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SERVICE DATE – SEPTEMBER 15, 2010

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35415]

BNSF Railway Company and Union Pacific Railroad Company—Joint Relocation
Project Exemption—in Lincoln, Neb.

On August 30, 2010, BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) jointly filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(5) to participate in a joint project involving the relocation of certain tracks over which they currently both operate, or have authority to operate, in the City of Lincoln, Lancaster County, Neb. (the City).

The purpose of the joint relocation project is to facilitate the redevelopment of the West Haymarket District and Downtown Lincoln (referred to as the West Haymarket Project). To allow for the redevelopment to proceed, BNSF must remove certain existing tracks and relocate its operations over tracks that will run parallel to the existing lines. UP will allow a portion of a previously abandoned line to be utilized in the project.

BNSF and UP will jointly relocate tracks over which they both currently operate, or have authority to operate, as follows:

BNSF owns a rail line beginning south of Sun Valley Boulevard (near UP milepost 56.50) that crosses Salt Creek and continues into a wye a short distance east of Salt Creek. The east leg of the wye (Track 460) extends in an easterly direction to a

connection with a BNSF main line, which, in turn, connects with the Omaha, Lincoln, & Beatrice Railway and extends beyond to Omaha, Neb. The west leg of the wye (Track 324) extends in an easterly and then southerly direction to BNSF's Hobson Yard in the City.

UP has overhead trackage rights over the east leg of the wye between BNSF milepost 0.65 and BNSF milepost 56.92. See Union Pac. R.R.—Trackage Rights Exemption—The Burlington N. & Santa Fe Ry., FD 33403 (STB served June 3, 1997); Union Pac. R.R.—Amendment of Trackage Rights Exemption—BNSF Ry., FD 30868 (Sub-No. 1) (STB served July 20, 2006). UP also leases: (1) the BNSF line near Sun Valley Boulevard (beginning near UP milepost 56.50) to the beginning point of the wye at BNSF milepost 0.62 (referred to as the Sun Valley Segment); and (2) the west leg of the BNSF wye from BNSF milepost 0.62 to BNSF milepost 59.4.

The joint relocation project that is the subject of this notice involves abandoning the Sun Valley Segment and relocating the existing wye tracks a short distance to the south. The underlying real estate will be conveyed to the City. BNSF will remove the tracks on the Sun Valley Segment and UP will reconstruct its parallel line which it had previously abandoned.¹ The new UP line will be located between UP milepost 56.50 and UP milepost 56.68, a short distance east of Salt Creek and crossing over Salt Creek using an existing UP bridge (UP track). The UP track will be owned and maintained by UP. BNSF will be granted trackage rights over the UP track.

The new east wye track will be located between new BNSF milepost 0.0 and BNSF milepost 59.24 where it will connect with BNSF's number 1 main line (new east

¹ See Union Pac. R.R.—Aban. Exemption—in Lancaster County, Neb., AB 33 (Sub-No. 207X) (STB served Sept. 30, 2003).

wye). The new east wye will be owned and maintained by BNSF. UP will be granted trackage rights over the new east wye. The new west wye will be located between new milepost BNSF 0.0 and BNSF milepost 59.55 where it will connect with BNSF's number 1 main line (new west wye). The new west wye will be owned and maintained by BNSF. UP's lease of the existing west wye and the Sun Valley Segment will be terminated. UP will retain existing operating rights incidental to interchange to Hobson Yard which includes the new west wye.

Applicants state that the proposed joint relocation project will not disrupt service to shippers. There are no shippers on the Sun Valley Segment, the existing east wye or the existing west wye lines. Applicants also state that the construction of the UP track, the new east wye and the new west wye will not involve an expansion of service by either carrier into new territory, or alter the existing competitive situation, but will simply preserve BNSF's and UP's ability to continue to serve the existing customers in the area.

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, lease 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 or UP'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 September 29, 2010, the effective date of the exemption (30 days after the exemption was filed).

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 September 22, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35415, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005; and Mack H. Shummate, Jr., Senior General Attorney, 101 North Wacker Drive, # 1920, Chicago, IL 60606.

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Decided: September 3, 2010.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.