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SERVICE DATE – MAY 4, 2007

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35003]

BNSF Railway Company and Soo Line Railroad Company, Inc.—Joint Relocation  
Project Exemption—in Duluth, MN

On April 18, 2007,<sup>1</sup> BNSF Railway Company (BNSF) and Soo Line Railroad Company, Inc., d/b/a Canadian Pacific Railway (CPR), jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate and construct track within and around Rice's Point Yard between CPR mileposts 288.70 and 287.20, in Duluth, MN. BNSF and CPR will construct, maintain, repair and renew their own trackage and turnouts under the Duluth Public Works Project.

The purpose of the joint relocation project is to accommodate a new public roadway, Davis-Helberg Drive (also referred to as Helberg Drive), being constructed as part of a Port of Duluth improvement project.

The project consists of the following transactions:

(1) BNSF will grant CPR non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by BNSF located between Points C and D, a distance of approximately 825 feet.

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<sup>1</sup> The notice was initially filed on March 26, 2007. On April 3, 9, and 18, 2007, amendments were filed to more clearly identify the trackage involved in this proceeding. Because the notice was not complete until the April 18 filing, that date will be considered the actual filing date.

Point C is currently located at BNSF milepost 1.46 (CPR milepost 288.25) and, after construction, because of changes to the overall track configuration within the CPR track system, Point C will be designated CPR milepost 288.24. Point D is currently located at BNSF milepost 1.49 and, after construction, Point D will be designated as CPR milepost 287.91. These trackage rights are intended to enable CPR a direct run-through to bypass switches at Cargill (or its successor). BNSF will continue to operate over this segment.

(2) CPR will grant BNSF non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by CPR located between Points E and I, a distance of approximately 350 feet. After construction, Point E will be on new trackage to be designated as CPR milepost 287.75. Point I is located on crossover yard track between BNSF and CPR. There is no milepost designation for this yard track, but the end point of the trackage rights (Point I), is approximately 350 feet south of Point E. These trackage rights are intended to enable BNSF to continue to connect with the Duluth Seaway Port Authority, which includes serving AG Processing, Inc. (or its successor), Azcon (or its successor), and the Garfield Industrial area. CPR will continue to operate over this segment.<sup>2</sup>

(3) BNSF will grant CPR a freight easement on BNSF's property for the purchase, relocation and reconstruction of a portion of CPR's line between Points A and B (Point A being the westerly BNSF right-of-way near Point C) (easement), a distance of

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<sup>2</sup> Applicants state that the overhead reciprocal trackage rights will terminate 25 years from the execution date (initial term). Unless BNSF or CPR notifies the other in writing at least 6 months prior to the expiration of the initial term, the trackage rights may continue in full force and effect for up to 3 successive terms of 25 years each under the same terms and conditions. The parties must seek appropriate Board authority for the trackage rights to expire at the end of the initial term or at the end of the successive term or terms, as appropriate.

approximately 2,500 feet. Point A is currently located at BNSF milepost 1.61. After construction, Point A will be located on new trackage designated as CPR milepost 288.10, and Point B will be located on new trackage to be designated as CPR milepost 287.64.

Applicants state that the proposed project will not disrupt service to shippers, as applicants will continue to have access to the Port. Additionally, applicants state that the relocated line and trackage rights will not involve an expansion of service by BNSF or CPR into new territory, or alter the existing competitive situation.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom. Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.&I.R.—Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

The earliest this transaction may be consummated is the May 18, 2007 effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than May 11, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35003, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: Sidney L. Strickland, Jr., 3050 K Street, N.W., Suite 101, Washington, DC 20007, and Leigh Currie, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our website at "[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV)."

Decided: April 27, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary