

SERVICE DATE – MAY 20, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36756

PENINSULA CORRIDOR JOINT POWERS BOARD—ACQUISITION EXEMPTION—
SAN MATEO COUNTY TRANSIT DISTRICT

Digest:¹ This decision grants the Peninsula Corridor Joint Powers Board authority to acquire all the rights, title, and interest of the San Mateo County Transit District in a line of railroad and related right-of-way in the County of San Mateo, Cal.

Decided: May 18, 2024

On February 21, 2024, the Peninsula Corridor Joint Powers Board (JPB)² filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 11323-24 to allow JPB to acquire all the rights, title, and interest of SamTrans in a line of railroad and related right-of-way currently owned by SamTrans as tenant-in-common with JPB (the Transaction). The petition is unopposed. The Board will grant JPB's petition for exemption, subject to standard labor protective conditions.

BACKGROUND

In 1991, JPB acquired a full ownership interest in the 51.3 miles of rail line known as the Peninsula Corridor from the Southern Pacific Transportation Company (SP), with the exception of an undivided one-half tenant-in-common interest for the portion of the rail line from milepost 5.2 to milepost 29.7 in the County of San Mateo, Cal. (the Line), which was acquired by SamTrans. Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co., FD 31980 (ICC served Jan. 17, 1992). SamTrans is the managing agency responsible for the management and operations of passenger rail services along the Line. (Pet. 3.) According to JPB, the Transaction will give JPB a 100% interest in the Line, including any track, right-of-way, and related properties. (Id.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² JPB is an agency created by the State of California and is comprised of member agencies San Mateo County Transit District (SamTrans), the Santa Clara Valley Transportation Authority, and the City and County of San Francisco. (See Pet. 1, 2 n.2.)

JPB explains that rail operations on the Line and the rights and obligations of the owners and the freight and passenger operators are governed by three key agreements. (*Id.*) The first is the 1991 Purchase and Sale Agreement JPB entered into with SP for the Peninsula Corridor, which includes the Line. (Pet. 3; *see also id.*, Ex. B.) The second is the 1991 Real Property Ownership Agreement, as amended in 2008 (RPOA), which establishes ownership rights with respect to the Line and various other properties along the Peninsula Corridor among JPB and its member agencies. (Pet. 3; *see also id.*, Exs. C, C-1.) Pursuant to Sections 4.1 and 7.8 of the RPOA, SamTrans is to transfer its tenant-in-common interest in the Line to JPB upon the fulfillment of certain financial conditions. (Pet. 3.) The third is the 1996 Joint Powers Agreement between JPB and its member agencies, which delegates management and operations of the Line to SamTrans. (*Id.* at 3-4; *see also id.*, Ex. D.)

With the conditions established in the RPOA and its amendment satisfied, pursuant to a memorandum of understanding dated August 5, 2022, JPB will now acquire all ownership interest in the Line, with SamTrans remaining the managing agency for the management and operations of the Line. (Pet. 4; *see also id.*, Ex. E.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(3), the acquisition of control of a rail carrier by any number of rail carriers requires prior Board approval. Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of 49 U.S.C. 11323-24 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-24 is not necessary here to carry out the RTP. Consolidating ownership of the Line in JPB will ensure that JPB will be able to further govern the Line as consistent with the agreements reached when JPB purchased the Line from SP. The Transaction will not have any operational impacts on passenger or common carrier service, as SamTrans will remain the managing agency overseeing the operation of passenger rail service, and no freight or commuter rail common carrier interests will be affected by the transfer of SamTrans' ownership interest to JPB. An exemption would promote the RTP by: minimizing the need for federal regulatory control over the transaction (49 U.S.C. 10101(2)), ensuring the development and continuation of a sound rail transportation system that would continue to meet the needs of the public (49 U.S.C. 10101(4)), fostering sound economic conditions in transportation (49 U.S.C. 10101(5)), encouraging efficient management (49 U.S.C. 10101(9)), and providing for the expeditious resolution of this proceeding (49 U.S.C. 10101(15)). Other aspects of the RTP would not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power.³ This acquisition involves no more than transferring the ownership interests of one current tenant-in-common to the other, thus consolidating ownership of the Line in the latter. According to JPB, no change in operations will occur, no interests of the freight railroads' operation on the corridor will be impacted, and no shippers will be adversely affected by the Transaction. Nothing in the record indicates that the Transaction would result in any shipper losing access to rail service or foreclose any transportation options currently available to shippers. Moreover, no shipper (or any other entity) has objected to the Transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).

The control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(1)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1), as JPB states it has no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

The exemption will be effective June 19, 2024, and petitions to stay will be due by May 30, 2024. Petitions for reconsideration or petitions to reopen will be due by June 10, 2024.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 the control transaction described above, subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).

2. Notice of the exemption will be published in the Federal Register.

3. The exemption will become effective on June 19, 2024. Petitions for stay must be filed by May 30, 2024. Petitions for reconsideration or petitions to reopen must be filed by June 10, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

³ Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).