

SERVICE DATE – JANUARY 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 433 (Sub-No. 4X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY—DISCONTINUANCE OF  
TRackage RIGHTS EXEMPTION—IN CANYON, PAYETTE AND WASHINGTON  
COUNTIES, IDAHO

Digest:<sup>1</sup> Idaho Northern & Pacific Railroad Company is permitted to discontinue overhead trackage rights over a 53.09-mile line of railroad owned by Union Pacific Railroad Company in Idaho.

Decided: December 27, 2012

By petition filed September 19, 2012, Idaho Northern & Pacific Railroad Company (INPR or Petitioner) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue overhead trackage rights over a 53.09-mile line of railroad owned by Union Pacific Railroad Company (UP), between milepost 519.0 at Weiser, and milepost 465.91 at Caldwell Junction, in Canyon, Payette and Washington Counties, Idaho. Notice of the filing was served on October 9, 2012, and published in the Federal Register on October 10, 2012 (77 Fed. Reg. 61,658). No comments were filed in response to the notice. We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

INPR was granted authority to acquire the subject overhead trackage rights as incidental to the transaction for the lease or sale by UP to INPR of several rail lines in Idaho Northern & Pacific Railroad Company—Lease, Acquisition and Operation Exemption—Union Pacific Railroad Company, FD 32370 (ICC served Dec. 7, 1993). The transaction encompassed some 290.52 miles of rail lines in the States of Idaho and Oregon, including as relevant here INPR's acquisition of the New Meadows Branch and the Payette Branch located in Idaho. Also, according to INPR, the portion of the overhead trackage rights it acquired in that transaction located between milepost 465.91, at Caldwell Junction, and milepost 454.0, at Nampa, was assigned to Boise Valley Railroad, Inc. (BVR), along with INPR's lease rights that included the Boise Cut-Off, in Boise Valley Railroad, Inc.—Assignment of Lease Exemption—Union Pacific

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Railroad Company and Idaho Northern & Pacific Railroad Company, FD 35259 (STB served Oct. 2, 2009).

INPR states that the overhead trackage rights that run between Weiser and Payette were initially used to move lumber from the New Meadows Branch to the Payette Branch. According to Petitioner, after the New Meadows Branch was abandoned, those overhead trackage rights were no longer needed. INPR adds that, starting in 1999, the overhead trackage rights that run between Payette and Caldwell Junction were used primarily to move INPR locomotives between the Payette Branch and the Boise Cut-Off. Once the lease of the Boise Cut-Off was assigned to BVR in 2009, however, INPR no longer had any need for any of the subject overhead trackage rights. INPR states that it has not used the overhead trackage rights between Weiser and Payette for approximately 17 years or the trackage rights between Payette and Caldwell Junction for nearly 3 years. INPR, therefore, seeks to discontinue these overhead trackage rights.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation 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 (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 of Petitioner's proposal to discontinue service over these overhead trackage rights is not necessary to carry out the rail transportation policy here. By minimizing the administrative expense of the application process, an exemption will expedite regulatory actions and reduce regulatory barriers to exit from the industry, in accordance with 49 U.S.C. §§ 10101(2) and (7). Because the overhead trackage rights are no longer needed by INPR, granting the exemption will foster sound economic conditions in transportation and encourage efficient railroad management, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.<sup>2</sup> The trackage rights are for overhead traffic only, and no local service will be affected. INPR does not serve any shippers on the line, and no shipper or other interested party has filed in opposition to the petition.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

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<sup>2</sup> Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

This proceeding involves a discontinuance of overhead trackage rights and not an abandonment. Thus, we need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the line under 49 U.S.C. § 10905.

Because this is a discontinuance of trackage rights where the line will continue to be operated, the proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(6). Similarly, under 49 C.F.R. § 1105.8(b), the proceeding is exempt from historic reporting requirements. Therefore, this decision 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 from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of overhead trackage rights by INPR as described above, subject to the employee protective conditions in Oregon Short Line, 360 I.C.C. 91 (1979).
2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by January 14, 2013, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600.
3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**
4. Petitions to stay must be filed by January 14, 2013, and petitions to reopen must be filed by January 23, 2013.
5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 2, 2013.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.