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SERVICE DATE - APRIL 30, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33738]

Rock & Rail, Inc.--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company

Rock & Rail, Inc. (R&R), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire The Burlington Northern and Santa Fe Railway Company's (BNSF) ownership interest in, and to acquire from BNSF a permanent and exclusive rail freight easement to operate over, and thus to operate, approximately 41.31 miles of rail line in Pueblo and Canon City, CO. The lines or rights intended to be acquired by R&R are as follows: (1) from milepost 160.30 in Canon City extending westerly for a distance of approximately 252 feet in Fremont County, CO; (2) from milepost 160.80 in Canon City extending easterly approximately 256 feet to serve the power plant at or near Canon City, in Fremont County, CO; (3) BNSF's trackage rights over Union Pacific Railroad Company's (UP) rail line between milepost 160.30 in Canon City and milepost 120.73 in Pueblo, a distance of 39.57 miles in Fremont and Pueblo Counties, CO; and (4) all of BNSF's connecting sidings, spurs, sidetracks and yard, industrial, team and switching tracks that are owned or leased by BNSF between the end of BNSF's track, approximately 252 feet west of milepost 160.30 in Canon City, and the connection between BNSF's line and UP's line at milepost 120.73 in Pueblo. In addition, BNSF will grant R&R incidental trackage rights over BNSF's rail line extending easterly from the connection between

BNSF's line and UP's line at milepost 120.73 in Pueblo and approximately 2,243 feet over Track No. 254, approximately 2,240 feet over Track No. 256, and approximately 4,200 feet over BNSF's main line track to milepost 619.75, for the purpose of interchanging with BNSF in Pueblo, for a total distance of approximately 1.64 miles in Pueblo County, CO.<sup>1</sup>

The transaction was scheduled to be consummated on or after April 14, 1999. R&R has subsequently advised the Board that the transaction has been consummated and that R&R will shortly commence operations on the Canon City-Pueblo Line.<sup>2</sup>

The purpose of the transaction is to permit R&R, rather than BNSF, to serve the shippers at Canon City, Florence, and Portland, and to conduct overhead operations between Canon City and Pueblo.

If this 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 does not automatically stay the transaction.

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<sup>1</sup> R&R certifies that its annual revenue will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed \$5 million.

<sup>2</sup> On April 14, 1999, UP submitted a letter stating that it was not objecting to the requested exemption because it is permissive in nature and would not give BNSF the ability to transfer rights that it has no legal right to transfer. UP went on to assert that BNSF's trackage rights between milepost 147.01, near Portland, CO, and milepost 160.30, near Canon City, are not assignable by BNSF without UP's consent and that UP's consent has neither been sought nor granted. UP also asserted that, while there is a small power plant at Canon City, neither BNSF's solely owned track nor its trackage rights over UP in the vicinity of Canon City actually reach the power plant. UP thus disputes that R&R would have a right to serve the power plant.

In issuing this notice, the Board is making no ruling on the contractual rights of the parties. Therefore, by invoking the class exemption, R&R has the right to perform common carrier service to the extent that it has or obtains the property rights to enable it to carry out the service.

STB Finance Docket No. 33738

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33738, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005-3934.

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Decided: April 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary