 1999 (the "Authority"), by counsel and pursuant to 49 C.F.R § 1104.13 hereby files this Motion to Dismiss the Notice of Exemption ("Notice of Exemption") filed in this proceeding. The Motion to Dismiss should be granted because the transaction that is described in the Notice of Exemption is not subject to the STB's jurisdiction. The Authority has not acquired any rights or obligations that will enable it to conduct common carrier operations or to otherwise provide transportation that is subject to the jurisdiction of this Board.

Background Facts

The Authority has acquired approximately 20.0 miles of rail line previously owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), the successor in interest to the former Los Angeles County Transportation Commission ("LACTC"). LACTC

acquired this property in 1992 in the transaction described in Finance Docket No. 32172, *Los Angeles Co. Trans. Comm'n. --Acquisition Exemption--The Atchison, Topeka and Santa Fe Ry. Co.*² The Authority acquired this property to complete a project envisioned at the time of LACTC's initial acquisition, but not yet finished, that is the construction of an extension of the light rail line (the Gold Line) from the Los Angeles Union Station to Pasadena, with the possibility of continuing the line further east at some point in the future to the City of Claremont. See Cal. Pub. Utilities Code §§132405, 132425.

The Deeds by which the Authority acquired the Property from LACMTA are attached as Exhibits A-1, A-2, and A-3 to the Authority's Notice of Exemption (also filed today). The Deeds transfer property subject to the following rights:

- (i) the Reserved Rail Freight Service Easement and the Reserved Rail Freight Licenses; and (ii) the Shared Use Agreement between the Railroad and LACTC dated October 30, 1992.

See Exhibits A-1, A-2 and A-3 to the Authority's Notice of Exemption. Burlington Northern Santa Fe Railway Company ("BNSF") holds the rail freight easement and obligation. Under the terms of those agreements, BNSF's freight service right and obligation is exclusive.

At the time that BNSF's predecessor transferred ownership of this line to LACTC, LACTC acquired certain rights related to its plans to operate commuter rail service on some portions of this right-of-way and light rail on others. In the Deeds, LACMTA expressly reserved the following rights:

- (i) all rights, interests and obligations of the LACTC under the Railroad Quit Claim Deed and the Shared Use Agreement relating to the Reserved Rail Freight Service Easement and Reserved Rail Freight License to the extent the encumbering the Property, including, without limitation, any income derived from the use of such Reserved Rail Freight Easement and Reserved Rail Freight License by the

¹ Cal. Pub. Utilities Code §§132400, *et seq.*

² Consolidated with Finance Docket No. 32173, *Orange Co. Trans. Auth., et al.--Acquisition Exemption--The Atchison, Topeka and Santa Fe Ry. Co.*, 10 I.C.C. 2d 78 (1994).

Railroad or any other person or entity, whether domestic or foreign, and the right to maintain and operate a commuter rail service on such Reserved Rail Freight Service Easement; and (ii) the right to operate and maintain on the Property on and adjacent to the Reserved Rail Freight Easement the commuter rail and rail freight service facilities and other improvements existing thereon as of the date hereof, including without limitation, passenger platforms, maintenance buildings, parking areas, railroad tracks and related facilities (including, rail and fastenings, switches and frogs, bumpers, ties, ballast, signaling, devices and roadbed) and all structures and other facilities necessary for the use or support of any such railroad tracks or related facilities (including bridges tunnels, culverts, grading, embankments, dikes, pavements and drainage facilities). Grantee shall not use the Rail Freight Service Easement, nor the commuter or freight railroad service facilities without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and absolute discretion.

Exhibit A-2 to Notice of Exemption at 1.³

The Authority purchased only physical assets that include the real property assets and track structure, and plans to develop a light rail transit line using these physical assets. However, LACMTA retained all rights that are needed for BNSF to conduct its freight common carrier operations to the extent common carrier activities occur on the Property, and for the Southern California Regional Rail Authority ("SCRRA" or "Metrolink") to operate commuter rail service on any portion of the Property. Under the Deeds, BNSF will retain a permanent easement for the continued common carrier freight operations over the line, and LACMTA retained the obligation to maintain and dispatch the line. In other words, the easement ensures LACMTA (and its successors and assigns) the ability to fulfill all obligations to the freight railroad and for the operation of commuter service on the Property. The Authority is acquiring land and physical assets but no rights related to such operations.

³ The two other deeds contain identical language, except that each of Exhibits A-1 and A-3 are Grant Deeds, not Quit Claim Deeds, and the language of the document reflects that distinction. The nature of the deed does not affect the rights reserved to LACMTA with respect to the rail freight operations conducted on the line.

Argument

I. The STB does not have jurisdiction in this matter because the Authority is not acquiring any rights or obligations to conduct common carrier operations.

Not all sales of track used by railroads in interstate commerce are subject to the Board's jurisdiction and therefore require the Board's approval. The conveyance from LACMTA to the Authority is one of the transactions that is not jurisdictional. Accordingly, the Notice of Exemption the Authority has filed should be dismissed.

This Board has recognized repeatedly that it need not and cannot assert jurisdiction over transfers of property that do not involve the transfer of a common carrier obligation. *State of Maine, DOT--Acquisition and Operation Exemption--Maine Central R. Co.*, I.C.C. STB Finance Docket No. 31847 *slip op.*, Service Date May 24, 1991; *Metro--North Commuter Railroad Company--Acquisition and Operation Exemption--Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC*, STB Finance Docket No. 34293, Service Date May 13, 2003 (Board authorization is not required when the common carrier rights and obligations that attach to the line will not be transferred). To determine whether it has jurisdiction over a transfer, the Board looks "to see whether there are restrictions imposed on the transfer that would keep ... [the freight railroad] from meeting its common carrier obligation." *Utah Transit Auth.--Acquisition Exemption--Line of Union Pacific R. Co.*, I.C.C. STB Finance Docket No. 32186, *slip op.*, Service Date December 31, 1997.

The Board reinforced its rulings on this subject in a 2001 decision, as follows:

"[T]he fundamental test for determining whether a party is a common carrier is whether there has been a holding out to the public as a common carrier" [citing *Common Carrier Status of States, State Agencies*, 363 I.C.C. 132, 133 (1980), *aff'd sub nom Simmons v. ICC*, 697, F.2d 326 (D.C. Cir. 1982).] See *Status of Bush Universal, Inc.*, 342 I.C.C. 550, 564 (1973). In the typical sale of a non-abandoned rail line, the new owner is presumed to succeed the former owner in assuming the obligation to ensure that service continues over the line. However, we have recognized that such rail lines may be sold, under certain limited circumstances, without imposing a service obligation on the new owner. Here, as

in *State of Maine*, and other Interstate Commerce Commission cases, no common carrier rights or obligations are being transferred. The State has acquired the old right-of-way from the WTLR for the sole purpose of constructing a controlled access highway in Lubbock. Pursuant to the quitclaim deed, WTLR has maintained the exclusive easement which will permit it to conduct any necessary freight railroad operations on the old rail line. The easement also includes a right of entry over the property by WTLR's employees, agents or representatives in order to maintain the old rail line. The transaction does not involve the transfer of common carrier rights or obligations, and the State will not become a common carrier. The exclusive easement retained by WTLR ensures for it the right to continue to conduct freight operations on the old rail line sufficient to fulfill its obligations as a common carrier. [footnote omitted].

State of Texas (Acting by and through the Texas Dept. of Trans.--Acquisition Exemption--West Texas & Lubbock R. Co., Inc., STB Finance Docket No. 33889 (Service Date March 6, 2001).

The Authority acquired this property for the purpose of expediting the construction of the light rail "Gold Line" from Union Station in downtown Los Angeles to Pasadena, with possible future expansion to Claremont. Because of the limited purpose for which the Authority acquired this line, LACMTA (the seller) agreed to retain all of the rights and obligations related to freight and commuter rail passenger service that remain attached to this line. The Authority has neither plans nor the ability to conduct such operations. It is in the same position as the Texas DOT in *State of Texas*, that is:

- The Authority is not holding itself out to be a common carrier.
- The seller has retained any common carrier rights that it acquired initially.
- The seller has retained any common carrier obligations that it acquired initially.
- BNSF will continue to provide any freight service that may be required on this line.

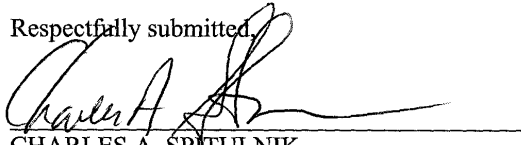
- Metrolink, pursuant to a contract with LACMTA, will continue to provide commuter rail service on the segments of this line.
- The construction of the light rail will not interfere in any way with any freight or commuter rail service that may remain on this line once the construction reaches that end of the line.

The Authority is acquiring only physical assets, the acquisition of which will not interfere with any freight or passenger service that may be occurring on the Property. In view of the limited scope of the interests that the Authority acquired, it clearly has not "become a common carrier." *State of Texas* at 2. As a result, this Board has no jurisdiction over the transaction and the Notice of Exemption should be dismissed, and this proceeding discontinued.

II. Conclusion

The Authority, pursuant to the terms of the acquisition, has not become a common carrier nor will it conduct common carrier operations or undertake common carrier obligations. As a result, this acquisition is not within the jurisdiction of the STB and the Notice of Exemption and this proceeding should be dismissed.

Respectfully submitted,



CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001
(202) 842-2345

Dated: June 24, 2003

Attorneys for Los Angeles To Pasadena Blue Line
Construction Authority

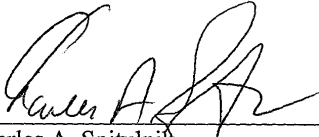
CERTIFICATE OF SERVICE

I certify that I have this 24th day of June 2003, caused copies of the Motion of Los Angeles to Pasadena Blue Line Construction Authority to Dismiss Notice of Exemption, to be served by first class mail, postage prepaid upon:

Hon. Gray Davis
State Capitol Building
Sacramento, CA 95814

California Department of Transportation
District 7 – Los Angeles and Ventura Counties
120 South Spring Street
Los Angeles, CA 90012
Attn: Douglas R. Failing, District Director

California Public Utilities Commission
770 L Street, Suite 1050
Sacramento, CA 95814



Charles A. Spitulnik