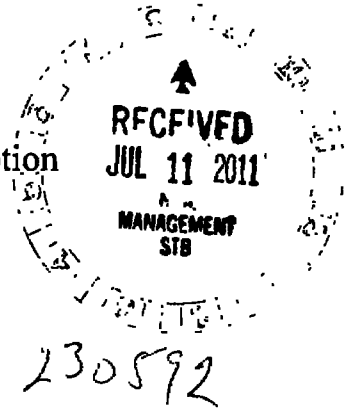


Before the
Surface Transportation Board

STB Docket No. AB-6 (Sub-No. 477X)

BNSF Railway Company's Petition for
Abandonment of Rail Freight Service Easement Exemption
In Los Angeles County, California

Reply to Petition for Exemption



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Dated: July 8, 2011

Before the
Surface Transportation Board

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BNSF Railway Company's Petition for
Abandonment of Rail Freight Service Easement Exemption
In Los Angeles County, California

Reply to Petition for Exemption

On May 31, 2011, BNSF Railway Company ("BNSF") filed a petition with the Surface Transportation Board ("STB") to exempt, from the prior approval requirements of 49 U.S.C. §§ 10903–5, BNSF's abandonment of its Rail Freight Service Easement ("Freight Easement") over an approximately 4.85-mile rail line owned by Los Angeles County Metropolitan Transportation Authority ("LACMTA") and located in Los Angeles County, California. Mount Olive Storage LLC, fee owner of 21.59 acres of land in Duarte, California—land that sits adjacent to the rail line at issue—opposes BNSF's petition for exemption from federal regulation because of the substantial damage the abandonment will have to the value of the Mount Olive Storage's land. As such, Mount Olive Storage respectfully requests the STB deny BNSF's petition for exemption from the notice and hearing protections provided by federal law.

Statement of Facts

BNSF has sought an exemption to abandon its Freight Easement on the LACMTA line located between milepost 119.35, just east of the San Gabriel River, in Irwindale, and milepost 124.20, just east of the Santa Anita Blvd. grade crossing in Arcadia, in Los Angeles County, California (the “Line”). This 4.85 mile stretch of the Line traverses U.S. Postal Service Zip Codes 91006, 91007, 91010, 91016, 91702, and 91706. BNSF emphasizes that this line is only 4.85 miles long, but it is 4.85 miles that runs through the heart of Los Angeles and its suburbs.

The Line is part of a group of rail lines acquired by Los Angeles County Transportation Commission (“LACTC”), a predecessor of the LACMTA. In that transaction, The Atchison, Topeka and Santa Fe Railway Company (“ATSF”) retained a binding, permanent easement to continue providing freight common carrier service over the Line. Subsequently, the STB’s predecessor, the Interstate Commerce Commission (“ICC”), found that the commuter service restrictions on ATSF’s freight service in the shared use agreement were so extensive as to substantially impair the effect of the permanent easement. Consequently, LACTC’s successor, the Los Angeles County Metropolitan Transportation Authority was deemed to be a railroad subject to the jurisdiction of the ICC, and thus subject to federal regulation.

Mount Olive Storage is the fee owner of 21.59 acres of land in Duarte, CA. The property is zoned M-2, heavy manufacturing. Not only does Mount Olive lie adjacent to the rail line in question, but Mount Olive Storage also has an easement granted from the State of California from its land for purposes of rail ingress and egress to the rail line. Over the years, Mount Olive Storage has used this railroad easement to provide storage for railroad cars owned by various customers. The easement is a valuable property right, and from time to time, has been the subject of projects discussed with developers, including the ATSF railroad. BNSF's petition for exemption, which would allow BNSF more easily to abandon service, threatens to render valueless the railroad easement to Mount Olive Storage, and will severely affect the future use and present value of the Mt Olive Storage property for industrial uses. Without the rail line, Mount Olive may lose its zoning as M-2, heavy manufacturing, which would dramatically decrease its value.

Why Hearings Are Necessary

BNSF has sought an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. §§ 10903–5 for BNSF to abandon its Freight Easement on the LACMTA line. Under 49 U.S.C. § 10502, such an exemption is warranted when the STB finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and

(2) either: (a) the transaction is of limited scope; or (b) regulation is not necessary to protect shippers from the abuse of market power.

Contrary to BNSF's contentions, federal regulation of the proposed abandonment of rail service *is necessary* to further the rail transportation policy of 49 U.S.C. §10101 and protect affected landowners like Mount Olive Storage. This is so because without the standard procedures, the affected land owners will have no way to seek a hearing at which they can present evidence of the effect this abandonment will have on their land.

The procedural safeguards of 49 U.S.C. §§ 10903–5 were put in place to assure that the interests of *all* affected parties are heard before the STB decides whether a rail line can be abandoned. Congress specifically intended to protect landowners from monopolistic or collusive action by railroads and to ensure that the deprivation of property rights for the common good is accompanied by all the protections of due process.¹ Congress's interest in protecting landowners is particularly strong where, as here, the discontinuation of rail service severely impacts an interested landowner's present property value, future use, and easement rights. Thus, neither rail transportation policy nor Congress's intent to prevent the abuse of market power would be furthered if BNSF's proposed discontinuation of

¹ Here, the proffered public good is the construction of a light-rail system by LACMTA.

rail service were exempted from federal regulation.

Moreover, the contemplated transaction is not of limited scope; the abandonment of nearly five miles of rail service in Los Angeles has tremendous utility to the affected landowners. One need only consider the LACTMA's proposed use of that land to recognize that utility: construction of light rail over the corridor underlying some, but not all, of the Line. Indeed, Mount Olive Storage will be left without any rail service if this abandonment is allowed to proceed.

BNSF contends that the proposed abandonment of rail service is of limited scope because the rail line is only 4.85 miles long, and there has not been a significant traffic volume on the line in recent years. While this might be a compelling argument if the line was located in a rural location with few affected landowners, it is not the case here. The 4.85 mile stretch of line at issue is in one of the world's largest cities—Los Angeles, running right through high-volume industrial and population centers. Five miles of rail service through this area has significant value to easement holders such as Mount Olive Storage, whose land is directly adjacent to the line and whose industrial use of the land has involved use of the rail lines in the past, and could require such use in the future. Thus, BNSF's proposed abandonment of service, made easier by exemption from federal regulation, would severely affect the future use and present value of Mount Olive

Storage LLC, as well as that of other affected landowners.

Additionally, as the STB is aware, with the steeply rising prices of oil in the past few years, the use of rail lines has increased. Previously unused, rusting rail lines are now being put back into service as a substitute for shipping by trucks. Such use makes particular sense in such a densely packed area as Los Angeles. In light of this substantial impact on property values and prospective land use, the proposed transaction cannot be considered limited in scope.

Mount Olive Storage has retained an expert MAI appraiser to value the impact the abandonment of this Line will have on its value and will submit his report as soon as it is available.

Conclusion

For these reasons, Mount Olive Storage respectfully requests that the BNSF petition, as presently filed, be rejected and that the STB follow its regular procedure, including conducting hearings to determine whether it is in the public interest to allow the railroad to abandon its obligation to provide service along the line from Duarte to Irwindale, passing alongside Mount Olive Storage.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Reply to BNSF's Petition for Exemption in STB Docket No. AB-6 (Sub-No. 477X) was sent via email on July 8, 2011, to the following parties:

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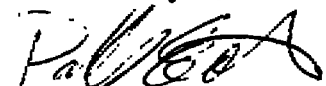
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