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SERVICE DATE - MARCH 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34305

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY—
CONSTRUCTION AND OPERATION EXEMPTION—
MERCED COUNTY, CA

Decided: March 21, 2003

By petition filed on January 14, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate an 850-foot line of railroad in Merced County, CA. The proposed line would connect to the BNSF Stockton Subdivision main line between Stockton and Bakersfield, CA, and extend to the Quebecor World Inc. (Quebecor) printing and distribution facility in Merced, CA. BNSF requests that we conditionally grant the exemption, subject to our completion of the required environmental review. We will grant a conditional exemption and issue a final decision after completion of the environmental review process.

BACKGROUND

Quebecor, a print media services company, operates a printing facility served exclusively by Union Pacific Railroad Company (UP). Quebecor has requested BNSF to construct and provide the proposed operation to create competitive rail service to its facility. Also, Quebecor claims that the new rail line would allow BNSF to offer Quebecor single-line service opportunities in the western two-thirds of the United States, in addition to those now offered by UP.

The proposed build-in would connect to the Stockton Subdivision at milepost 1058.0,¹ cross one public road, Santa Fe Road,² and the existing UP loop track that currently provides service to the Quebecor facility. BNSF states that it intends promptly to engage in discussions with UP regarding the

¹ BNSF would have a turnout for the new line at this point on its main line. The BNSF line currently averages approximately 35 trains per day. BNSF plans to use a local train operating from its Calwa Yard and sidings at Merced (milepost 1056.1) or Fluhr, CA (milepost 1062.9), to provide the service to Quebecor.

² Santa Fe Road is a two-lane light density road maintained by the City of Merced. BNSF states that the crossing will be at grade and will use active warning devices.

proposed crossing of the UP track; however, BNSF states that it will seek authority to cross UP's track pursuant to 49 U.S.C. 10901(d), if no agreement is reached.³ The line would be located adjacent to an existing railroad corridor, and BNSF submits that no residences or recreational lands are required for the proposed construction.⁴

BNSF states that the line would be used for inbound shipments of non-hazardous paper rolls in boxcars and limited outbound shipments of waste paper (approximately one carload per week). However, outbound traffic would be primarily empty boxcars. BNSF projects that, upon completion of the construction project, there would be generally one inbound train per day consisting of 6-8 boxcars, with the same train returning to pick up the empty cars. BNSF plans to provide this service 6 days a week.

DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines require prior Board approval under 49 U.S.C. 10901. However, under 49 U.S.C. 10502, 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.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy. The proposed construction and operation will afford Quebecor access to additional rail service via BNSF; consequently, the construction and operation will increase competition [49 U.S.C. 10101(1) and (4)]. Moreover, exempting the proposed construction and operation will reduce the need for Federal regulation, ensure the development of a sound transportation system, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Unless we determine otherwise following the environmental

³ Any exemption granted in this proceeding is permissive only and does not relieve the petitioner from legal impediments to the proposed construction relating to crossing rights and compensation under 49 U.S.C. 10901(d)(1). An agreement to permit the crossing must be reached or section 10901(d)(1) authority must be sought and obtained before a crossing may be constructed. See Kansas City Southern Railway Company—Construction and Operation Exemption—Geismar Industrial Area Near Gonzales and Sorrento, LA, Finance Docket 32530, slip op. at 7 (ICC served June 30, 1995).

⁴ According to BNSF, the adjacent land is used for agricultural and industrial activities.

analysis, nothing on the record indicates that other aspects of the rail transportation policy will be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed construction of a new rail line will enhance competition by providing Quebecor with a choice of rail providers. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

BNSF has consulted with our Section of Environmental Analysis regarding the environmental review process. Pursuant to 49 CFR 1105.10(d), BNSF has retained an independent third-party consultant to prepare the environmental documentation for this project. Once the environmental documentation is prepared and an environmental assessment or impact statement is issued and comments are received, we will issue a further decision addressing the environmental issues and making the exemption effective at that time, if appropriate, subject to any necessary mitigation conditions, thereby allowing the construction to begin. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994); Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989).

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of resources.

It is ordered:

1. Under 49 U.S.C. 10502, we conditionally exempt BNSF's construction and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.
2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate, subject to any necessary conditions, thereby allowing construction to begin.
3. Notice will be published in the Federal Register on March 28, 2003.
4. Petitions to reopen must be filed by April 17, 2003.

5. This decision is effective 30 days from the date of service of this decision.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary