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June 26, 2013

ENTERED
Office of Proceeding
June 26, 2013
Part of Public
Record

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: *Norfolk Southern Railway Company – Lease Exemption – BNSF Railway Company, STB Docket No. FD 35747*

Dear Ms. Brown:

Attached is Norfolk Southern's Petition for Exemption under 49 C.F.R. §1121. The fax regarding the filing fee of \$6,600 is being sent concurrently pursuant to the Board's instructions. If there are any questions concerning this filing, please contact me by telephone at (757) 533-4939 or by e-mail at Maqui.Parkerson@nscorp.com.

Sincerely,

Maquiling B. Parkerson

Attachment

FEE RECEIVED
June 26, 2013
SURFACE
TRANSPORTATION BOARD

FILED
June 26, 2013
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35747

**NORFOLK SOUTHERN RAILWAY COMPANY
-- LEASE EXEMPTION --
BNSF RAILWAY COMPANY**

EXPEDITED HANDLING REQUESTED

James A. Hixon
John M. Scheib
Maquiling Parkerson
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway
Company*

Dated: June 26, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35747

**NORFOLK SOUTHERN RAILWAY COMPANY
– LEASE EXEMPTION –
BNSF RAILWAY COMPANY**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and the rules applicable thereto at 49 C.F.R. Part 1121, Norfolk Southern Railway Company (“NSR”) hereby petitions the Surface Transportation Board (the “Board”) for an exemption from the prior review and approval provisions at 49 U.S.C. §§ 11323-25 and the Board’s corresponding regulations at 49 C.F.R. Part 1180 for authority for NSR to lease, upgrade and maintain approximately 797 feet of rail line owned by BNSF Railway Company (“BNSF”) in Chicago, Illinois.

As set forth below, NSR respectfully requests expedited consideration of this petition, so that the parties may begin construction of the project on July 15, 2013.

BACKGROUND

NSR’s No. 2 and No. 3 CJ main lines connect with BNSF’s Lumber Lead on BNSF’s Chicago Division at 22nd Street through the use of a system of hand operated switches and cross over switches. NSR seeks to lease from BNSF, for the purpose of upgrading and maintaining, approximately 797 feet of rail line located in Chicago, Illinois (the “Line”). Upon consummation of the proposed lease transaction, NSR plans to upgrade the 22nd Street connections by installing upgraded power-operated switches and a new remote controlled interlocker to control the

switches and tracks. A map of the Line, which shows its interrelationship with the NSR-owned CJ main lines is attached as Exhibit 1.

NSR's proposed lease and upgrade of the Line and its connections to the CJ main lines are included among the undertakings that are part of the Chicago Region Environmental and Transportation Efficiency ("CREATE") Program. CREATE is a public-private partnership between the Chicago Department of Transportation, the Illinois Department of Transportation, and the American Association of Railroads, including Metra and the freight railroads operating in Chicago, to increase efficiency of the region's rail infrastructure, and to enhance the quality of life for Chicago area residents.¹ The subject transaction, and indeed the entire CREATE Project, will result in more fluid and efficient train operations over the numerous connections between major freight yards and main line tracks in the Chicago area, reducing congestion and delays and adding critical capacity to local rail freight infrastructure.

EXPEDITED HANDLING REQUESTED

NSR's proposed lease and upgrade of the Line and other CREATE improvements are scheduled to start during the Summer and early-Fall of 2013. In order for NSR to ensure that it can commence work on the Line in accordance with general CREATE plans, NSR must be able to consummate the lease transaction with BNSF by no later than July 15, 2013. Consequently, NSR respectfully urges the Board to expedite the processing of this Petition so that the project can be completed on a timely basis.

¹ <http://www.createprogram.org>

DESCRIPTION OF THE PARTIES

A. Transferee/Lessee

NSR (the lessee) is a Virginia Corporation, the address of which is Three Commercial Place, Norfolk, VA 23510. NSR is a Class I railroad operating in 22 states, the District of Columbia and the Province of Ontario, Canada. NSR is a wholly-owned subsidiary of Norfolk Southern Corporation, a non-carrier.

B. Transferor/Lessor

BNSF (the lessor) is a Delaware corporation, the main business address of which is 2500 Lou Menk Drive AOB-3, Fort Worth, Texas 76131. BNSF is a Class I railroad operating in 28 states and two Canadian provinces. BNSF is a wholly-owned subsidiary of Berkshire Hathaway, Inc., a non-carrier.

C. Representatives

Counsel for NSR is:
James A. Hixon
John M. Scheib
Maquiling Parkerson
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Counsel for BNSF is:

Courtney Biery Estes
BNSF Railway Company
2500 Lou Menk Drive AOB-3
Fort Worth, TX 76131

DESCRIPTION OF THE TRANSACTION

A. Property To Be Leased

As indicated above, NSR seeks to lease from BNSF, for the purpose of upgrading and maintaining, the Line located in Chicago, and known by BNSF as the Lumber Lead, including certain underlying and adjacent land and improvements. A map depicting the Line and related adjacent property, which will be used to stage materials for the project and to facilitate maintenance during the term of the lease, is provided as Exhibit 1.

B. Agreement and Interchange Commitments

Pursuant to a lease agreement to be entered into by NSR and BNSF, BNSF will lease the Line to NSR for an initial five-year term. The agreement contains no provision that would limit NSR's ability to interchange with third party carriers as a result of entering into the proposed transaction. Accordingly, the disclosure requirements of 49 C.F.R. § 1121.3(d) are inapplicable.

C. Proposed Operation

Upon consummation of the Lease, NSR will replace the hand-thrown turnouts with power turnouts. The new turnouts will be controlled by NSR with BNSF supervisory control on BNSF-owned tracks.

D. Objectives

The lease of the Line to NSR will, as mentioned above, facilitate the timely delivery of elements of the overall CREATE Project.

ARGUMENT

I. The Proposed Transaction Should be Exempted From the Prior Approval Requirements of 48 U.S.C. §§ 11323-25.

Under 49 U.S.C. § 11323(a)(2), a carrier may not lease property of another carrier without prior Board approval under that section and the sections following at 49 U.S.C. §§ 11324-5. However, under 49 U.S.C. § 10502, the Board must exempt a transaction from the application of the formal provisions of sections 11323-5, and the corresponding regulatory provisions at 49 C.F.R. Part 1180 when it finds that – (1) regulation of the transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power. Congress intended that the Board should use its exemption authority under section 10502 to free certain transactions and services from substantial administrative and economic costs associated with excessive regulation. The exemption authority conferred upon the Board is not discretionary if the criteria of section 10502 are met. As discussed below, NSR’s proposed rail line lease clearly meets the statutory requirements of section 10502, and therefore warrants an individual exemption.²

² The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board’s predecessor to liberally use the expanded exemption authority under former Section 10505, stating as follows:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

A. Regulation Of The Proposed Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

Detailed scrutiny of the proposed transaction under 49 U.S.C. §§ 11323-25 is not necessary to carry out the Rail Transportation Policy (“RTP”) set forth at 49 U.S.C. § 10101. By minimizing the administrative expense of considering the proposed transaction, the requested exemption will – (1) minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required; (2) promote a safe and efficient rail transportation system; (3) ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the public; (4) encourage honest and efficient management of railroads; promote energy conservation; and (5) provide for the expeditious handling and resolution of proceedings. See 49 U.S.C. § 10101(2), (3), (4), (9), (14), and (15). In short, the requested exemption is consistent with the objectives of the RTP. Other aspects of the RTP will not be adversely affected.

As mentioned above, the proposed lease of the Line is part of CREATE, and it will improve operating efficiencies in the Chicago area. Denying the subject petition would only serve to reduce or delay important operating benefits of CREATE in the absence of any evidence

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation - Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

that the proposed transaction would result in any adverse impacts to competition that might warrant greater regulatory scrutiny.

B. The Proposed Transaction Is Of Limited Scope.

NSR proposes to lease from BNSF approximately 797 feet of rail line from BNSF. The Board and its predecessor have found that the lease and operation of longer lengths of rail line are transactions of limited scope for purposes of an individual exemption. *See, e.g., Union Pacific Railroad Company – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34504 (STB served Aug. 26, 2004) (lease of 5.39 miles of rail line); *Norfolk Southern Railway Company – Lease and Operation Exemption – Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34132 (STB served Feb. 15, 2002) (lease of 1.2 miles of rail line).

C. Regulation Of The Proposed Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Because the subject transaction is of limited scope, NSR need not show that regulation of is unnecessary to protect shippers from market abuse. But even if the proposed transaction were not limited in scope, application of the Board’s formal carrier-to-carrier rail line lease procedures clearly is not necessary to protect shippers from a potential abuse of market power. The proposed transaction is solely intended to accommodate a transfer of upgrade and maintenance functions from BNSF to NSR and will not result in any abuse of market power by NSR. There are no shippers located on the Line, and even if there were, no shipper would lose an existing rail service option as a result of the proposed lease transaction. The proposed transaction is intended simply to improve the operating efficiencies of NSR, BNSF, and the other railroads in the

vicinity. Consequently, the proposed transaction will not result in an abuse of market power. *See, e.g., CSX Transportation, Inc. – Lease Exemption – Consolidated Rail Corporation*, STB Docket No. 35495, slip op. at 2-3 (STB served Jul. 6, 2011) (in approving a lease transaction that would improve track connections, and thereby “enhance the efficiency of an existing operation in the area,” the Board noted that the transaction would not result in an abuse of market power, inasmuch as “service options available to shippers will not be diminished”); ICC Finance Docket No. 31469, *S.C. Cent. R.R. – Purchase – CSX Transp., Inc. Line Between E. Greenville and Laurens, SC* (not printed), served July 30, 1990, slip op. at 3 (finding no anticompetitive effect where the number of competitive alternatives available to shippers remains unchanged).

II. LABOR PROTECTION.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Because transactions governed by 49 U.S.C. § 11323, *et seq.*, carry mandatory labor protection under 49 U.S.C. § 11326, NSR and BNSF do not object to the conditions set forth in *Mendocino Coast Ry., Inc. – Lease and Operation*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), on the employer of any railroad personnel adversely affected by the subject lease and operation transaction.

III. ENVIRONMENTAL AND HISTORIC IMPACTS.

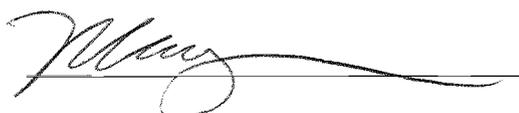
NSR will lease the Line for purposes of continuing rail operations and maintenance. Further, there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Petition does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

Because this lease transaction will not materially change the current level of traffic or operations, it is within the class of actions deemed to be excluded from the Board's environmental reporting and review processes as provided by 49 C.F.R. § 1105.6(c)(2). There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction also will not result in: (1) an increase in rail traffic of at least 50 percent or an increase of at least three trains a day on any segment of the line; (2) an increase of rail yard activity of at least 20 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. Finally, the transportation of ozone depleting materials is not contemplated. Accordingly, the thresholds of 49 C.F.R. §§ 1105.7(e)(4) and (5) will not be exceeded. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

CONCLUSION

Regulation of the proposed lease transaction is not necessary to carry out the RTP. Also, the proposed transaction is limited in scope. Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Consequently, NSR respectfully requests that the Board exempt from the prior approval requirement the proposed lease by NSR of the Line and, for the scheduling reasons set forth above, to grant the requested exemption expeditiously.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James A. Hixon', with a long, sweeping horizontal line extending to the right.

James A. Hixon
John M. Scheib
Maquiling Parkerson
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway
Company*

Dated: June 26, 2013



Legend

-  TRACK
-  LONG TERM LEASE
-  SHORT TERM LEASE
-  NON-EXCLUSIVE ROADWAY

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
NORFOLK SOUTHERN
CHICAGO, ILLINOIS

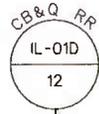


TRACKING NO. _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
NORFOLK SOUTHERN

SCALE: 1 IN. = 100 FT.
CHICAGO DIV.
CHICAGO SUBDIV. L.S.
DATE 04/10/2013 ML LS 0071

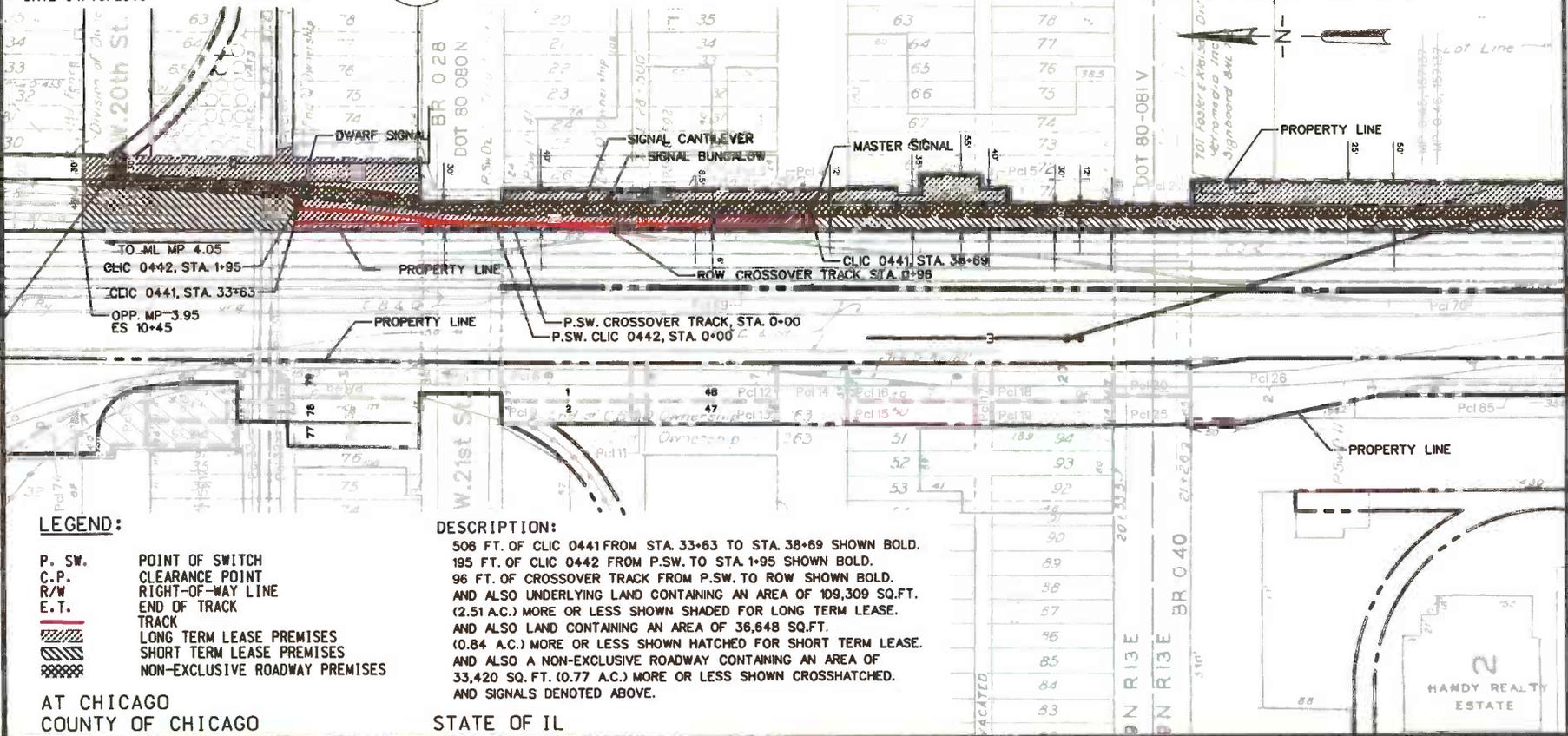


SECTION: 24/25
TOWNSHIP: 39N
RANGE: 13E
P.M.: 3PM

TRIM LINE

NOTE: BN 35859 CANCELLED BY BF 9307, BNSF 3447-035
SALE OF CERTAIN TELECOMMUNICATIONS
EASMENTS TO CATELLUS FIBER OPTICS, LLC.
DATED 12/31/1998

NOTE: ALL R/W SUBJECT TO
FIBER OPTIC EASEMENT UNDER
CONTRACT BN 35859 TO MCI,
DATED 9/17/1996 FROM WESTERN AVE.
TO OGDEN AVE. AS SHOWN ABOVE.



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- TRACK
- LONG TERM LEASE PREMISES
- SHORT TERM LEASE PREMISES
- NON-EXCLUSIVE ROADWAY PREMISES

DESCRIPTION:

506 FT. OF CLIC 0441 FROM STA. 33+63 TO STA. 38+69 SHOWN BOLD.
195 FT. OF CLIC 0442 FROM P.S.W. TO STA. 1+95 SHOWN BOLD.
96 FT. OF CROSSOVER TRACK FROM P.S.W. TO ROW SHOWN BOLD.
AND ALSO UNDERLYING LAND CONTAINING AN AREA OF 109,309 SQ.FT.
(2.51 A.C.) MORE OR LESS SHOWN SHADED FOR LONG TERM LEASE.
AND ALSO LAND CONTAINING AN AREA OF 36,648 SQ.FT.
(0.84 A.C.) MORE OR LESS SHOWN HATCHED FOR SHORT TERM LEASE.
AND ALSO A NON-EXCLUSIVE ROADWAY CONTAINING AN AREA OF
33,420 SQ.FT. (0.77 A.C.) MORE OR LESS SHOWN CROSSHATCHED.
AND SIGNALS DENOTED ABOVE.

AT CHICAGO
COUNTY OF CHICAGO

STATE OF IL

MATCH MARK 3-51348B

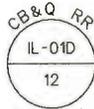
MAP REF. S60320/S60320

TRACKING NO. _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
NORFOLK SOUTHERN

SCALE: 1 IN. = 100 FT.
CHICAGO DIV.
CHICAGO SUBDIV. L.S. --
DATE 04/10/2013 ML LS 0071



SECTION: 24/25
TOWNSHIP: 39N
RANGE: 13E
P.M.: 3PM

TRIM LINE

NOTE: BN 35859 CANCELLED BY BE 9307, BNSF 3447-035
SALE OF CERTAIN TELECOMMUNICATIONS
EASEMENTS TO CATELLUS FIBER OPTICS, LLC,
DATED 12/31/1998
NOTE: ALL R/W SUBJECT TO
FIBER OPTIC EASEMENT UNDER
CONTRACT BN 35859 TO MCI,
DATED 9/17/1996 FROM WESTERN AVE.
TO OGDEN AVE AS SHOWN ABOVE.

MATCH MARK 3-51348A

MAP REF. S60320

LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- TRACK
- LONG TERM LEASE PREMISES
- SHORT TERM LEASE PREMISES
- NON-EXCLUSIVE ROADWAY PREMISES

AT CHICAGO
COUNTY OF COOK

STATE OF IL

REVISION 4

DRAWING NO. 3-51348B

