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SERVICE DATE - JULY 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33631 (Sub-No. 1)

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

Decided: July 22, 1998

By petition filed July 6, 1998, Union Pacific Railroad Company (UP or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33631<sup>1</sup> to extend only until July 31, 1998.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33631 is necessary because UP will be performing maintenance work on its parallel line between Fort Worth and Temple. 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. UP would then face severe operational problems on the trackage for which maintenance is scheduled.

This agency (by its predecessor, the Interstate Commerce Commission) by rule<sup>2</sup> exempted the approval of trackage rights agreements from regulation. The rule is termed a "class exemption" because the rule exempts an entire class of transactions (here, trackage rights agreements) from regulation. A person invokes the class exemption by filing a notice pursuant to 49 CFR

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<sup>1</sup> On July 6, 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 grant temporary overhead trackage rights to UP from milepost 345.6, at Tower 55-UPRRX near Fort Worth, to milepost 217.3, near Temple, a distance of 128.3 miles in the State of Texas. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (STB served July 17, 1998). The trackage rights operations under the exemption became effective and were scheduled to be consummated on July 13, 1998.

<sup>2</sup> See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985).

1180.2(d)(7). The authority granted by the rule may not be limited by any action or agreement of the parties, but may only be circumscribed by order of this agency.

Parties have sought approval of temporary trackage rights by filing individual petitions rather than by invoking the class exemption. 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 Apr. 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. 33612 (Sub-No. 1) (STB served July 1, 1998).

Rather than filing a petition, UP invoked the class exemption in order to permit the rights to become effective on short notice. UP now asks us to limit the effect of the rule in this case by subsequent order. We see nothing objectionable in this procedure where, as here, the petition and notice were filed together. The draft notice submitted in STB Finance Docket No. 33631 referenced the petition filed herein, thus affording notice to the public that the parties were seeking to limit the rights obtained by invoking the class exemption.

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.

Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted. This action will have no adverse impact on shippers on the line as the trackage rights are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33631 to expire on July 31, 1998.

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 July 31, 1998, 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. 33631, as discussed above, permitting them to expire on July 31, 1998.
2. Notice will be published in the Federal Register on July 30, 1998.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary