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SERVICE DATE - FEBRUARY 5, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33699 (Sub-No. 1)

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

Decided: February 1, 1999

By petition filed January 5, 1999, 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. 33699¹ to extend only until February 12, 1999.

According to petitioners, the trackage rights arrangement exempted in STB Finance Docket No. 33699 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 alternate route for BNSF traffic during that time. 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 indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad

¹ On January 5, 1999, 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 over UP's rail line, between (1) Kern Junction, CA, in the vicinity of UP's milepost 313.6 (Fresno Subdivision), and Calwa, CA, in the vicinity of UP's milepost 209.1 (Fresno Subdivision); and (2) Los Angeles, CA, in the vicinity of UP's milepost 485.0 (Wilmington Subdivision), and San Jose, CA, in the vicinity of milepost 45.7 (Coast Subdivision). See The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33699 (STB served Jan. 21, 1999). The trackage rights operations under the exemption became effective and were scheduled to be consummated on January 12, 1999.

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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.

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 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. 33699 to expire on February 12, 1999.

Usually, an order granting a petition for exemption is made effective 30 days from the date of service granting the exemption. As the relief requested pertains to an intended cessation of trackage rights on February 12, 1999, we will shorten the effective date of the decision from the normal 30-day period in order to accommodate the parties.

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. 33699, as discussed above, to permit the trackage rights to expire on February 12, 1999.
2. Notice will be published in the Federal Register on February 5, 1999.
3. This decision is effective on February 12, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams
Secretary