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SERVICE DATE - OCTOBER 1, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34249 (Sub-No. 1)

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

Decided: September 24, 2002

By petition filed on August 30, 2002, Union Pacific Railroad Company (UP) requests that we permit the trackage rights arrangement exempted in STB Finance Docket No. 34249¹ to extend only until October 24, 2002.

According to UP, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34249 is necessary because UP will be performing maintenance and repairs on its main line and will be using the trackage rights over BNSF's line as an alternate route for UP's traffic while the work is being performed. However, UP states that it was only seeking, and BNSF was only willing to grant, temporary trackage rights over BNSF trackage during the period of maintenance activity on UP's line. UP maintains that, without approval of the temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on its main line.

DISCUSSION AND CONCLUSIONS

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Trackage rights exemptions have

¹ On August 30, 2002, UP concurrently filed a notice of exemption under the 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 between BNSF's milepost 6.1 near Fort Worth, TX, and BNSF milepost 218.1 near Temple, TX. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34249 (STB served Sept. 18, 2002). Trackage rights operations under the exemption were scheduled to be consummated on or after September 9, 2002.

been granted for a limited term rather than in perpetuity in situations such as these. See The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34194 (Sub-No. 1) (STB served May 14, 2002).

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.

UP's temporary 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. 34249 to expire on October 24, 2002.

Usually, an order granting a petition for exemption is made effective 30 days from the date of service. As the relief requested pertains to an intended cessation of trackage rights on October 24, 2002, 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. 34249, as discussed above, to permit the trackage rights to expire as of October 24, 2002.
2. Notice will be published in the Federal Register on October 1, 2002.
3. This decision is effective on October 24, 2002.

4. Petitions to stay must be filed by October 15, 2002. Petitions to reopen must be filed by October 17, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary