

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35879 (Sub-No. 1)

BNSF RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS  
EXEMPTION—UNION PACIFIC RAILROAD COMPANY

Digest:<sup>1</sup> This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: February 18, 2015

By petition filed on November 25, 2014, BNSF Railway Company (BNSF) requests that the Board partially revoke the class exemption to permit the restricted local trackage rights arrangement exempted in Docket No. FD 35879<sup>2</sup> to expire at midnight on October 31, 2015. BNSF explains that the parties have agreed that these trackage rights should only be valid until that time and that they are restricted to movements of BNSF's unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, Cal.

DISCUSSION AND CONCLUSION

Although BNSF and UP have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 C.F.R.

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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).

<sup>2</sup> In that docket, also on November 25, 2014, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice addressed an agreement in which Union Pacific Railroad Company (UP) granted local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35879 (STB served Dec. 11, 2014). BNSF notes in its petition that, because the trackage rights covered by that docket are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8).

§ 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity.<sup>3</sup>

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) at 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 C.F.R. § 1180.2(d)(7). See R.R. Consolidation Procedures—Trackage Rights Exemption, 1 I.C.C.2d 270 (1985). Granting partial revocation here is consistent with the RTP goals, including minimizing the need for Federal regulatory control (49 U.S.C. § 10101(2)); ensuring coordination between rail carriers (10101(5)); reducing regulatory barriers to entry into and exit from the industry (§ 10101(7)); and providing for the expeditious handling and resolution of this proceeding (§ 10101(15)). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and would have no adverse impact on shippers because the trackage rights that are the subject of the exemption are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit in Eley for use in BNSF's maintenance-of-way projects. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35879 to expire at midnight on October 31, 2015.

To provide the statutorily mandated 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 Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 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, the temporary trackage rights described in Docket No. FD 35879 are exempted, as discussed above, to permit the trackage rights to expire at midnight on October 31, 2015, subject to the employee protective conditions set forth in Oregon Short Line, 360 I.C.C. 91 (1979).

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<sup>3</sup> Indeed, the Board limited the term of local trackage rights on these lines when it granted a similar BNSF petition in 2014. See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35808 (Sub-No. 1) (STB served Apr. 10, 2014).

3. Notice will be published in the Federal Register on February 23, 2015.
4. This decision is effective on March 25, 2015. Petitions to stay must be filed by March 5, 2015. Petitions for reconsideration must be filed by March 16, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.