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SERVICE DATE – FEBRUARY 21, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35807

OAKLAND GLOBAL RAIL ENTERPRISE, LLC—ACQUISITION AND OPERATING
EXEMPTION—IN THE PORT OF OAKLAND, CAL.

Decided: February 20, 2014

On February 7, 2014, Oakland Global Rail Enterprise, LLC (OGRE), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate over approximately 19.1 miles of track located in the Port of Oakland (Port), Alameda County, Cal. OGRE states that it plans to (1) construct and operate over 6.24 miles (32,960 feet) of track within the Port on property owned by the City of Oakland, Cal. (City), that runs from the Northwest portion of the Port adjacent to West Burma Road to connections with track owned by the Port and/or Union Pacific Railroad Company (UP) on the Martinez Subdivision; and (2) operate over 11.5 miles (60,670 feet) of track owned by the Port, which runs through the central Port area and is adjacent to the tracks owned by UP on the Martinez Subdivision; (3) operate over 1.4 miles of track owned by BNSF Railway Company (BNSF), which is known as the Wood Street Yard, and, on occasion, 500 feet of track owned by UP, which connects with the Port track; and (4) operate over various industry track in the area. OGRE states that it has entered into a formal agreement with the Port, the City, BNSF, and UP, pursuant to which OGRE would construct approximately 6 miles of new track and provide common carrier rail service to various industries within the Port over the tracks described above.

Based on OGRE's intent to provide common carrier service over the trackage, the construction to which OGRE refers in its notice appears to involve a construction of a line of railroad, in which case Board authorization under 49 U.S.C. § 10901, and an environmental review under the National Environmental Policy Act, would be required. OGRE, however, has not sought Board authority for its construction.

If the Board were to accept OGRE's verified notice as sufficient and complete at this time and publish notice of the proposed exemption in the Federal Register, this Board action might be seen by interested persons as tacit approval of OGRE's construction of a line of railroad without Board authority. Because the notice of exemption does not provide sufficient information to make a definitive determination that use of the class exemption at 49 C.F.R. § 1150.31 for acquisitions and operations is appropriate here, additional information is necessary for OGRE's notice of exemption to be considered complete. As a result, OGRE's proposed exemption will not become effective, if at all, until further order of the Board.

OGRE is directed to file, by March 10, 2014, supplemental information describing, in detail, whether the activities at issue include construction of a line of railroad subject to the Board's licensing authority and, if so, why it has not sought Board authority for the construction within the Port.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The exemption that is the subject of the notice in this proceeding will not become effective until further order of the Board.
2. OGRE is directed to file, by March 10, 2014, the supplemental information described above.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.