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SERVICE DATE - JULY 24, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34218 (Sub-No. 1)

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

Decided: July 17, 2002

By petition filed June 20, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34218¹ to extend only until August 16, 2002.

According to BNSF, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34218 was necessary in order for it to perform scheduled maintenance on BNSF lines. However, BNSF states that it is only seeking, and UP is only willing to grant, temporary trackage rights over UP trackage during the period of maintenance activity on BNSF's line. BNSF maintains that, without approval of the temporary trackage rights, it is unlikely that any other arrangement could have been reached to allow BNSF to operate over UP's line, and BNSF would face the possibility of severe operational problems on its main line.

¹ On June 10, 2002, BNSF filed a notice of exemption under the class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to BNSF over UP's trackage between UP milepost 428.7 at Klamath Falls, OR, and UP milepost 141.9 at Binney Junction (Maryville), CA, a total distance of approximately 286.8 miles. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad, STB Finance Docket No. 34218 (STB served June 28, 2002). The agreement is scheduled to expire on August 16, 2002. The trackage rights operations under the exemption were scheduled to be consummated on or after June 17, 2002.

DISCUSSION AND CONCLUSIONS

Although BNSF and UP 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 Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34160 (Sub-No. 1) (STB served Jan. 22, 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.

BNSF'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. 34218 to expire on August 16, 2002.

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. 34218, as discussed above, to permit the trackage rights to expire on August 16, 2002.
2. Notice will be published in the Federal Register on July 24, 2002.
3. This decision is effective on August 15, 2002.

4. Petitions to reopen must be filed by August 5, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary