

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34667

BNSF RAILWAY COMPANY
— ACQUISITION AND OPERATION —
STATE OF SOUTH DAKOTA

Decided: May 25, 2005

By application filed February 18, 2005, BNSF Railway Company (BNSF)¹ seeks authority, under 49 U.S.C. 10901 and 49 CFR Part 1150, Subpart A (§ 1150.1 *et seq.*), to acquire and operate approximately 368 miles of railroad lines (referred to as the “Core Lines”) that are now owned by the State of South Dakota (the State). The Core Lines extend principally: between milepost (MP) 777.0 near Aberdeen, SD, and MP 650.6 near Mitchell, SD; between MP 518.9 near Sioux City, IA, and MP 649.7 near Mitchell, SD; between MP 293.1 near Canton, SD, and MP 650.6 near Mitchell, SD; between MPs 74.1 and 68.8 in Sioux Falls, SD; between MP 68.8 near Sioux Falls, SD, and MP 49.4 near Canton, SD; and between MPs 511.9 and 518.9 in Sioux City, IA.

By decision served March 3, 2005, and published in the Federal Register on March 8, 2005,² interested persons were requested to submit comments respecting the BNSF application. Such comments were submitted by two parties: the State, which asked that approval of the BNSF application be made subject to four conditions; and John D. Fitzgerald, for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), who asked that the BNSF application be approved without conditions.

By joint motion filed May 19, 2005, BNSF and the State ask that this proceeding be stayed pending the implementation of the terms and conditions of an agreement reached between BNSF and the State, dated as of April 25, 2005, to resolve the State’s concerns in this proceeding and to settle and resolve related litigation pending between BNSF and the State. The agreement provides, among other things, for the grant to the State or third parties of certain trackage, haulage, or access rights over rail lines owned or to be acquired by BNSF in South Dakota. The

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

² BNSF Railway Company — Acquisition and Operation — State of South Dakota, STB Finance Docket No. 34667 (STB served March 3, 2005, and published March 8, 2005, at 70 FR 11309).

agreement contemplates the execution of a number of implementing agreements with third parties, after which BNSF and the State would request immediate resumption of this proceeding, the State would withdraw its comments and request for conditions, and BNSF and the State would seek unconditional and expedited approval of BNSF's proposed acquisition of the Core Lines. The agreement also contemplates that all conditions of settlement (including execution of required third party implementing agreements, Board approval of BNSF's acquisition of the Core Lines, closing on the Core Lines acquisition, and dismissal of the related litigation) must occur prior to October 25, 2005, or the terms of the settlement will be null and void.

BNSF and the State have therefore requested that this proceeding be stayed to allow completion of certain terms of settlement until such time as BNSF and the State may jointly request that the stay be lifted, provided that in no event shall the stay extend beyond October 25, 2005, unless BNSF and the State mutually agree and jointly request otherwise.

In view of the Board's preference for negotiated solutions to disputes arising between railroad industry stakeholders, this proceeding will be held in abeyance until October 25, 2005. The Board requests that BNSF and/or the State will submit a report on the progress of the implementation of the agreement on or before August 22, 2005. The Board expects that BNSF and/or the State will submit, no later than October 25, 2005, a request seeking further action to be taken in this proceeding. Moreover, we note that not all parties to this proceeding have entered into the settlement agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding will be held in abeyance until October 25, 2005.
2. BNSF Railway, Inc. and /or the State of South Dakota will submit, on or before August 22, 2005, a report on the implementation of the agreement.
3. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary