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SERVICE DATE – FEBRUARY 23, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34976

BNSF RAILWAY COMPANY  
– LEASE AND OPERATION EXEMPTION –  
INTERLOCKER PLANT OF THE  
ILLINOIS CENTRAL RAILROAD COMPANY

Decided: February 21, 2007

On January 5, 2007, BNSF Railway Company (BNSF) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to lease and operate an interlocker plant<sup>1</sup> and the underlying land owned by the Illinois Central Railroad Company (CN), situated at or near BNSF's Corwith Yard in the City of Chicago, Cook County, IL, including all signal appliances and structures thereon and the tower facility (collectively, the Interlocker Plant or the Plant), but excluding the tracks, track appurtenances, turnouts and derails of CN and BNSF. The Interlocker Plant is bounded by: (i) the opposing home signals on the BNSF Joliet, IL-Chicago main line; (ii) the opposing home signals on the CN Joliet-Chicago main line; and (iii) the opposing home signals on the BNSF Joliet-Chicago main line and the BNSF Wye. The Plant measures approximately 1 mile in length east to west, and 1/2 mile in length north to south.

Petitioner has requested expedited consideration of the petition and that the exemption be made effective immediately, or at least in less than the usual 30-day period. We will grant the exemption, subject to labor protective conditions, and provide for the exemption to become effective on 10 days' notice.

BACKGROUND

CN, a Class I railroad, is a subsidiary of Canadian National Railway Company, which owns and operates lines in 16 states and 8 Canadian provinces. BNSF is a Class I railroad that owns and operates lines in 28 states and 2 Canadian provinces.

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<sup>1</sup> An interlocker plant is “[a]n arrangement of signals and signal appliances so interconnected that their movements must succeed each other in proper sequence and for which [rules] are in effect.” JAMES A. CONNELLY & WILLIAM J. CURDY, *THE RAILROADERS’ DICTIONARY* I7 (1985).

According to BNSF, the purpose of this transaction is to facilitate a restructuring of existing joint facility arrangements applicable to the Interlocker Plant.<sup>2</sup> BNSF seeks to lease and operate the Interlocker Plant and to assume certain responsibilities pertaining to the Plant. BNSF will assume the right, responsibility and supervision for the performance of all maintenance, repairs, and renewals of the Plant ten days after all governmental approvals are obtained, and will assume the right, responsibility and supervision for the operation, management, and control of the Plant, effective January 1, 2008. BNSF states that the lease and operation agreement will be effective for 20 years as of the later of the execution date of the lease agreement or the date all required approvals are obtained, and will amend previously existing joint facility agreements pertaining to the Plant for the purpose of transferring the previously mentioned responsibilities from CN to BNSF.

According to BNSF, there will be no material change in the common carrier service provided by both railroads to shippers via the Interlocker Plant. BNSF adds that neither railroad plans to close any existing interline routes or cancel any divisions, and that the existing commercial relationships between it and CN will not be materially changed as a result of the transaction. BNSF stresses that the only resulting change will be a change of the carrier performing the maintenance and operation of the Interlocker Plant; not a change in service or competition. Consequently, petitioner asserts, the transaction will have no anticompetitive effects.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for the lease and operation proposed here. Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from an abuse of market power.

It is not necessary for us to scrutinize the proposed transaction under 49 U.S.C. 11323-25 in order to carry out the RTP. By minimizing the administrative expense of considering the proposed transaction, an exemption will expedite regulatory decisions, foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers, and encourage honest and efficient management of railroads. See 49 U.S.C. 10101(2), (5), and (9). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not necessary to protect shippers from the abuse of market power. Shippers on BNSF's and CN's lines will have the same service options available to them as they have now and neither railroad will be giving up any rights to compete against the other. Accordingly, there will be no reduction in competition as a result of the transaction.

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<sup>2</sup> According to BNSF, the referenced agreements include an agreement dated October 29, 1887, by and between CN's predecessor, the Chicago and Alton Railroad, and Lessee's predecessor, the Atchison, Topeka & Santa Fe Railroad, as supplemented by agreements dated October 18, 1915, November 15, 1923, August 31, 1954, April 15, 1958, February 22, 1965, and November 4, 1987.

Given our market power finding, we need not address whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. BNSF recognizes and accepts that because the proposed transaction is controlled by 49 U.S.C. 11323 et seq., employee protective conditions, as set forth in Mendocino Coast Ry., Inc. – Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), apply. Accordingly, as a condition to granting this exemption, we will impose the above employee protective conditions.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8. According to BNSF, the proposed transaction will not result in operational changes that exceed any of the Board's applicable thresholds, there are no plans to dispose of or alter historic properties, and further Board approval would be required to abandon any service.

Finally, as previously noted, BNSF has requested expedited consideration of this petition. BNSF has also requested that the exemption be made effective upon service of the decision or at least sooner than the normal 30 days after service. According to BNSF, revitalizing the Interlocker Plant potentially involves time-sensitive funding and the transaction requires the timely coordination of employees in transferring the operations. Under the circumstances, the request for expedited action is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption will be made effective on March 5, 2007.

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 above-described transaction from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions set forth in Mendocino Coast Ry., Inc. – Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

2. Notice will be published in the Federal Register on February 28, 2007.

3. This exemption will be effective on March 5, 2007. Petitions to reopen must be filed by March 15, 2007.

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

Vernon A. Williams  
Secretary