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SERVICE DATE – JUNE 2, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 466X)

BNSF RAILWAY COMPANY—DISCONTINUANCE OF TRackage RIGHTS  
EXEMPTION—IN KOOTENAI COUNTY, ID

Decided: May 29, 2009

By petition filed February 12, 2009, BNSF Railway Company (BNSF) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue trackage rights over approximately 1.39 miles of rail line owned by Union Pacific Railroad Company (UP), between milepost 7.40 at Gibb and milepost 8.79 at Coeur d'Alene, in Kootenai County, ID. Notice of the filing was served and published in the Federal Register on March 4, 2009 (74 FR 9476). We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

BNSF acquired the trackage rights in 2003 pursuant to a trackage rights agreement with UP. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34436 (STB served Dec. 24, 2003). According to BNSF, the purpose of the trackage rights was to enable it to provide contractual haulage services for UP between Spokane, WA, and Coeur d'Alene for traffic originating at or destined to the Stimson Lumber Company (Stimson) facility at Coeur d'Alene.

BNSF states that Stimson was the only shipper on the line and that the last Stimson shipments moving over the line occurred in May 2008, when Stimson's DeArmond Stud Mill ceased operations. According to BNSF, that facility is currently being dismantled and converted to non-industrial uses. BNSF further states that, in light of the closing of the Stimson facility, UP filed a petition for exemption on January 14, 2009, seeking to abandon the portion of the line located between milepost 7.5 and milepost 8.79.<sup>1</sup> Finally, BNSF indicates that the line is stub-ended and not capable of hauling overhead traffic.

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<sup>1</sup> The petition was granted in Union Pacific Railroad Company—Abandonment Exemption—in Kootenai County, ID, STB Docket No. AB-33 (Sub-No. 272X) (STB served May 4, 2009). As pertinent here, UP was directed not to exercise the authority until after BNSF obtained approval to discontinue its trackage rights.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit from the industry [49 U.S.C. 10101(7)]. An exemption also will foster sound economic conditions and encourage efficient management by allowing BNSF to discontinue its trackage rights over the line and permit UP to now exercise its abandonment authority and use its assets more productively elsewhere on its system. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. There are no shippers on the line and the only customer that moved traffic over the line in recent years has ceased operations and has not opposed this discontinuance. Nevertheless, to ensure that Stimson is informed of our action, we will require BNSF to serve a copy of this decision on Stimson within 5 days after the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

We need not consider trail use requests or requests to negotiate for public use of the line because this proceeding involves a discontinuance of trackage rights and not an abandonment.

As noted, by decision served on May 4, 2009, the Board granted an exemption for UP to abandon this line, subject to certain environmental conditions. BNSF's proposed discontinuance of trackage rights over the line does not involve environmental impacts separate from those connected with UP's abandonment of the line. Accordingly, the proposed discontinuance will not significantly affect the quality of the human environment and no environmental conditions are necessary.

### It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of trackage rights by BNSF as described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. BNSF is directed to serve a copy of this decision on Stimson within 5 days after the service date of this decision and to certify to us that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) for subsidy must be received by the railroad and the Board by June 12, 2009, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA for subsidy has been received, this exemption will be effective on July 2, 2009. Petitions to stay must be filed by June 17, 2009, and petitions to reopen must be filed by June 29, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan  
Acting Secretary