

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34911 (Sub-No. 1)

MONTANA RAIL LINK, INC.—TRACKAGE RIGHTS EXEMPTION—BNSF
RAILWAY COMPANY

Decided: November 17, 2006

By petition filed on September 25, 2006, Montana Rail Link, Inc. (MRL) requests that we partially revoke a class exemption to permit the trackage rights arrangement exempted in Montana Rail Link, Inc.—Trackage Rights Exemption—BNSF Railway Company, STB Finance Docket No. 34911 (STB served Oct. 13, 2006) (MRL Trackage Rights),¹ to expire on or about December 31, 2010.

According to MRL, the trackage rights arrangement exempted in MRL Trackage Rights is necessary because it will allow for the movement of sediment from a shipper's facility at the Clark Fork River between Garrison and Missoula, MT (Milltown Dam Area), near Bonner, MT, to a disposal site at Opportunity Ponds, MT. MRL states that, without Board approval of this petition, it is unlikely that any other arrangement could have been reached that would have allowed it to operate over BNSF's rail lines.

DISCUSSION AND CONCLUSIONS

Although MRL and BNSF have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely, regardless of any durational contract provisions. The Board has adopted a class exemption for overhead trackage rights of less than 1-year's duration at 49 CFR 1180.2(d)(8). The trackage rights covered by the notice of exemption in MRL Trackage Rights extend for longer than 1 year, however. Thus, the rule at 49 CFR 1180.2(d)(8) does not apply to them. MRL must therefore seek temporary trackage rights by individual petition, as carriers often did before the Board adopted the new rule. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34353 (Sub-No. 1) (STB served June 10, 2003).

¹ MRL concurrently 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 Railway Company (BNSF) to grant overhead trackage rights to MRL over BNSF's rail lines extending from approximately milepost 51.07 at or near Garrison, MT, to approximately milepost 21.5, a location south of Warm Springs, MT, a distance of approximately 29.57 miles. See MRL Trackage Rights. The trackage rights operations under the exemption were scheduled to be consummated on or after October 2, 2006.

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.

MRL'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 because 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 MRL Trackage Rights to expire on or about December 31, 2010.

The effect of this decision is to terminate the authorization for trackage rights conferred by our rule at 49 CFR 1180.2(d)(7). As noted, MRL invoked that rule by notice on September 25, 2006. Because we are required to provide 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 R. Co.—Abandonment—Goshen, 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, we exempt the trackage rights described in STB Finance Docket No. 34911, as discussed above, to permit them to expire on or about December 31, 2010, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on November 28, 2006.
4. This decision is effective on December 28, 2006.

5. Petitions to stay must be filed by December 8, 2006. Petitions to reopen must be filed by December 18, 2006.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary