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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 12)]

Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF

Railway Company

Pursuant to a modified written trackage rights agreement dated December 15, 2009, BNSF Railway Company (BNSF) has agreed to extend the December 31, 2009 expiration date of the local trackage rights granted to the Union Pacific Railroad Company (UP)¹ over a BNSF line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 52 miles.²

¹ UP submits that the trackage rights being granted here are only temporary rights, but, because they are “local” rather than “overhead” rights, they do not qualify for the Board’s class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Railroad Consolidation Procedures, 6 S.T.B. 910 (2003). Therefore, UP concurrently has filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 13), Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF Railway Company, wherein UP requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 18, 2010, as provided in the parties’ agreement. That petition will be addressed by the Board in a separate decision.

² The trackage rights were originally granted in Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed notices of exemption several times based on their agreements to extend expiration dates of the same trackage rights. See STB Finance Docket No. 34554 (Sub-No. 2) (decision served February 11, 2005); STB Finance

(continued . . .)

The transaction is scheduled to be consummated on January 22, 2010.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 10) to further extend the expiration date to on or about December 18, 2010. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980).

(. . . continued)

Docket No. 34554 (Sub-No. 4) (decision served March 3, 2006); STB Finance Docket No. 34554 (Sub-No. 6) (decision served January 12, 2007); STB Finance Docket No. 34554 (Sub-No. 8) (decision served January 4, 2008); and STB Finance Docket No. 34554 (Sub-No. 10) (decision served January 8, 2009). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See STB Finance Docket No. 34554 (Sub-No. 1) (decision served November 24, 2004); STB Finance Docket No. 34554 (Sub-No. 3) (decision served March 25, 2005); STB Finance Docket No. 34554 (Sub-No. 5) (decision served March 23, 2006); STB Finance Docket No. 34554 (Sub-No. 7) (decision served March 13, 2007); STB Finance Docket No. 34554 (Sub-No. 9) (decision served March 20, 2008); and STB Finance Docket No. 34554 (Sub-No. 11) (decision served March 11, 2009). At the time of the extension authorized in STB Finance Docket No. 34554 (Sub-No. 10), the parties anticipated that the authority to allow the rights to expire would be exercised by December 31, 2009. However, the parties filed on December 18, 2009 in STB Finance Docket No. 34554 (Sub-No. 12) their most recent notice of exemption to allow the trackage rights to be extended to on or about December 18, 2010, which we are addressing here.

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. Stay petitions must be filed by January 9, 2010 (7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 12), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room #1920, Chicago, IL 60606.

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Decided: December 23, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.