

SERVICE DATE – MARCH 12, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34951 (Sub-No. 1)

PORTLAND & WESTERN RAILROAD, INC.—TRACKAGE RIGHTS
EXEMPTION—BNSF RAILWAY COMPANY

Decided: March 5, 2007

By petition filed on November 13, 2006, Portland & Western Railroad, Inc. (PNWR), requests that we partially revoke a class exemption to permit the trackage rights arrangement between PNWR and BNSF Railway Company (BNSF), exempted in Portland & Western Railroad, Inc.—Trackage Rights Exemption—BNSF Railway Company, STB Finance Docket No. 34951 (STB served Nov. 22, 2006), to expire on May 30, 2016. We will grant the petition.

BACKGROUND

The trackage rights exempted in STB Finance Docket No. 34951 are overhead trackage rights over BNSF's rail lines between: (a) milepost 10.0 in Vancouver, WA, on the BNSF Fallbridge Subdivision, and milepost 0.69 (Main Track 1) and milepost 0.91 (Main Track 2) in Portland, OR; and (b) milepost 132.5 and milepost 136.5 in Vancouver, WA, on the BNSF Seattle Subdivision, a total distance of approximately 13.31 miles. The transaction was scheduled to be consummated on or after November 13, 2006. The purpose of the trackage rights is to allow PNWR and BNSF to shift their interchange from Salem or Albany, OR, to Vancouver, WA.¹ PNWR states that a grant of this petition is necessary for the parties to realize the negotiated economic benefits of the trackage rights.

DISCUSSION AND CONCLUSIONS

Although PNWR and BNSF have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption set forth at 49 CFR 1180.2(d)(7) normally remain effective indefinitely, regardless of any durational contract provisions. The Board has adopted a class exemption for overhead trackage rights of less than 1-year's duration at 49 CFR 1180.2(d)(8), but that rule does not apply here where the trackage rights covered by the notice of exemption in STB Finance Docket No. 34951 extend longer than 1 year. PNWR must therefore seek temporary trackage rights by individual petition for exemption under 49 U.S.C. 10502, as carriers often did before the Board adopted the new rule.

¹ To accomplish this shift, PNWR will also use trackage rights between Labish, OR, and Portland, OR. See Portland & Western Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34883 (STB served July 19, 2006).

See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34353 (Sub-No. 1) (STB served June 10, 2003).

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.

PNWR'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 because 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 exemption in STB Finance Docket No. 34951 to expire on May 30, 2016.

The effect of this decision is to terminate the authorization for trackage rights conferred by our rule at 49 CFR 1180.2(d)(7). PNWR invoked that rule by notice on November 3, 2006. Because we are required to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

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

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34951, as discussed above, to permit them to expire on May 30, 2016, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on March 12, 2007.
4. This decision is effective on April 11, 2007.

5. Petitions to stay must be filed by March 22, 2007. Petitions to reopen must be filed by April 2, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary