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SERVICE DATE - NOVEMBER 10, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33657 (Sub No. 1)

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

Decided: November 2, 1998

By petition filed September 3, 1998, Union Pacific Railroad Company (UP or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33657¹ to extend only until December 31, 1998.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33657 is necessary because UP will be performing programmed track, roadbed and structural maintenance work on its trackage between Pueblo, CO, and Peabody, KS, and will utilize the trackage rights over BNSF's line as an alternative route for UP's traffic. However, petitioner states that BNSF is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on UP's trackage. Petitioner further states that operating crew constraints on BNSF dictate that UP's operations over BNSF's trackage be handled as trackage rights rather than as a detour arrangement. Petitioner maintains that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

Although the parties have expressly agreed on the terms of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions.² Occasionally, trackage rights

¹ On September 3, 1998, UP 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 The Burlington Northern and Santa Fe Railway Company (BNSF) to authorize temporary overhead trackage rights to UP over approximately 448 miles of BNSF's rail line between milepost 618.0 at Pueblo, CO, and milepost 170 at Peabody, KS. See Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33657 (STB served Sept. 30, 1998). The exemption became effective on September 10, 1998, 7 days after the verified notice was filed.

² 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

(continued...)

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 April 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); 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); The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33612 (Sub-No. 1) (STB served July 1, 1998); and Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (Sub-No. 1) (STB served July 30, 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.

UP'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 that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33657 to expire on December 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. 33657, as discussed above, to permit the trackage rights to expire on December 31, 1998.

²(...continued)

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).

STB Finance Docket No. 33657 (Sub-No. 1)

2. Notice will be published in the Federal Register on November 10, 1998.
3. This decision is effective on December 10, 1998.
4. Petitions to reopen must be filed by November 30, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary