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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35755]

BNSF Railway Company, CBEC Railway Inc., Iowa Interstate Railroad, Ltd., and Union Pacific Railroad Company—Joint Relocation Project Exemption—In Council Bluffs, Iowa

On September 30, 2013, BNSF Railway Company (BNSF), CBEC Railway Inc. (CBEC), Iowa Interstate Railroad, Ltd. (IAIS), and Union Pacific Railroad Company (UP) (collectively, applicants) jointly filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(5) to participate in a joint relocation project in Council Bluffs, Iowa (the City).

The purpose of the joint relocation project is to facilitate the reconstruction of Interstates 80 and 29 in Council Bluffs. The Council Bluffs Interstate System (CBIS) Improvements Project is a public works project initiated by the Iowa Department of Transportation (IDOT) that involves the joint relocation project and an acquisition by IAIS of a line of railroad owned by BNSF.¹

According to applicants, the following steps will be taken to allow for the CBIS Improvements Project to proceed. First, BNSF will close its Council Bluffs yard and convey the underlying land to the State of Iowa. Second, BNSF will abandon the following two segments of its Council Bluffs Subdivision: 1) the segment located between milepost 490.62

¹ Iowa Interstate R.R.—Acquis. Exemption—Line of BNSF Ry., FD 35751 (filed Aug. 7, 2013). The Board will address that petition for exemption in a subsequent decision.

and milepost 491.00, a distance of approximately 0.38 miles; and 2) the segment located between milepost 491.75 and 492.65, a distance of approximately 0.90 miles. The first segment will be relocated to the west of Mosquito Creek. This segment is located between BNSF Bayard Subdivision milepost 482.08 and a point near BNSF Council Bluffs Subdivision milepost 488.85, a distance of approximately 1.6 miles. The second segment will be relocated to the west of Highway 192 in downtown Council Bluffs. This segment is located between BNSF milepost 492.65 and the connection to the IAIS main line at IAIS milepost 489.3, a distance of approximately 0.3 miles. Third, CBEC will abandon its main line between milepost 3.90 and milepost 6.47, a distance of approximately 2.8 miles. That portion of CBEC's main line will be relocated to the west bank of Mosquito Creek between milepost 3.90, approximately 1,500 feet to the northwest of IA-92/US-275 and the connection with the lead track to MidAmerican Energy Company's Walter Scott, Jr. Energy Center (MidAmerican), a distance of approximately 1.5 miles. Fourth, UP's trackage rights on CBEC's line to be abandoned will be discontinued and relocated to CBEC's newly constructed main line. Fifth, BNSF and CBEC will establish a crossover connection between their newly constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 900 feet south of I-29. CBEC will grant overhead trackage rights to BNSF from that connection and from BNSF Council Bluffs Subdivision milepost 488.6 to the connection with the lead track to MidAmerican, a distance of approximately 0.6 miles and 0.5 miles, respectively. Sixth, BNSF and CBEC also will establish an opposite-direction crossover connection between their newly constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 1,400 feet south of I-29. BNSF will grant

overhead trackage rights to CBEC from that connection to a new connection with CBEC's relocated SIRE industrial lead track at BNSF Council Bluffs Subdivision milepost 488.85, a distance of approximately 1,500 feet. Seventh, BNSF will grant overhead trackage rights to IAIS between BNSF Bayard Subdivision milepost 482.08 and BNSF Council Bluffs Subdivision milepost 488.6. Lastly, BNSF and IAIS will establish new connections between the two carriers at BNSF Bayard Subdivision milepost 482.08 and IAIS milepost 489.30, which will enable BNSF to crossover IAIS from its Council Bluffs Subdivision to reach its Bayard Subdivision through a dual switch arrangement.

Applicants state that the proposed joint relocation project will not disrupt service to shippers, nor will it expand service by BNSF, CBEC, or IAIS into a new territory. According to applicants, there are no shippers located on the rail segments BNSF and CBEC are abandoning.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. See City of Detroit v. Canadian Nat'l Ry., 9 I.C.C.2d 1208 (1993), aff'd sub nom. Detroit/Wayne Cnty. Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio, FD 34108 (STB served Nov. 15, 2001). Line relocation projects may embrace trackage rights transactions such as those involved here. See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Washington Court House & Greggs, Ohio—Exemption, 363 I.C.C. 878 (1981). Under these standards, the incidental

abandonment, construction, and trackage rights components of this relocation project require no separate approval or exemption because the relocation project will not disrupt service to shippers, expand BNSF's, CBEC's, or IAIS's service into a new territory, or alter the existing competitive situation, and thus, this joint relocation project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate-California Western Railroad, 360 I.C.C. 653 (1980).

The transaction may be consummated on or after November 13, 2013, the effective date of the exemption.²

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 6, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35755, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives:

² This notice was scheduled to be published in the Federal Register during the time that the agency was closed due to a lapse in appropriations. Because publication of this notice has been delayed, the effective date of the exemption will also be delayed to provide adequate notice to the public.

Karl Morell, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005 (BNSF's representative); Benjamin M. Clark, Sullivan & Ward, P.C., 6601 Westown Parkway, Suite 200, West Des Moines, Iowa 50266 (CBEC's representative); Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606 (IAIS's representative); and Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179 (UP's representative).

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Decided: October 25, 2013.

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