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SERVICE DATE – MAY 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 462X)

BNSF RAILWAY COMPANY—DISCONTINUANCE OF TRACKAGE RIGHTS  
EXEMPTION—IN COOK COUNTY, IL

Decided: April 29, 2008

By petition filed January 14, 2008, BNSF Railway Company (BNSF) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue overhead trackage rights over a 17.8-mile rail line owned by Illinois Central Railroad Company (IC) in Cook County, IL. The line extends between milepost 1.7 in Chicago, IL, and milepost 19.5 in Harvey, IL. Notice of the filing was served and published in the Federal Register on February 1, 2008 (73 FR 6291). We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

The 17.8-mile rail line over which BNSF seeks to discontinue its trackage rights is owned by IC, a wholly owned subsidiary of Canadian National Railway Company (CN). BNSF acquired the overhead trackage rights in 1999. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company, STB Finance Docket No. 33765 (STB served June 23, 1999).<sup>1</sup> In the underlying trackage rights agreement dated June 7, 1999, IC agreed to grant overhead trackage rights over the line to BNSF to enable BNSF, using its own trains and crews, to interchange unit coal trains with Grand Trunk Western Railroad (GTW), also a wholly owned subsidiary of CN, at GTW's connection with IC at Harvey.

Subsequently, on November 26, 2007, IC and BNSF have entered into an interchange agreement that governs the interchange of certain traffic between BNSF and the CN family of rail carriers in Chicago and in Harvey. The interchange agreement supersedes and terminates the trackage rights agreement dated June 7, 1999, and also expressly requires BNSF to discontinue its overhead trackage rights. BNSF, therefore, seeks to discontinue its overhead trackage rights on the line.

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<sup>1</sup> While that decision states that the length of the line was approximately 17.6 miles, BNSF notes here that the length of the line is actually 17.8 miles.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation 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 (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit from the industry [49 U.S.C. 10101(7)]. An exemption also will foster sound economic conditions and encourage efficient management by allowing BNSF to discontinue its overhead trackage rights and, instead, interchange the same traffic with the CN family in Chicago and in Harvey pursuant to the parties' negotiated interchange agreement [49 U.S.C. 10101(5) and (9)]. Other aspects of rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power, as the trackage rights are simply overhead and no local service is affected. Indeed, BNSF does not serve any shippers on the line, and no shipper, or any other interested party, has filed in opposition to the petition. Furthermore, BNSF and IC have entered into an interchange agreement that will allow BNSF to continue to provide the same service to its shippers that is provided by having the overhead trackage rights over the line. Nevertheless, to ensure that affected shippers and connecting carriers are informed of our action, we will require BNSF to serve a copy of this decision on all shippers and connecting carriers to which BNSF has commercial access via the subject trackage rights within 5 days after the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment 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 its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

We need not consider offers of financial assistance (OFA) to acquire the line for continued rail service, trail use requests, or requests to negotiate for public use of the line, because this proceeding involves a discontinuance of trackage rights and not an abandonment.

Because this is a discontinuance of trackage rights where the line will continue to be operated, the proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(6). Similarly, under 49 CFR 1105.8, the proceeding is exempt from historic reporting requirements. Therefore, this decision 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 from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of overhead trackage rights by BNSF as described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. BNSF is directed to serve a copy of this decision on all shippers and connecting carriers to which BNSF has commercial access via the subject trackage rights within 5 days after the service date of this decision and to certify to us that it has done so.

3. This exemption will be effective on June 1, 2008. Petitions to stay must be filed by May 19, 2008, and petitions to reopen must be filed by May 27, 2008.

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

Anne K. Quinlan  
Acting Secretary