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SERVICE DATE - OCTOBER 7, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34242 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY–TRACKAGE RIGHTS EXEMPTION–  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: September 26, 2002

By petition filed on August 14, 2002, Union Pacific Railroad Company (UP) requests that we permit the trackage rights arrangement exempted in STB Finance Docket No. 34242<sup>1</sup> to expire on or about November 23, 2002.

According to UP, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34242 is necessary because it will be performing maintenance and repairs on its main line and will use these trackage rights as an alternative route for its traffic while the work is being performed. However, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage during the period of maintenance activity on UP's trackage. UP maintains that, without Board approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow it to operate over BNSF's line, and it would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

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<sup>1</sup> On August 14, 2002, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over BNSF's rail lines between BNSF milepost 460.0 near Sweetwater, TX, and BNSF milepost 655.7 near Clovis, NM, a distance of approximately 221.2 miles. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (STB served Sept. 3, 2002). The trackage rights operations under the exemption were scheduled to be consummated on August 22, 2002.

## DISCUSSION AND CONCLUSIONS

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34194 (Sub-No. 1) (STB served May 14, 2002).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, 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 the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34242 to expire on or about November 23, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34242, as discussed above, to permit the trackage rights to expire on or about November 23, 2002.
2. Notice will be published in the Federal Register on October 7, 2002.
3. This decision is effective on November 6, 2002.
4. Petitions to stay must be filed by October 17, 2002. Petitions to reopen must be filed by October 28, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary