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SERVICE DATE - OCTOBER 6, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33926 (Sub-No. 1)

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

Decided: September 27, 2000

By petition filed September 6, 2000, The Burlington Northern and Santa Fe Railway Company (BNSF) and the Union Pacific Railroad Company (UP) (collectively petitioners) request that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33926¹ to extend only until November 11, 2000.

According to petitioners, the trackage rights arrangement exempted in STB Finance Docket No. 33926 is necessary because BNSF will be performing maintenance and repairs on its main line and will utilize the trackage rights over UP's lines as alternate routes for BNSF's traffic during that time. However, BNSF states that UP is willing to grant operating rights on its trackage only during the period of maintenance and repair on BNSF's line. Petitioners maintain that operating crew constraints on UP dictate that BNSF's operations over UP's line be handled as trackage rights rather than as a detour or other similar arrangement. Petitioners further maintain that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow BNSF to operate over UP's line, and BNSF would face the possibility of severe congestion and service disruption on its main line.

Although the petitioners have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain

¹ On September 6, 2000, BNSF 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 UP to grant temporary overhead trackage rights to BNSF over approximately 245 miles of UP's lines as follows: (1) between East Portland, OR, in the vicinity of UP's milepost 770.34, and Oakridge, OR, in the vicinity of UP's milepost 580.5 (UP's Brooklyn Subdivision); and (2) between Oakridge, in the vicinity of UP's milepost 580.5 and Chemult, OR, in the vicinity of UP's milepost 502.9 (UP's Cascade Subdivision). See The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 33926 (STB served Sept. 15, 2000). The trackage rights agreement is scheduled to expire on November 11, 2000. The trackage rights operations under the exemption were scheduled to be consummated on September 15, 2000.

effective indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33879 (Sub-No. 1) (STB served June 23, 2000); The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 33833 (Sub-No. 1) (STB served Feb. 4, 2000); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33748 (Sub-No. 1) (STB served June 15, 1999); The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999).

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.

BNSF'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 that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33926 to expire on November 11, 2000.

This action 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 the trackage rights described in STB Finance Docket No. 33926, as discussed above, to permit the trackage rights to expire on November 11, 2000.
2. Notice will be published in the Federal Register on October 6, 2000.

3. This decision is effective on November 5, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary