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SERVICE DATE – DECEMBER 14, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34069 (Sub-No. 1)

CENTRAL MONTANA RAIL, INC.–TRACKAGE RIGHTS EXEMPTION–
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: December 7, 2001

By petition filed October 29, 2001, Central Montana Rail, Inc. (CMR) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34069¹ to extend only until January 1, 2003.

According to CMR, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34069 is necessary because it will allow CMR to serve the United Harvest grain elevator located at milepost 134.4 without disrupting BNSF's rail transportation system. CMR states that it intends to construct its own track to serve the United Harvest grain elevator and anticipates completing its construction by January 1, 2003. CMR maintains that, without approval of the temporary trackage rights, it is unlikely that any other feasible arrangement can be reached to allow CMR to operate over BNSF's line.

DISCUSSION AND CONCLUSIONS

Although CMR 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

¹ On October 29, 2001, CMR filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by which The Burlington Northern and Santa Fe Railway Company (BNSF) granted temporary overhead trackage rights to CMR over BNSF's line between milepost 134.4 and milepost 134.57, in the vicinity of Moccasin, MT, a distance of 0.17 miles. See Central Montana Rail, Inc.–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34069 (STB served Nov. 16, 2001). The agreement is scheduled to expire on January 1, 2003. The trackage rights operations under the exemption were scheduled to be consummated on November 5, 2001.

Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34082 (Sub- No. 1) (STB served Sept. 13, 2001).

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.

CMR'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. 34069 to expire on January 1, 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. 34069, as discussed above, to permit the trackage rights to expire on January 1, 2003.
2. Notice will be published in the Federal Register on December 14, 2001.
3. This decision is effective on January 13, 2002.
4. Petitions for stay must be filed by December 26, 2001. Petitions to reopen must be filed by January 3, 2002.

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

Vernon A. Williams
Secretary