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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34168]

West Texas & Lubbock Railroad Company, Inc. and The Burlington and Northern and Santa Fe Railway Company—Joint Relocation Project Exemption—in Lubbock, TX

On February 20, 2002, West Texas & Lubbock Railroad Company, Inc. (WTLR) filed a notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint relocation project with The Burlington Northern and Santa Fe Railway Company (BNSF) in Lubbock, Lubbock County, TX.<sup>1</sup> The transaction was scheduled to be consummated after February 22, 2002. The earliest the transaction can be consummated is February 27, 2002, the effective date of the exemption (7 days after the verified notice of exemption was filed).

Under the joint relocation project, WTLR and BNSF propose the following transactions:

(1) WTLR will relocate to a new connecting track, which is to be built on behalf of WTLR by the City of Lubbock, located between WTLR milepost 7.2 and BNSF milepost 83.6, in Lubbock;

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<sup>1</sup> The joint relocation project is part of a plan to accommodate the upgrade of U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. See State of Texas (Acting by and Through the Texas Department of Transportation)—Acquisition Exemption—West Texas & Lubbock Railroad Company, Inc., STB Finance Docket No. 33889 (STB served July 5, 2000 and Mar. 6, 2001).

(2) BNSF will grant overhead trackage rights to WTLR over BNSF's line extending from BNSF milepost 83.6, at Broadview, TX, to BNSF milepost 88.6, at Canyon Jct., TX, a distance of approximately 5 miles;

(3) WTLR will abandon approximately 6.1 miles of its line between WTLR milepost 7.2 and WTLR milepost 1.1, in Lubbock.

WTLR states that the proposed joint relocation project will not disrupt service to shippers.<sup>2</sup> Additionally, WTLR states that the relocated line and trackage rights will not involve an expansion of service by WTLR into a new territory but will enable WTLR to preserve its current connection with BNSF in downtown Lubbock once WTLR abandons its line.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom. Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.&I.R.—Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the

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<sup>2</sup> There are no shippers located on the WTLR line being abandoned.

relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 34168, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: February 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary