

35555

SERVICE DATE – FEBRUARY 11, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 2)]

Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF Railway Company¹

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP² over BNSF's line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.³

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

² UP submits that the trackage rights being granted here 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 at 49 CFR 1180.2(d)(8). See Railroad Consolidation Procedures–Exemption for Temporary Trackage Rights, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 3), Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF Railway Company, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2005. That petition will be addressed by the Board in a separate decision.

³ The original trackage rights granted in Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance

(continued...)

The transaction was scheduled to be consummated on February 1, 2005.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 to extend the expiration date to on or before December 31, 2005. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

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).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 2) must be filed with the Surface Transportation Board, 1925 K Street, N.W.,

³(...continued)

Docket No. 34554 (STB served Oct. 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decision served November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), the Board granted an exemption to permit the trackage rights granted in STB Finance Docket No. 34554 to expire. At that time, it was anticipated by the parties that the rights would expire on or about December 31, 2004. However, this authority has not yet been exercised.

Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: February 3, 2005.

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

Vernon A. Williams

Secretary