

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34333 (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 April 14, 2003, Union Pacific Railroad Company (UP) requests that we partially revoke the class exemption to permit the temporary trackage rights arrangement between UP and The Burlington Northern and Santa Fe Railway Company (BNSF), exempted in Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34333 (STB served May 2, 2003), to expire on or about May 10, 2003. We will grant the petition.

BACKGROUND

The temporary overhead trackage rights exempted in STB Finance Docket No. 34333 are over BNSF's rail line from BNSF milepost 141.7 near Rockview, MO, to BNSF milepost 422.2 near Jonesboro, AR, a distance of 181.6 miles. According to UP, the temporary trackage rights arrangement is necessary because it will be performing maintenance and repairs on its main line and will use the 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 line. UP maintains that, without approval of its petition to partially revoke the class exemption with respect to the temporary trackage rights, it is unlikely that any other arrangement can be reached to allow it to operate over BNSF's line. In that event, UP submits that it would face the possibility of severe operational problems on its main line.

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. Trackage rights exemptions have been granted for a limited term, rather than in perpetuity, in situations such as these. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34194 (Sub-No. 1) (STB served May 14, 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 are designed solely to facilitate the maintenance and repair of UP's rail line. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34333 to expire on or about May 10, 2003.

As the relief requested pertains to an intended cessation of trackage rights on or about May 10, 2003, we will make the decision effective on the service date of the decision to accommodate the parties.

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 temporary trackage rights described in STB Finance Docket No. 34333, as discussed above, to permit them to expire on or about May 10, 2003.
3. Notice will be published in the Federal Register on May 15, 2003.
4. This decision is effective on May 9, 2003.
5. Petitions to reopen must be filed by June 4, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary