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SERVICE DATE - APRIL 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33572 (Sub-No. 1)

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

Decided: April 10, 1998

By petition filed March 23, 1998, Union Pacific Railroad Company (UP or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33572,¹ as it relates to the operation between Council Bluffs and Hastings, to extend only until July 16, 1998, and as it relates to the operation between Hastings and Northport, to extend only until October 1, 1998.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33572 is necessary because UP will be performing programmed track, roadbed and structural maintenance work on its trackage between Council Bluffs and Northport. However, petitioner states that BNSF is only willing to grant temporary operating rights on its trackage during the periods of

¹ On March 23, 1998, 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 over two segments of its line to UP: (1) between Council Bluffs, IA, at milepost 483.6 on BNSF's Bayard Subdivision (at a point which is equal to milepost 12.8 on BNSF's Omaha Subdivision) and Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivision, a distance of approximately 214.6 miles over a segment which extends from Council Bluffs through Omaha, NE, Ashland, NE, Lincoln, NE, Crete, NE, and Fairmont, NE, to Hastings, for the period March 30, 1998, through July 15, 1998; and (2) between Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivision and Northport, NE, at milepost 34.4 on BNSF's Angora Subdivision, a distance of approximately 387.7 miles over a segment which extends from Hastings through Holdredge, NE, Oxford, NE, Culbertson, NE, Wray, CO, East Brush, CO, Sterling, CO, and Sidney, NE, to Northport, for the period March 30, 1998, through September 30, 1998. The portion of the trackage rights operation between Council Bluffs, IA, and Hastings, NE, is scheduled to expire effective July 16, 1998. The portion of the trackage rights operation between Hastings and Northport, NE, is scheduled to expire effective October 1, 1998. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33572 (STB served Apr. 2, 1998). The exemption became effective on March 30, 1998, 7 days after the verified notice was filed.

maintenance activity on UP's trackage. Petitioner further states that operating crew constraints on BNSF dictate that UP's operations over BNSF's trackage be handled as trackage rights rather than as a detour arrangement. Petitioner maintains that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face severe operational problems on the trackage for which programmed track, roadbed and structural maintenance is scheduled.

Although the parties have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions.² Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Southern Pacific Transportation Company--Trackage Rights Exemption--Peninsula Corridor Joint Powers Board, Finance Docket No. 32300 (ICC served June 8, 1993); Soo Line Railroad Company--Trackage Rights--Over a Line of Chicago, Central and Pacific Railroad Company in Rockford, IL, Finance Docket No. 32446 (ICC served Jan. 6, 1994); Union Pacific Railroad Company--Trackage Rights Exemption--Chicago, Central & Pacific Railroad Company, STB Finance Docket No. 32959 (Sub-No. 1) (STB served July 25, 1996).

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 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 are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33572, as they relate to the operation between Council Bluffs and Hastings, to expire on July 16, 1998, and as they relate to the operation between Hastings and Northport, to expire on October 1, 1998.

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

It is ordered:

² In the absence of the relief sought here by exemption, petitioner would ordinarily need to seek either discontinuance authority under 49 U.S.C. 10903 or approval of a new agreement. See Milford-Bennington Railroad Company, Inc.--Trackage Rights Exemption--Boston and Maine Corporation and Springfield Terminal Railway Company, Finance Docket No. 32103 (ICC served Sept. 3, 1993).

STB Finance Docket No. 33572 (Sub-No. 1)

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 33572, as discussed above, permitting them to expire, as they relate to the operation between Council Bluffs and Hastings, on July 16, 1998, and as they relate to the operation between Hastings and Northport, on October 1, 1998.

2. Notice will be published in the Federal Register on April 23, 1998.

3. This decision is effective on May 23, 1998.

4. Petitions to reopen must be filed by May 13, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary