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SERVICE DATE - NOVEMBER 22, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33990

C & C RAILROAD, INC.—OPERATION EXEMPTION—
CENTERPOINT PROPERTIES, L.L.C.

Decided: November 21, 2019

On May 1, 2019, Union Pacific Railroad Company (UP) filed a petition to vacate and find void ab initio the 2001 verified notice of exemption filed by C & C Railroad, Inc. (C&C)¹ to operate eight rail lines owned by Centerpoint Properties, L.L.C., and leased to The Custom Companies, Inc., within the perimeter of the Global II Intermodal Yard owned by UP. C&C filed a reply opposing UP's petition on May 31, 2019. The Board instituted a proceeding on July 30, 2019, and directed the parties to provide certain additional information.

On October 31, 2019, after the parties provided additional information, UP and C&C filed a joint motion to dismiss UP's petition, stating that the parties have resolved their dispute. On the same date, C&C filed a motion to withdraw its notice of exemption. C&C states that it never "effectuated the permissive authority extended to it under applicable Board procedures" and has not operated as a common carrier. (C&C Mot. to Withdraw 2.) No replies were filed in response to either motion.

In light of the parties' agreement, their joint motion to dismiss UP's petition will be granted. Moreover, although C&C's exemption became effective January 9, 2001, the authority conferred to C&C is permissive only, and a filer may choose whether or not to consummate that authority. See Jackson Cty. Port Auth.—Pet. For Declaratory Order, FD 35994, slip op. at 2 (STB served July 28, 2016); Port of Ivory, LLC—Operation Exemption—Line of R.R. in Tulare Cty., Cal., FD 35475, slip op. at 2 (STB served June 27, 2011). The record here indicates that C&C has never exercised its authority and operated as a common carrier over the lines. Therefore, C&C's request to withdraw its notice of exemption is reasonable and will be granted.

¹ Notice of the exemption was served and published in the Federal Register on January 17, 2001 (66 Fed. Reg. 4074). The exemption became effective on January 9, 2001.

It is ordered:

1. The parties' joint request to dismiss UP's petition is granted.
2. C&C's request to withdraw its verified notice of exemption is granted, and this proceeding is dismissed without prejudice.
3. The notice served and published in the Federal Register on January 17, 2001, is vacated.
4. This decision is effective on its date of service.

By the Board, Allison C. Davis, Director, Office of Proceedings.