

40486  
EB

SERVICE DATE – MARCH 15, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34554 (Sub-No. 13)

UNION PACIFIC RAILROAD COMPANY—TEMPORARY TRACKAGE RIGHTS  
EXEMPTION—BNSF RAILWAY COMPANY

Decided: March 8, 2010

By petition filed on December 18, 2009, Union Pacific Railroad Company (UP) requests that the Board partially revoke the class exemption to permit the modified trackage rights arrangement exempted in STB Finance Docket No. 34554 (Sub-No. 12)<sup>1</sup> to expire on or about December 18, 2010.<sup>2</sup>

---

<sup>1</sup> In that docket, on December 18, 2009, UP filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF Railway Company (BNSF) to extend to December 18, 2010, the expiration date of the local trackage rights granted to UP 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 52 miles. UP submits that while the trackage rights are only temporary rights, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). See Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company, STB Finance Docket No. 34554 (Sub-No. 12) (STB served Dec. 31, 2009).

<sup>2</sup> The trackage rights were originally granted in Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed several notices of exemption based on their agreements to extend expiration dates of the same trackage rights. See STB Finance Docket No. 34554 (Sub-No. 2) (decision served February 11, 2005); STB Finance Docket No. 34554 (Sub-No. 4) (decision served March 3, 2006); STB Finance Docket No. 34554 (Sub-No. 6) (decision served January 12, 2007); STB Finance Docket No. 34554 (Sub-No. 8) (decision served January 4, 2008); and STB Finance Docket No. 34554 (Sub-No.10) (decision served January 8, 2009). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See STB Finance Docket No. 34554 (Sub-No. 1) (decision served November 24, 2004); STB Finance Docket No. 34554 (Sub-No. 3) (decision served March 25, 2005); STB Finance Docket No. 34554 (Sub-No. 5) (decision served March 23, 2006); STB Finance Docket No. 34554 (Sub-No. 7) (decision served March 13, 2007); STB Finance Docket No. 34554

(continued . . . )

UP states that the modified trackage rights arrangement exempted in STB Finance Docket No. 34554 (Sub-No. 12) is necessary to continue to permit UP to move loaded and empty ballast trains for use in its maintenance-of-way (MOW) projects. But UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage until December 18, 2010.

## DISCUSSION AND CONCLUSION

Although UP and BNSF have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds 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 temporary trackage rights already have been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Granting partial revocation in these circumstances will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreements expire, thereby promoting rail transportation policy goals at 49 U.S.C. 10101(2), (4), (5), (7) and (15). Moreover, 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 because the trackage rights that are the subject of the exemption are solely for the continued movement of loaded and empty ballast trains for use in UP's MOW projects. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 12) to expire on or about December 18, 2010.

---

( . . . continued)

(Sub-No. 9) (decision served March 20, 2008); and STB Finance Docket No. 34554 (Sub-No. 11) (decision served March 11, 2009). At the time of the extension authorized in STB Finance Docket No. 34554 (Sub-No. 10), the parties anticipated that the authority to allow the rights to expire would be exercised by December 31, 2009. However, the parties filed on December 18, 2009, in STB Finance Docket No. 34554 (Sub-No. 12) their most recent notice of exemption so that the trackage rights could be extended to December 18, 2010, and in STB Finance Docket No. 34554 (Sub-No. 13) their latest petition to partially revoke the class exemption to permit expiration, which we are addressing here.

In order to provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights described in STB Finance Docket No. 34554 (Sub-No. 12) are exempted, as discussed above, to permit the trackage rights to expire on or about December 18, 2010, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on March 15, 2010.
4. This decision is effective on April 14, 2010. Petitions to stay must be filed by March 25, 2010. Petitions for reconsideration must be filed by April 5, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.