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SERVICE DATE – APRIL 17, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-397 (Sub-No. 6X)]

Tulare Valley Railroad Company—Discontinuance of Service Exemption—in Tulare County, CA

Tulare Valley Railroad Company (TVR), a Class III rail carrier, has filed a verified notice of exemption¹ under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over a 5.9-mile line of railroad between milepost 66.0 at or near Ultra and milepost 71+2969.2 at or near Ducor, in Tulare County, CA. The line traverses United States Postal Service Zip Codes 93270 and 93218.

TVR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and

¹ TVR originally filed its verified notice of exemption on March 12, 2009. However, TVR failed to comply fully with the notification requirement at 49 CFR 1152.50(d)(1) until March 19, 2009, when it states that it notified the U.S. Department of Agriculture of the proposed discontinuance of service exemption. Because the railroad must notify this agency at least 10 days prior to the filing of a notice of exemption, March 30, 2009, will be considered the official filing date.

(4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 19, 2009, unless stayed pending reconsideration.² Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),³ must be filed by April 27, 2009.⁴ Petitions to reopen must be filed by May 7, 2009, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

² Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. A Board staff member has informed TVR that, because the official filing date of the notice is now March 30, 2009, consummation may not take place prior to May 19, 2009.

³ Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

⁴ Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

A copy of any petition filed with the Board should be sent to TVR's representative: Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, N.W. (8th floor), Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 7, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary