

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35895

BNSF RAILWAY COMPANY—LEASE
EXEMPTION—UNION PACIFIC RAILROAD COMPANY

Docket No. FD 35896

UNION PACIFIC RAILROAD COMPANY—LEASE
EXEMPTION—BNSF RAILWAY COMPANY

Digest:¹ This decision permits BNSF Railway Company (BNSF) to lease from Union Pacific Railroad Company (UP) approximately 54.12 miles of main line track for track and signal maintenance and 7.80 miles of right of way for signal maintenance. The decision also permits UP to lease from BNSF approximately 14.85 miles of main line track for track and signal maintenance and 1.77 miles of right of way for track maintenance only.

Decided: April 20, 2015

By petition filed on March 10, 2015, BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) (collectively, Petitioners) seek separate exemptions from prior review and approval under 49 U.S.C. §§ 11323-25 for BNSF to lease from UP approximately 54.12 miles of main line track for both track and signal maintenance and 7.80 miles of right of way for signal maintenance; and for UP to lease from BNSF approximately 14.85 miles of main line track for track and signal maintenance and 1.77 miles of right of way for track maintenance only. According to Petitioners, the proposed lease transactions would modify prior agreements, which were entered into by Petitioners' predecessors, to geographically consolidate BNSF's and UP's respective maintenance obligations on the tracks and appurtenant structures and facilities located between Denver and Bragdon, Colo. (the Joint Trackage). We will grant the exemptions, subject to the standard labor protective conditions.

¹ This digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

Petitioners state that they have entered into a lease agreement (the New Agreement) that modifies each party's responsibilities regarding the ownership, operation, maintenance, and joint use of the Joint Trackage. The responsibilities assigned to each party were established in agreements entered into by Petitioners' predecessors in 1936, with respect to tracks located between South Denver and Bragdon, Colo. (the Joint Corridor), and in 1987, with respect to tracks located between Prospect Junction and South Denver, Colo. (the Consolidated Corridor).² According to Petitioners, under the New Agreement, BNSF would grant UP a non-exclusive lease for the following segments of BNSF-owned Joint Trackage: (i) on the Joint Corridor, main track 2, BNSF milepost 12.41, at or near Littleton, to BNSF milepost 25.21, at or near Sedalia; (ii) on the Joint Corridor, main track 2, BNSF milepost 49.79, at or near Spruce, to BNSF milepost 51.84, at or near Palmer Lake; and (iii) on the Joint Corridor, main track 2, BNSF milepost 84.36, at or near Crews, to BNSF milepost 86.13, south of Crews, excluding the signal system and grade crossing warning devices.

Additionally, Petitioners state that UP would grant BNSF a non-exclusive lease for the following segments of UP-owned Joint Trackage: (i) on the Consolidated Corridor in Denver, main track 1, BNSF milepost 0.0 to BNSF milepost 0.85; (ii) on the Joint Corridor, main track 1, BNSF milepost 3.92, at or near South Denver, to BNSF milepost 25.21, at or near Sedalia (excluding Dupont Spur at approximately UP milepost 20.6, Fort Logan Spur at approximately UP milepost 9.1, and Iowa Spur No. 3 at approximately UP milepost 5.3); (iii) on the Joint Corridor, main track 1, BNSF milepost 48.97, at or near Spruce, to BNSF milepost 51.99, at or near Palmer Lake; (iv) on the Joint Corridor, main track 1, BNSF milepost 51.84 to BNSF milepost 51.99, at or near Palmer Lake; (v) on the Joint Corridor, the single track, BNSF milepost 51.99, at or near Palmer Lake, to BNSF milepost 78.75, at or near Kelker (excluding UP's yard in Colorado Springs between UP milepost 74.4 and UP milepost 75.4, the Templeton Gap Spur at approximately UP milepost 72.79, and the Russina Spur at approximately UP milepost 70.7); and (vi) on the Joint Corridor, main track 1, BNSF milepost 84.49, at or near Crews, to BNSF milepost 86.54, south of Crews. UP would also grant BNSF a non-exclusive lease of UP's signal system and grade crossing warning devices on the Joint Corridor, main track 2, BNSF milepost 86.13, south of Crews, to BNSF milepost 93.9, at or near Nixon.

According to Petitioners, the New Agreement is designed to bring geographic consistency to the parties' maintenance obligations over the Joint Trackage. Petitioners state that the parties' maintenance obligations are currently disjointed, making it more difficult and costly to properly maintain the Joint Trackage. Petitioners explain that the New Agreement would consolidate each party's maintenance obligations geographically so that each party could more efficiently maintain the portions of the Joint Trackage for which it is responsible.

² According to Petitioners, the 1936 agreement was entered into between one of BNSF's predecessors, The Atchison, Topeka and Santa Fe Railway Company, and one of UP's predecessors, The Denver and Rio Grande Western Railroad Company (DRGW). The 1987 agreement was entered into between another of BNSF's predecessors, Burlington Northern Railroad Company, and DRGW.

Petitioners have requested expedited consideration so that they can begin maintenance on the Joint Trackage as soon as possible. Petitioners explain that there are “slow orders” (speed restrictions) due to ballast issues, tie issues, broken frogs, etc., that they would be able to address if and when the proposed transactions are approved. Petitioners note that reducing the number of slow orders would have a direct effect on the speed and reliability of the route, ensuring that energy producers, who are connected to coal sources via the north-south route that includes the Joint Trackage, have sufficient stockpiles to supply customer needs when unexpected weather conditions occur. In a letter filed by BNSF on March 23, 2015, BNSF reiterates Petitioners request for expedited handling, stating that expedited consideration would allow BNSF to plan for and deploy maintenance during the summer construction season of 2015. Specifically, BNSF requests a waiver from 49 C.F.R. § 1121.4(e), which provides that exemptions granted under this section are generally effective 30 days from the service date of the decision granting the exemption.

In a letter filed on March 17, 2015, Petitioners certify that the New Agreement contains no provisions that would limit the parties’ ability to interchange with third-party connecting carriers.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transactions through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101. The proposed transactions are designed primarily to realign Petitioners’ maintenance responsibilities over the Joint Trackage, which would enable Petitioners to improve service for their customers by increasing the efficiency of their rail operations. As described by Petitioners, maintenance under the New Agreement would be performed with fewer outages and less impact on shippers because the New Agreement would replace the patchwork of responsibilities created by the 1936 and 1987 agreements with consolidated maintenance obligations, under which each railroad would be responsible for maintaining a contiguous line of track. In doing so, the proposed transactions would promote a safe and efficient rail transportation system (49 U.S.C. § 10101(3)), ensure continuation of a sound rail transportation system with effective competition among rail carriers (49 U.S.C. § 10101(4)), foster sound economic conditions in transportation and ensure effective competition (49 U.S.C. § 10101(5)), encourage honest and efficient management (49 U.S.C. § 10101(9)), and promote energy conservation (49 U.S.C. § 10101(14)). Further, an exemption from the application process would expedite regulatory action (49 U.S.C. § 10101(2)) and reduce regulatory barriers to entry and exit (49 U.S.C. § 10101(7)). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transactions is not necessary to protect shippers from the abuse of market power.³ Nothing in the record indicates that any shipper would lose an existing rail service option as a result of the proposed lease transactions. Petitioners state that BNSF would continue to operate and serve customers located on the track it would lease to UP, and UP would likewise continue to operate and serve customers located on the track it would lease to BNSF. According to Petitioners, no service would be degraded as a result of the transactions. Rather, the lease transactions should benefit shippers by allowing Petitioners to move traffic more efficiently following improved maintenance on the Joint Trackage. Moreover, no shippers or other parties have filed any objections or opposition to the proposed transactions.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting these exemptions, we will impose the standard employee protective conditions in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

The proposed leases are exempt from both the environmental reporting requirements under 49 C.F.R. § 1105.6(c) and the historic reporting requirements under 49 C.F.R. § 1105.8(b).

As noted above, Petitioners request expedited consideration of their petitions, and BNSF asks the Board to waive the requirements of 49 C.F.R. § 1121.4(e),⁴ so that Petitioners can commence maintenance improvements as soon as possible. Because of the urgency shown by Petitioners, the request for expedited consideration will be granted, and the request that the Board waive the requirements of § 1121.4(e) will be granted. The exemptions will be effective April 30, 2015. The other procedural deadlines provided for in § 1121.4(e) will also be expedited, with petitions to stay, petitions for reconsideration, and petitions to reopen due by April 27, 2015.

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 from the prior approval requirements of 49 U.S.C. §§ 11323-25 Petitioners' leases of the above-described segments, subject to the

³ Given our market power finding, we need not determine whether the proposed transactions are limited in scope.

⁴ Unless a decision specifies otherwise, § 1121.4(e) provides that: (1) an exemption generally will be effective 30 days from the service date of the decision granting the exemption; (2) petitions to stay are due 10 days from the service date of the decision granting the exemption; and (3) petitions for reconsideration or to reopen are due 20 days from the service date of the decision granting the exemption.

employee protective conditions in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

2. Notice of the exemptions will be published in the Federal Register on April 23, 2015.
3. The request that the Board waive the requirements of § 1121.4(e) is granted.
4. The exemptions will become effective on April 30, 2015.
5. Petitions to stay, petitions for reconsideration, and petitions to reopen must be filed by April 27, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.