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SERVICE DATE - DECEMBER 8, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34417 (Sub-No. 1)

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

Decided: November 24, 2003

By petition filed on October 14, 2003, Union Pacific Railroad Company (UP) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in STB Finance Docket No. 34417¹ to expire on October 15, 2004.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 34417 is necessary to permit UP to serve the shipper at Endicott until BNSF's trackage can be repaired or other arrangements can be made for continued rail service to this shipper, following severe washouts on BNSF's line in the area. Thus, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage until those repairs or other arrangements have been made.

DISCUSSION AND CONCLUSION

Although UP 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 Pacific Railroad

¹ On October 14, 2003, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant local trackage rights to UP over a BNSF line of railroad between milepost 114.5 and milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. UP submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's new class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34417 (STB served Nov. 3, 2003). The trackage rights operations under the exemption were scheduled to begin on October 21, 2003.

Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company,
STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

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 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.

UP'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 the shipper on the line because the trackage rights that are the subject of the exemption are solely to allow the shipper to continue to receive rail service until necessary repairs are made to certain BNSF trackage or other arrangements are made for continued rail service to the shipper. Therefore, the Board will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34417 to expire on October 15, 2004.

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 trackage rights described in STB Finance Docket No. 34417, are exempted, as discussed above, to permit the trackage rights to expire on October 15, 2004.
3. Notice will be published in the Federal Register on December 8, 2003.
4. This decision is effective on January 7, 2004.

5. Petitions to stay must be filed by December 18, 2003. Petitions to reopen must be filed by December 29, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary