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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Submitted via e-Filing Procedures

Re: *City of Los Angeles--Abandonment Exemption in Los Angeles County, CA, STB Docket No. AB 1094X*

Dear Ms. Brown:

Attached please find the Petition for Exemption from 49 U.S.C. §§ 10904 and 10905 for filing in STB Docket No. AB 1094X.

Please do not hesitate to contact me with any questions.

Sincerely,



Allison I. Fultz
Counsel for the City of Los Angeles

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB 1094X

**CITY OF LOS ANGELES
– ABANDONMENT EXEMPTION –
IN LOS ANGELES COUNTY, CA**

**PETITION OF CITY OF LOS ANGELES
FOR EXEMPTION FROM 49 U.S.C. §§ 10904 AND 10905**

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May 18, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB 1094X

**CITY OF LOS ANGELES
– ABANDONMENT EXEMPTION –
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**PETITION OF CITY OF LOS ANGELES
FOR EXEMPTION FROM 49 U.S.C. §§ 10904 AND 10905**

The City of Los Angeles, a municipal corporation, acting through its Board of Harbor Commissioners (the “**City**”) to operate the Port of Los Angeles hereby submits this Petition for Exemption From 49 U.S.C. §§ 10904 and 10905, the statutory provisions relating to Offers of Financial Assistance and Public Use Conditions. This Petition is being filed simultaneously and in connection with the City’s Verified Notice of Exemption pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights in the above-captioned proceeding (the “**NOE**”). The City is submitting the NOE to effect the abandonment of all common carrier obligations on a 2.6 mile line of railroad in the City of Los Angeles, Los Angeles County, California, from Milepost 4.00 (north of Front Street and east of the Gaffey Street Lead) to Milepost 6.60 (at West 22nd Street and Miner Street), as shown on the City’s map (the “**Line**”), attached to the NOE as Exhibit A. For the reasons set forth in detail below, the City respectfully request that the Board exempt the abandonment of the Line from the provisions of 49 U.S.C. § 10904 (Offer of Financial Assistance or “**OFA**” procedures) and 49 U.S.C. § 10905 (public use conditions).

Background

The Line was formerly used to provide rail service to various industrial port terminals and berths. The City owns the Line and previously had an operating agreement in place with Pacific Harbor Line (“**PHL**”), under which PHL provided freight rail service along the Line. Union Pacific Railroad Company (“**UP**”) also held an easement to conduct freight operations on the Line. Both UP and PHL discontinued their respective common carrier obligations on the Line in 2016. *Union Pacific Railroad Co. – Notice of Exemption for Discontinuance of Service – In Port of Los Angeles’ San Pedro Subdivision, Los Angeles, CA (San Pedro Industrial Lead)*, STB Docket No. AB-33 (Sub-No. 330X) (Service Date Aug. 12, 2016); *Pacific Harbor Line, Inc. – Discontinuance of Service Exemption – in Los Angeles County, Ca.*, STB Docket No. AB 1100X (Service Date Aug. 13, 2016). The City’s interest in the Line is subject to a residual common carrier obligation following UP’s and PHL’s respective discontinuances.

The City is now in the process of redeveloping the area as part of the West Harbor project (the “**Proposed Project**”). The Proposed Project includes development of public waterfront and open space areas, commercial development, transportation and parking facilities, and expansion of cruise ship facilities and operations. Los Angeles Harbor Department, Environmental Management Division & U.S. Army Corps of Engineers, Los Angeles District, *San Pedro Waterfront Project FEIS/FEIR*, at p.1-2 (2009) (“FEIS”), available at <https://www.portoflosangeles.org/environment/environmental-documents>. As part of the Proposed Project, a portion of the Line is planned to be used to improve and extend an existing passenger trolley system, the Waterfront Red Car Line. FEIS at pp. 1-41 to 1-42. The remaining portions of the Line will not be used for any rail-related activities and the underlying property will be redeveloped in accordance with the Proposed Project. FEIS at pp. 1-41 to 1-42.

Freight use of the Line is no longer required in light of the lack of demand for freight rail service on the Line and is no longer practicable in light of the proposed development plans for the surrounding community. However, the existing corridor can be expeditiously put to use to create substantial future public benefits if the rail use is formally abandoned and the abandonment is exempt from offers of financial assistance and the imposition of public use conditions.

ARGUMENT

Where a right-of-way is already designated for use that will fulfill a valid public purpose and there is no overriding public need for continued rail service, the Board will grant exemptions from the requirements of 49 U.S.C. §§ 10904 and 10905. *See, e.g., K & E R. Co. – Abandonment Exemption – In Alfalfa, Garfield, and Grant Cos., OK, and Barber Cos., KS*, STB Docket No. AB-480X (Service Date December 31, 1996), *slip op.* at 4-5. The circumstances here fully warrant an exemption from OFA and public use requirements.

A. Exemption from OFA Requirements Would Be Consistent with Board Precedent

In circumstances like those presented here, where no shipper has used the line for freight traffic for more than two years, and where a public agency proposes a public use of the line, Board precedent supports the exemption Applicants request. The OFA provisions are intended to permit a party genuinely interested in ensuring the continued availability of rail service on a line that would otherwise be abandoned. The OFA proponent may either acquire that line for continued rail service or subsidize the continuation of existing operations. Exemptions from 49 U.S.C. § 10904 have been granted when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding public need for continued freight rail service. *See, e.g., Georgia Southwestern Railroad, Inc. – Abandonment Exemption – In Barbour County,*

AL, STB Docket No. AB-1000X (Service Date April 25, 2007) (no shippers in over seven years; right-of-way to be used for public trail); *CSX Transportation, Inc.—Abandonment Exemption—in Pike County, KY*, STB Docket No. AB-55 (Sub-No. 653X) (Service Date September 13, 2004) (no existing shippers, right-of-way to be used for highway expansion); *Norfolk Southern Ry. Co. – Abandonment Exemption – In Washington County, NC*, STB Docket No. AB-290 (Sub-No. 248X) (Service Date July 26, 2004) (“*Washington County*”) (single remaining shipper had moved shipments to other facility; right-of-way needed for improvements and better access to electric distribution facilities owned by power company).

Where an abandonment was necessary to support urban redevelopment projects, the Board has granted exemptions from the OFA requirements even over the protests of putative shippers. *See, e.g., Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X) (Service Date May 13, 1998) (petition for exemption from the OFA process granted in the face of arguments by two potential shippers that there was an overriding public need for transportation service because no traffic had moved on the line for the prior 11 years, shippers had viable transportation alternatives available, and the right-of-way was needed for multi-purpose municipal improvements, including a new professional football stadium); *The Kansas City Southern Ry. Co. – Abandonment Exemption – In Jackson County, MO*, STB Docket No. AB-103 (Sub-No. 17X) (Service Date July 27, 2004) (shippers along line had ceased operation and right-of-way was needed to facilitate redevelopment/revitalization projects). Additionally, the Board has acknowledged that a mass transit operation is not only a valid public purpose, but an important one that can provide a justification for exempting a proposed abandonment from OFA requirements. *Los Angeles County Metropolitan Trans. Auth. – Abandonment Exemption – In*

Los Angeles County, CA, AB-409 (Sub-No. 5X) (Service Date July 17, 2008), *slip op.* at 5. The Board's predecessor, the Interstate Commerce Commission, has also granted an exemption from the OFA procedures, when an OFA would preclude the planned use of a rail line, which included developing a mass transit corridor, noting that the OFA procedures "would only frustrate the purpose of the proposed abandonment". *See Missouri Pacific Railroad Co. – Abandonment – in Harris County, TX*, STB Docket No. AB-3 (Sub-No. 105X) (Service Date December 22, 1992), *slip op.* at 3.

Here, the City intends to use the Line for the development of a public transit corridor and improvement of its existing intrastate trolley service as part of the larger Proposed Project targeted at spurring economic development. The facts and circumstances supporting the City's requested exemption from OFA conditions are consistent with those the Board has previously accepted as the basis for such an exemption. There is no freight service to be preserved and the abandonment will clear the path for planned public uses to be established. There are no shippers on the corridor that is the subject of this abandonment proceeding and no freight traffic has moved over this line for at least two years.

Because the facts and circumstances in this case are consistent with those the Board has previously relied on to grant an exemption from OFA conditions, the Board should exempt the City's abandonment request from the application of the OFA requirements.

B. In View of the Public Interest and Intended Use of the Line, Exemption from Public Use Requirements Would Be Consistent with Board Precedent

Where there is no overriding public need for continued rail service, a right-of-way is needed for a valid public purpose and is already owned by a public entity, the Board will grant exemptions from the requirements governing the imposition of public use conditions. *See, e.g.,*

Washington County, slip op. at 2, 4. The Board should exempt the City from the imposition of public use conditions because the City seeks abandonment of the Line in order to devote the corridor to a valid and compelling public purpose through development for transit and other legitimate public purposes by the City.

Here, the Line is only 2.6 miles long and the railroads that held the primary common carrier obligation on the Line discontinued their freight rail rights almost five years ago. Once the City receives and exercises authority to abandon, the common carrier obligation associated with the Line, the City will use the abandoned Line for uses directly related to, and in support of, the development of public transit, recreational areas, and economic development projects, all of which are compelling public uses. Accordingly, the facts in this proceeding clearly justify an exemption from the public use requirements as well.

CONCLUSION

WHEREFORE, in light of the foregoing, the City respectfully requests that the Board exempt the abandonment transaction from the provisions of 49 U.S.C. § 10904 (OFA procedures) and 49 U.S.C. § 10905 (public use conditions).

Respectfully submitted,

City of Los Angeles



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