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SERVICE DATE - JULY 1, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33612 (Sub-No. 1)

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

Decided: June 23 , 1998

By petition filed on June 4, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) (or collectively petitioners) request that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33612<sup>1</sup> to extend only until July 31, 1998.

According to petitioners, the trackage rights arrangement exempted in STB Finance Docket No. 33612 is necessary because BNSF will be performing maintenance and repairs on its main line and will utilize the trackage rights over UP's line as an alternative route for BNSF traffic. However, petitioners state that UP is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on BNSF's trackage. Petitioners further state that operating crew constraints on UP dictate that BNSF's operations over UP's trackage be handled as trackage rights rather than as a detour arrangement. Petitioners maintain that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow BNSF to operate over UP's line, and BNSF would face the possibility of severe congestion and service disruption on its main line.

Although the parties have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective

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<sup>1</sup> On June 4, 1998, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant temporary overhead trackage rights to BNSF between Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision) and Tower 55, Forth Worth, TX, in the vicinity of UP's milepost 245.5 (Dallas Subdivision), a distance of approximately 30.9 miles. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 33612 (STB served June 22, 1998). The trackage rights transaction under the exemption became effective on June 11, 1998, 7 days after the verified notice was filed, and was scheduled to be consummated on June 15, 1998.

indefinitely regardless of any durational contract provisions.<sup>2</sup> Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Southern Pacific Transportation Company--Trackage Rights Exemption--Peninsula Corridor Joint Powers Board, Finance Docket No. 32300 (ICC served June 8, 1993); Soo Line Railroad Company--Trackage Rights--Over a Line of Chicago, Central and Pacific Railroad Company in Rockford, IL, Finance Docket No. 32446 (ICC served Jan. 6, 1994); Union Pacific Railroad Company--Trackage Rights Exemption--Chicago, Central & Pacific Railroad Company, STB Finance Docket No. 32959 (Sub-No. 1) (STB served July 25, 1996); Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33572 (Sub-No. 1) (STB served Apr. 23, 1998); The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 33574 (Sub-No. 1) (STB served Apr. 24, 1998).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find 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.

BNSF's 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 shippers on the line as the trackage rights are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33612 to expire on July 31, 1998.

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 the trackage rights described in STB Finance Docket No. 33612, as discussed above, permitting them to expire on July 31, 1998.
2. Notice will be published in the Federal Register on July 1, 1998.
3. This decision is effective on July 31, 1998.

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<sup>2</sup> In the absence of the relief sought here by exemption, petitioner would ordinarily need to seek either discontinuance authority under 49 U.S.C. 10903 or approval of a new agreement. See Milford-Bennington Railroad Company, Inc.--Trackage Rights Exemption--Boston and Maine Corporation and Springfield Terminal Railway Company, Finance Docket No. 32103 (ICC served Sept. 3, 1993).

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4. Petitions to reopen must be filed by July 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary