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SERVICE DATE - LATE RELEASE MAY 9, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34320 (Sub-No. 1)

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

Decided: May 9, 2003

By petition filed on March 7, 2003, Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) request that we permit the trackage rights arrangement exempted in STB Finance Docket No. 34320<sup>1</sup> to expire on or about May 22, 2003.

According to petitioners, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34320 is necessary because UP will be performing maintenance and repairs on its main line and will use these trackage rights as an alternative route for its traffic while the work is being performed. However, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage during the period of maintenance activity on UP's trackage. Petitioners maintain that, without Board 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 the possibility of severe operational problems on the trackage for which maintenance is scheduled.

DISCUSSION AND CONCLUSIONS

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain 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

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<sup>1</sup> On March 7, 2003, 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 BNSF to grant temporary overhead trackage rights to UP over a BNSF line of railroad between BNSF milepost 203.0 near Keddie, CA, and BNSF milepost 0.0 near Klamath Falls, OR, a distance of approximately 203.0 miles. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34320 (STB served Mar. 26, 2003). The trackage rights operations under the exemption were scheduled to begin on March 16, 2003.

Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

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 temporary 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. 34320 to expire on or about May 22, 2003.

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. 34320, as discussed above, to permit the trackage rights to expire on or about May 22, 2003.
2. Notice will be published in the Federal Register on May 15, 2003.
3. This decision is effective on May 22, 2003.
4. Petitions to reopen must be filed by June 4, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary