

216254

FEE RECEIVED

APR 14 2006

SIDNEY STRICKLAND AND ASSOCIATES, PLLC

3050 K ST. N.W., SUITE 101
WASHINGTON, DC 20007-5108
TELEPHONE: 202-295-4024
FAX: 202-672-5399

SURFACE TRANSPORTATION BOARD
SIDNEY STRICKLAND, JR.
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM



April 14, 2006

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 34863; BNSF Railway Company—Acquisition and Operation Exemption—Line of the Union Pacific Railroad Company

Dear Secretary Williams,

I enclose the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Petition for Exemption covering the transaction proposed in the above proceeding;
2. A payment form in the amount \$5,400 for the filing fee 49 C.F.R. 1002.2(f), Part IV (41)(vi); and
3. Twenty (20) unbound copies of the Exhibit A maps.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sidney L. Strickland, Jr.
Sidney L. Strickland, Jr.

Enclosures

FILED

APR 14 2006

SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34863

BNSF RAILWAY COMPANY –
ACQUISITION AND OPERATION EXEMPTION –
STERLING-UNION LINE OF THE UNION PACIFIC RAILROAD COMPANY

BETWEEN STERLING AND UNION,
IN MORGAN AND LOGAN COUNTIES, CO

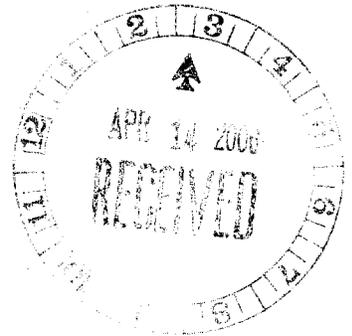
PETITION FOR EXEMPTION

BNSF RAILWAY COMPANY

Sidney L. Strickland, Jr.
Elizabeth Waite
SIDNEY STRICKLAND AND ASSOCIATES
3050 K Street N.W.
Suite 101
Washington D.C. 20007
(202) 295-4672

Richard E. Weicher
Sarah W. Bailiff
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
(817) 352-2354

Dated: April 14, 2006



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34863

BNSF RAILWAY COMPANY –
ACQUISITION AND OPERATION EXEMPTION –
STERLING-UNION LINES OF THE UNION PACIFIC RAILROAD COMPANY

BETWEEN STERLING AND UNION,
IN MORGAN AND LOGAN COUNTIES, CO

PETITION FOR EXEMPTION

BNSF Railway Company (“BNSF”), a Class I carrier, petitions the Board, pursuant to 49 U.S.C. § 10502, to exempt from 49 U.S.C. §§ 11323, *et seq.* BNSF’s proposed acquisition and operation of the Union Pacific Railroad Company’s (“UPRR”) Sterling-Union Line from Union, Morgan County, Colorado at UPRR Milepost 81.1 to the City of Sterling, Logan County, Colorado at UPRR Milepost 56.1 (the “Sterling-Union Line”) and resulting discontinuance of BNSF’s existing trackage rights on and over the Sterling-Union Line. The Sterling-Union Line is shown on the map attached as Exhibit A. We identify the parties to this acquisition and operation transaction in Part I below. Part II describes the transaction and its benefits. Part III explains why this transaction should be exempt from regulation. The verified statement of Debbie Valentine of BNSF supports this Petition.

TRANSACTION SUMMARY

BNSF and UPRR have agreed on terms for a property exchange transaction whereby UPRR will transfer UPRR’s Sterling-Union Line to BNSF, and BNSF will transfer its

Rockview-Sikeston, MO, rail line to UPRR.¹ BNSF and UPRR would, respectively reserve out of the transfers, trackage rights to operate on and over the rail corridors. BNSF's existing trackage rights over the Sterling-Union Line would be extinguished upon acquisition of the line in its entirety. The rail line exchange will enhance the efficiency and competitiveness of both the BNSF and UPRR systems and will more effectively align the parties' rights and obligations with respect to maintenance and operation of said lines. BNSF is currently the predominant user of the Sterling-Union Line pursuant to a trackage rights agreement² and dispatches the Sterling-Union Line (at the discretion of UPRR), and a transfer of traditional ownership functions, including maintenance, more practically serves the parties' mutual interests. This petition requests that the Board exempt the acquisition of the Sterling-Union Line from the prior approval requirements of 49 U.S.C. §§ 11323, et seq., because this transaction falls within the parameters of 49 U.S.C. § 10502(a).

Because BNSF will acquire "property of another rail carrier," the Board has jurisdiction under 49 U.S.C. § 11323(a)(2) over BNSF's acquisition of the Sterling-Union Line. Under 49 U.S.C. § 10502(a), however, this acquisition should be exempt from regulation. BNSF's acquisition of the Sterling-Union Line will promote several elements of the rail transportation policy of 49 U.S.C. § 10101 without running afoul of any. The transaction is of limited scope, and

¹ UPRR's acquisition of the Rockview-Sikeston, MO is not involved in this proceeding. Acquisition of the Rockview-Sikeston, MO line is the subject of review by the Board in STB Finance Docket No. 34672, Union Pacific Railroad Company – Acquisition and Operation Exemption – Line of the Burlington Northern and Santa Fe Railway Company (*sic*), filed March 14, 2005.

² BNSF currently operates the Sterling-Union Line pursuant to a trackage rights agreement between Chicago, Burlington & Quincy Railroad Company and Union Pacific Railroad Company, dated May 28, 1951, and approved by the ICC in Finance Docket No. 17482, report and order entered December 18, 1951 (See Exhibit B).

does not lessen any rail competition. To the extent that the transaction has a competitive effect, it will benefit shippers by enhancing the efficiency of BNSF service.

I. PARTIES TO THE TRANSACTION

A. Transferor

Transferor, UPRR, a Delaware Corporation, is a Class I railroad, subject to the provisions of the Act. UPRR owns and operates lines of railroad in 23 States in the western and Midwestern United States, including the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. The trackage covered in this petition is in Colorado.

B. Transferee

Transferee, BNSF, a Delaware Corporation, is a Class I rail carrier, subject to the provisions of Subtitle IV of Title 49 of the United States Code, 49 U.S.C. §§ 10101, et seq. (the "Act"). BNSF owns and operates lines of railroad in 28 States, including the States of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming, and the Canadian provinces of British Columbia and Manitoba.

C. Petitioner's Representative

Counsel representing BNSF Railway Company is:

Sidney L. Strickland, Jr.
SIDNEY STRICKLAND AND ASSOCIATES
3050 K Street N.W.
Suite 101
Washington D.C. 20007
(202) 295-4672
(202) 672-5399 facsimile

II. BACKGROUND

BNSF proposes to acquire approximately 25 miles of UPRR's Sterling-Union Line between Union, in Morgan County, Colorado, at UPRR Milepost 81.1 to the City of Sterling, in Logan County, Colorado, at UPRR Milepost 56.1. UPRR will retain trackage rights, including the right to serve local industries on the Sterling-Union Line. BNSF already possesses permanent trackage rights on the Sterling-Union Line and will, as a practical matter, trade its trackage rights for an ownership position in the line.

Through the transaction, BNSF will obtain the right to maintain the Sterling-Union Line, to use the Sterling-Union Line and to jointly serve industries accessed from the Sterling-Union Line. UPRR will retain full-service trackage rights on the Sterling-Union Line for 99 years, with the right to renew these trackage rights for successive 99-year periods.

The purpose of this transaction is to foster more efficient operations on and along the Sterling-Union Line. BNSF currently operates 168 trains per week on the Sterling-Union Line and will continue to operate the same approximate number of trains per week after this transaction is implemented. However, all maintenance responsibilities will shift to BNSF, the predominant user of the Sterling-Union Line. Changing ownership responsibilities will better align the responsibilities of the parties relative to usage of the Sterling-Union line. Day-to-day management functions and initial capital investment decisions will appropriately be shifted to the carrier with the higher density on this corridor.

III. REQUESTED EXEMPTION SHOULD BE GRANTED

Under Section 10502(a), the Board exempts a transaction if regulation under an otherwise applicable provision of the statute:

- (1) is not necessary to carry out the transportation policy of Section 10101 of [Title 49]; and
- (2) either—
 - (A) the transaction or service is of limited scope; or
 - (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

49 U.S.C. § 10502(a).

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the ICC should use its expanded exemption authority under Section 10502 to free certain transactions and service from the administrative and costs associated with continued regulation:

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 exemptions from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995). On the eve of the 25th anniversary of Staggers, the Board's exemption authority remains a vital tool in implementing the goals of Staggers.

The Board must grant an exemption if a transaction satisfies the requirements of Section 10502(a). BNSF's acquisition of the Sterling-Union Line should be exempt from regulation. As explained below, an exemption from the prior approval requirements of Section 11323 for BNSF's acquisition of the Sterling-Union Line satisfies exemption criteria and should be exempt from regulation.

A. STB Regulation of the Proposed Acquisition Is Not Necessary to Carry Out the Rail Transportation Policy

In determining whether the regulation of a transaction proposed for exemption under 49 U.S.C. § 10502 is necessary to carry out the rail transportation policy, the Board considers only those policy elements related to making a determination under the provisions of the statute from which exemption is sought. Indiana Railroad Co. – Acq. & Oper. – Illinois Central Railroad Co., 6 I.C.C.2d 1004, 1006 (1990), aff'd sub nom. Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991); Blackstone Capital Partners, L.P. – Control Exempt. – CNW Corp. and Chicago and North Western Transportation Co., ICC Finance Docket No. 31493 (served July 5, 1989), slip op. at 2. In other words, the Board need not extend its analysis beyond what it would otherwise address in an application proceeding itself.

While the transaction does involve the transfer of a rail line from one Class I to another Class I carrier, the proposed transaction does *not* involve the merger or control of at least two Class I rail carriers. Therefore, absent an exemption, the proposed transaction would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction, and the public interest factors are considered only where significant anticompetitive effects are found. See, e.g., Canadian Pacific Ltd., and Soo Line Railroad – Control – Davenport, Rock Island & North Western Railway Co., ICC Finance Docket No. 32579 (served February 10, 1995), slip op. at 5; Wilmington Term. Railroad, Inc. – Pur. & Lease – CSX Transp., Inc., 6 I.C.C.2d 799, 803 (1990), pet. for review denied sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). As explained below, there are no significant anticompetitive effects that will result from the proposed transaction here, and accordingly the Board does not need to consider the public interest factors.

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both “likely” and “substantial”, and an application must be granted unless there is such a showing. Wisc. Central Transportation Corp., et al. – Continuance in Control – Fox Valley & Western Ltd., 9 I.C.C.2d 233, 238 (1992). Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) “would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.” Blackstone Capital Partners, L.P. – Control Exempt. – CNW Corp., et al., 5 I.C.C.2d 1015, 1019 (1989) (footnote omitted). As explained below, the proposed transaction will not lead to higher rates or worsened service.

BNSF and UPRR will continue to provide common carrier service to shippers via the Sterling-Union Line, and there would be no material change in the service provided to those shippers. They can continue to ship their products as they have previously, both before and after transfer of title to BNSF. Bridge traffic between BNSF and UPRR that currently moves over the

Sterling-Union Line can continue to move just as it has in the past. BNSF and UPRR have no plans to close any existing interline routes or to cancel any existing divisions, and the existing commercial relationships between BNSF and UPRR will not be materially changed as a result of this transaction. As a practical matter, the proposed transaction will only result in a change of ownership, not a change in service or competition. Accordingly, regulation is not necessary to carry out the rail transportation policy. See Norfolk S. Ry. – Purchase Exemption – Union Pac. R.R., Finance Docket No. 33609 (STB Decision served Oct. 29, 1998), at 3 (finding no anticompetitive effect where “transportation represents only a change in owners”); S.C. Central R.R. – Purchase – CSX Transp. Inc. Line Between E. Greenville and Laurens, SC, Finance Docket No. 31469 (ICC Decision served July 30, 1990), at 3 (finding no anticompetitive effect where the number of competitive alternatives available to shippers remains unchanged).

Although the Board’s analysis need not go further, exemption of this transaction will promote various objectives of the rail transportation policy. By minimizing the administrative expense and delay of the Board’s review of the transaction, an exemption will expedite regulatory decisions (49 U.S.C. § 10101(2)), foster sound economic conditions in transportation (49 U.S.C. § 10101(5)), and encourage efficient management of railroads (Section 10101(9)). Other aspects of the rail transportation policy are not adversely affected.

The Board’s rail transportation policy also provides that the Board should minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry into and exit from the rail transportation industry. See 49 U.S.C. §§ 10101(2) and (7). The statutory exemption procedure of Section 10502 obviates the expensive and time-consuming processes attendant to a proceeding under Section 11323. By relying upon the

wholly adequate and more expeditious exemption procedure, the Board would minimize unnecessary regulation of this transaction.

B. The Acquisition of the Sterling-Union Line Is of Limited Scope

The proposed acquisition is clearly of limited scope. The proposed acquisition involves merely the transfer of title by UPRR and retention of trackage rights thereover for continued rail operations by both UPRR and BNSF of a 25-mile line of railroad. The proposed title transfer of UPRR's Sterling-Union Line will not affect the traffic volume on the line, nor will it contribute to an increase in BNSF's and UPRR's share of the transportation service market in the area. The transaction's practical effect is simply reversing the historical landlord tenancy roles under the existing trackage rights arrangement, without altering the basic operating rights of either party over the Sterling-Union Line. Therefore, the proposed transaction is clearly of limited scope.

Furthermore, the Line is only 25 miles in length. Previous Board and Interstate Commerce Commission decisions hold acquisition and operation transactions of even greater length to be limited in scope. See Ind. R.R. 6 I.C.C 2nd at 1011 (acquisition of 90.3 miles of track). Additionally, the transaction will be accomplished without the issuance of new securities or the restructuring of either UPRR's or BNSF's rail operations. See, e.g., Village of Palestine, 936 F.2d at 1340-41 (D.C. Cir. 1991); CSX Transp., Inc. -- Acquisition and Lease Exemption -- Pittsburgh & Lake Erie R.R., Finance Docket No. 31827 (ICC Decision served June 28, 1991), at 12 (acquisition of 61 miles of track without new securities issuances or changes in operations).

C. Regulation of the Exchange Is Not Necessary to Protect Shippers From an Abuse of Market Power

Even though information showing the limited scope of the transaction is dispositive under the alternative test of 49 U.S.C. § 10502(a)(2), the transaction also satisfies the alternative "abuse of market power" test because the contemplated transaction will not subject shippers to abuse of

market power. Shippers located on the Sterling-Union Line, as well as shippers located on BNSF's and UPRR's lines, will have the same service options available to them as they have now. There will therefore be no reduction in competition, and this transaction will not have any measurable impact on the national or local rail industry.

Also, even if the Board were to find that the proposed transaction is not limited in scope, the transaction should nonetheless be exempted because the proposed acquisition will not result in any abuse of market power by either UPRR or BNSF because the transaction represents only a change in owners of the Line, and there will be no loss of rail competition. UPRR will retain trackage rights over the line, including non-exclusive overhead rights and the same rights it has today to serve local industries on the line. See Norfolk S. Ry. -- Purchase Exemption -- Union Pac. R.R., Finance Docket No. 33609 (STB Decision served Oct. 29, 1998), at 3 (finding no risk of abuse of market power where "transaction represents only a change in owners," "existing . . . operations will be continued," and "there will be no loss of rail competition").

IV. LABOR PROTECTION

Because the proposed transaction falls under 49 U.S.C. § 11323 et seq., labor protection as set forth in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), applies. Petitioners do not object to imposition of the labor protective conditions normally imposed on Section 11323 transactions.

V. ENVIRONMENTAL, HISTORICAL AND SAFETY INTEGRATION PLAN DOCUMENTATION

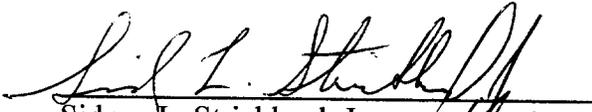
The proposed transaction is exempt under 49 C.F.R. 1105.6(c)(2)(i), 1105.6(a)(3) and 1105.7(e) from environmental reporting requirements because the proposed transaction will not result in operational changes that exceed any of the Board's applicable thresholds. Specifically, the proposed transaction will not result in operational changes such that rail traffic on the line being acquired will increase three trains or more a day or more than 50 percent (measured in gross ton miles annually). See 49 C.F.R. § 1105.7(e)(5)(ii). Accordingly, the proposed transaction is "categorically excluded" from environmental review under the National Environmental Policy Act and the Board's environmental rules. See, e.g., Canadian National Railway Co., et al. – Control – Wisconsin Central Transportation Corporation, et al., STB Finance Docket No. 34000 (Decision No. 9 served August 2, 2001), slip op. at 1-3.

Similarly, the proposed transaction is exempt from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. Finally, under the STB's regulations, no safety integration plan is required for this type of proposed transaction. 49 C.F.R. §§ 1106.2 and 1106.3.

VI. CONCLUSION

For the foregoing reasons, BNSF requests the Board to grant an exemption from the provisions of 49 U.S.C. § 11323, et seq., for acquisition and operation of the Sterling-Union Line.

Respectfully submitted,



Sidney L. Strickland, Jr.

Elizabeth Waite

SIDNEY STRICKLAND AND ASSOCIATES

3050 K Street N.W.

Suite 101

Washington D.C. 20007

(202) 295-4672

Richard E. Weicher

Sarah W. Bailiff

BNSF Railway Company

2500 Lou Menk Drive

Fort Worth, TX 76131-2828

(817) 352-2354

VERIFICATION

Debbie Valentine, Assistant Vice President, Contracts & Joint Facilities, of BNSF Railway Company, under penalty of perjury, declares and verifies that he/she has read the foregoing Petition for Exemption in Finance Docket No. 34863, knows the facts stated therein, and that said facts are true as stated.

Dated: April 13, 2006

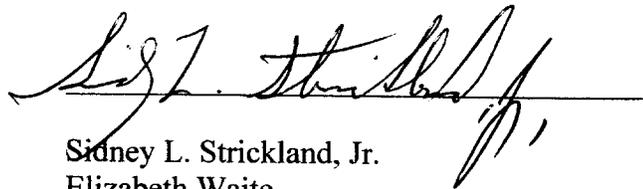
Debbie Valentine

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by hand delivery or first-class mail this 14th day of April, 2006 on:

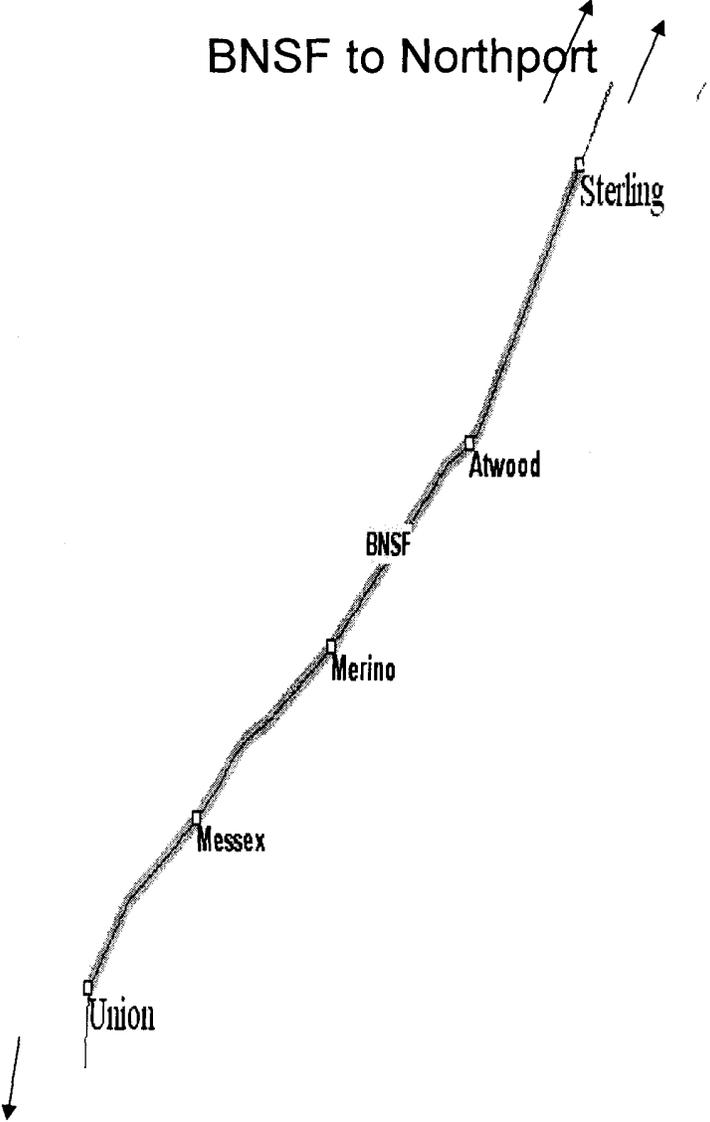
(i) J. Michael Hemmer
Robert T. Opal
Union Pacific Railroad Company
1400 Douglas Street 19th Floor
Omaha, NE 68179
(402) 271-3072;

(ii) Linda J. Morgan
Frederick G. Sandstrom
Covington and Burlington
1201 Pennsylvania Ave. N.W.
Washington, D.C. 20004



Sidney L. Strickland, Jr.
Elizabeth Waite
SIDNEY STRICKLAND AND ASSOCIATES
3050 K Street N.W.
Suite 101
Washington D.C. 20007
(202) 295-4672

Richard E. Weicher
Sarah W. Bailiff
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
(817) 352-2354



Sterling to Union
Map not to scale
Not all tracks
shown

This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

RECEIVED

INTERSTATE COMMERCE COMMISSION

DEC 18 1951

SECTION OF DOCKETS

Finance Docket No. 17482

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY TRACKAGE RIGHTS

Submitted November 19, 1951.Decided December 14, 1951

Acquisition by the Chicago, Burlington & Quincy Railroad Company of the right to continue joint use of a line of the Union Pacific Railroad Company between Sterling and Union, Colo., approved and authorized. Conditions prescribed.

J. C. James, Walter McFarland, and R. T. Cabbage for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND MITCHELL

BY DIVISION 4:

The Chicago, Burlington & Quincy Railroad Company, hereinafter sometimes called the Burlington, on September 13, 1951, made application under section 5(2) of the Interstate Commerce Act, as amended, for authority to continue joint use of a line of the Union Pacific Railroad Company,¹ hereinafter sometimes referred to as the Union Pacific, between Sterling and Union, Colo., a distance of approximately 23.7 miles. No representations have been made by any State authority and no objections to the granting of the application have been presented. In our opinion a public hearing is not necessary in the public interest inasmuch as approval of the authority requested will not affect existing transportation facilities. Unless otherwise indicated, all points hereinafter mentioned are located in Colorado.

The portion of line here involved has served as a part of the Burlington's main line between Denver and Billings, Mont., via Alliance, Nebr., and Sheridan, Wyo., since September 15, 1900, under an agreement between the parties dated August 7, 1900, and various supplements thereto. That agreement, together with its several supplements, expired on September 14, 1950.

¹ Including certain passing and side tracks, stations and other facilities and appurtenances.

The agreement herein under consideration, executed by the parties on May 28, 1951, subject to our approval, grants the applicant the right to continue operations over the segment of line for an additional 50-year period, commencing as of September 15, 1950. The right so granted, to be exercised in common with the grantor and such other carriers as may from time to time acquire similar privileges, includes the right to do both local and through freight, passenger, mail, and express business between the points of connection; the use of certain passing and side tracks, stations, and other facilities and appurtenances; and the right to maintain certain existing connections between the tracks of the parties at Sterling and Union. Specifically excluded from the operation of the contract, as no longer useful to the applicant, are the Union Pacific's water station facilities at Sterling and about 1400 feet of its easterly track, also in Sterling, lying north of the crossover opposite the freight house platform. The agreement also provides that nothing contained therein should be construed as affecting the agreement between the parties dated March 12, 1928,² except that for purposes of section 8 thereof, the termination date of an agreement dated March 12, 1928, therein referred to, would be deemed to be September 14, 2000, unless sooner terminated.

As compensation for the use of the joint facilities, the applicant agreed to pay the Union Pacific (1) interest rental at the rate of one-half of 5 percent per annum³ on the value of the properties used, fixed by the parties at \$1,372,313.49,⁴ subject to adjustment from time to time by reason of additions and betterments and retirements; (2) a car-miles proportion of the grantor's operating and maintenance expenses, taxes and assessments on the properties, and noncapital account expenditures, including taxes and assessments made in connection with additions and betterments and retirements for the joint benefit;⁵ and (3) one-half of the wages and salaries of station

² Covers the construction, maintenance, and operation by the Burlington of a spur track from a connection with trackage of the Union Pacific at the factory of the Great Western Sugar Company in Sterling.

³ Interest rental under the original agreement amounted to 2 percent per annum on \$651,531.67 and 2½ percent per annum on \$379,512.97, the cost of additions and betterments since September, 1920.

⁴ The total valuation of the properties as of September 15, 1950, as contained in a statement furnished the applicant by the Union Pacific, which total is made up of \$832,346.97, the basic value of the facilities as determined by the Commission as of June 30, 1919, plus \$178,455, the latest Commission appraisal of the land, and \$361,511.52, representing additions and betterments, at cost, subsequent to June 30, 1919.

⁵ Under the former agreement, operating and maintenance expenses were shared on a wheelage basis, except for wages of joint station employees which were divided equally.

employees employed in the operation of the joint facilities. The applicant also agreed to bear the entire cost of operating, maintaining, repairing, and renewing the connections between the tracks of the parties at Sterling and Union.

Included among the various expenses to be apportioned between the parties on a car-miles basis are the cost of heat, light, water, equipment and supplies, telephone service, and premiums for fire and/or tornado insurance. The agreement also provides, in this connection, that in determining the number of car-miles operated, each steam locomotive with tender (and each Diesel or similar type locomotive, irrespective of the number of units therein) would be counted as two cars. However, movements of locomotives or cars for ordinary switching purposes at Sterling, or at points between Sterling and Union, would not be considered in such computation. According to the applicant, its use proportion of the line has recently amounted to approximately 35 percent.

It was understood and agreed that all income, revenue, and remuneration received by the grantor from outside parties for use of space, including privileges and concessions, in depots and other joint facilities; structures would be credited to such expenses as are apportionable under the agreement on a car-miles basis. However, all revenue derived from commercial telegraph business in depots and all rentals accruing under leases for industrial and other sights on the segment would be retained by the Union Pacific. The agreement also provides that any switching service revenues realized by either party for switching cars to and from industries on the segment would be retained by the party performing such services.

Under the terms of the agreement, the construction of any additional tracks, facilities, appurtenances or improvements between the points of connection, deemed necessary by the grantor and requiring a capital expenditure of over \$15,000, would be subject to prior approval by the applicant, unless such construction, although exceeding \$15,000 in cost, should be rendered necessary by reason of any law, ordinance or other public enactment or regulation, or should be undertaken by the Union Pacific for its exclusive use, or otherwise, at its own expense. In event of disapproval of any such project by the applicant, the question of the necessity therefor would be submitted for arbitration.

It was further agreed that the management, operation, maintenance, repair, and renewal of the joint facilities would be under the exclusive jurisdiction and control of the Union Pacific, and that the applicant would operate its trains, manned by its own employees and crews, over the joint tracks under the direction of the Union Pacific and in strict accordance with its rules and regulations.

The agreement also contains provisions relating to the preparation, rendition, and payment of bills; the fixing of liability for death or injury to persons and loss or damage to property; accounting methods; inspection of books and records; arbitration; service of notice; admission of additional carriers; successors and assigns; compliance with laws and regulations; and other matters customarily incident to trackage agreements of this nature.

F. D. No. 17482 - Sheet 4

Approval of the proposal herein will in no way adversely affect adequate transportation service to the public, but will on the other hand, enable the applicant to continue its operations over a portion of line which has served as a part of its system for over 50 years. The transaction will not result in any increase of total fixed charges, nor is there any guaranty or assumption of the payment of dividends or fixed charges involved. No other railroad has requested to be included in the transaction. While nothing in the record indicates that the interests of railway employees will be adversely affected, our authorization herein will be granted upon the same conditions for the protection of railway employees as those contained in Chicago & N. W. Ry. Co. Merger, 261 I.C.C. 672.

Subject to the conditions respecting the protection of employees, we find that the acquisition by the Chicago, Burlington & Quincy Railroad Company of the right to continue joint use of the line of the Union Pacific Railroad Company between Sterling and Union, described herein, is a transaction within the meaning of section 5(2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed are just and reasonable, and that the transaction will be consistent with the public interest.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4,
held at its office in Washington, D. C., on the 14th
day of December , A. D. 1951.

FINANCE DOCKET NO. 17482

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY TRackage RIGHTS

Investigation of the matters and things involved in this proceeding having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That subject to the conditions relating to the protection of railway employees referred to in said report, the acquisition by the Chicago, Burlington & Quincy Railroad Company of the right to continue joint use of a line of the Union Pacific Railroad Company between Sterling and Union, Colo., described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

By the Commission, division 4.


Secretary.

December 18, 1951

Finance Docket No. 17482
 CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY TRACKAGE RIGHTS

MEMORANDUM TO MR. JACKSON:

Transmitted herewith are original and sufficient copies for service of report and order in the above-entitled proceeding, approved by division 4 on December 14, 1951. Please have the same issued and copies sent to:

GOVERNORS and STATE COMMISSIONS of Colo., Ill., Wis., Minn., Iowa, Mo., Nebr., Kans., S.D., Mont., Wyo., Ky., Idaho, Utah, Nev., Wash., Ore., and Calif.

J. C. James, 547 West Jackson Blvd.,
 Chicago 6, Ill.

Walter McFarland, -do-

R. T. Cabbage, -do-

General Counsel, U.S. Treasury Dept.,
 Washington 25, D. C.

General Counsel, U.S. Railroad Retirement Board,
 844 Rush St., Chicago 11, Ill.



Director.

41 copies for service
 5 " " your use
 1 copy for Commissioner Mahaffie
 1 " " Secretary Bartel

December 20, 1951

FINANCE DOCKET NO. 17482

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY TRACKAGE RIGHTS

- - - -

REPORT AND ORDER OF THE COMMISSION ENTERED DECEMBER 14, 1951

- - - -

A copy of the above-entitled report and order sent to the following by regular mail on December 20, 1951(23)

J. C. James,
547 W. Jackson Blvd.,
Chicago 6, Ill.

Walter McFarland,
547 W. Jackson Blvd.,
Chicago 6, Ill.

R. T. Cabbage,
547 W. Jackson Blvd.,
Chicago 6, Ill.

General Counsel,
U. S. Treasury Dept.,
Washington 25, D. C.

General Counsel,
U. S. RR. Retirement Board,
844 Rush St.,
Chicago 11, Ill.

GOVERNORS & STATE COMMISSIONS
Calif., Colo., Ill., Ia.,
Kans., Ky., Mann., Mo.,
Mont., Nebr., Nev., Oreg.
S. Dak., Utah, Wash., Wisc.,
Wyo., & Idaho