STB FINANCE DOCKET NO. 33630

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY--ACQUISITION EXEMPTION--LINES BETWEEN DAWES, TX, AND AVONDALE, LA

Decided September 22, 1998

The Board grants joint acquisition exemption to permit joint ownership of a rail line between Texas and Louisiana.

BY THE BOARD:

By joint petition filed July 1, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP), seek an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for the acquisition of joint ownership of a line of railroad between Dawes, TX, and Avondale, LA, a distance of approximately 338 miles.[1] The United Transportation Union requests the imposition of labor protective conditions under 49 U.S.C. 11326.

The ownership of the railroad line between Dawes and Avondale is presently divided between UP and BNSF. UP owns the 147.5-mile segment between Dawes, at milepost 352.8, and Iowa Junction, LA, at milepost 205.3 (the Beaumont Segment), and BNSF owns the 190.4-mile segment between Iowa Junction and Avondale, at milepost 14.9 (the Avondale Segment), having acquired it pursuant to the UP/SP-BNSF Settlement Agreement in Finance Docket No. 32760 (the UP/SP merger).[2] As part of the Settlement Agreement, UP retained trackage rights over the Avondale Segment, including the right to serve all local industries on that line. In addition, BNSF received overhead

[1] Prior to the UP's merger with Southern Pacific Transportation Company (SP), this line was SP's main line between Houston, TX, and New Orleans, LA.

[2] *See, Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996) (*Decision No. 44*). BNSF's acquisition of the Avondale Segment was exempted in Finance Docket No. 32760 (Sub-No. 2), which was embraced in *Decision No. 44*.

trackage rights on the Beaumont Segment, with access to all new facilities customers, Lake Charles area customers, and all shippers that would have had their railroad service options reduced from 2 to 1 as a result of the UP/SP merger.[3]

On February 12, 1998, BNSF and UP entered into a Term Sheet agreement relating to the two railroads' operations in and around Houston and along the Gulf Coast between Houston and New Orleans. As one part of that agreement, BNSF and UP agreed to exchange 50% ownership interests in their respective main line segments, including operating sidings used for meeting and passing trains. Under the Term Sheet agreement, BNSF will acquire an undivided 50% interest in UP's Beaumont Segment and UP will acquire an undivided 50% interest in BNSF's Avondale Segment. Other elements of the Term Sheet agreement include the establishment of a regional dispatching center in Spring, TX, for UP and BNSF lines in and around Houston and between Houston and New Orleans. In addition, BNSF will gain access to all present and future shipper facilities on the line and on former SP branches or spurs that connect to the line, as well as on new branches and spurs added to the line.[4] The ownership exchange will be made subject to the existing trackage rights of the Texas Mexican Railway Company (TexMex) between Houston and Beaumont, as well as Amtrak's service over the entire line.

Under the proposed operating agreement, capital additions and betterments on the line will be split on a user basis; maintenance capital, ordinary maintenance, and operations costs will be split on an annualized usage basis. Petitioners state that the exchange of ownership interests will improve coordination between BNSF and UP of maintenance and improvements on the line.

Either railroad will be permitted to use the Louisiana & Delta Railroad (L&D) as its agent to provide service over the line. TexMex trackage rights charges will be paid to UP, and TexMex usage of the line will be considered as UP usage. BNSF's and UP's contracts with Amtrak will not be affected by the ownership exchange. Amtrak usage will be considered usage of the pre-exchange owner of the particular segment.

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[3] BNSF's trackage rights were exempted in Finance Docket 32760 (Sub-No. 1), which also was embraced in *Decision No. 44*.

[4] The agreement also included the creation of new UP trackage rights over BNSF's line between Beaumont and Navasota, TX, which were exempted in *Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33584 (STB served April 22, 1998).

Petitioners maintain that the exchange of ownership interests is an element of an arrangement that will provide significant benefits to Houston-area and Gulf Coast shippers. The new regional dispatching center in Spring, which has been in use since March 15, 1998, will coordinate the lines of the Houston Belt & Terminal Railway Company, the lines of the Port Terminal Railroad Association between Bridge 5A and Deer Park, and the trackage in the Houston terminal area that was formerly dispatched by the control operator at SP Tower 68. UP and BNSF personnel engaged in joint dispatching are located in the same area, operating from the same system, and are under the supervision of a neutral joint director.

Petitioners are also conducting consolidated dispatching of other area lines from the Spring facility. UP and BNSF dispatchers control from Spring their respective lines along the entire Gulf Coast region from New Orleans through Houston to Brownsville, TX, and radiating north and south from Houston.[5] By placing each railroad's dispatching operations for these lines in one location, the railroads will be able to increase coordination and improve operations by reducing on-line congestion, permitting trains of both UP and BNSF to operate more reliably and more in accord with customers' expectations. According to petitioners, these steps will fulfill a vital need to coordinate and improve UP and BNSF operations in the Houston area. In addition, petitioners state that the operations of both Kansas City Southern Railway Company and TexMex will benefit from this consolidated dispatching.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, we must exempt a transaction or service from a provision of law when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323-25 is warranted under the standards of 49 U.S.C. 10502. The ownership exchange will further the rail transportation policy of 49 U.S.C.10101 by promoting competition. [49 U.S.C. 10101(1) and (4)]. The resulting increased coordination in maintenance and improvements of the line will foster sound economic conditions in transportation, by ensuring effective coordination among carriers and encouraging efficient management and will have a positive impact on safety.

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[5] Provisions have also been made for TexMex dispatchers to operate out of the new center.

[49 U.S.C. 10101(5), (8), and (9)]. Finally, an exemption will minimize the need for Federal regulatory control over this transaction.[49 U.S.C. 10101(2)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. The ownership exchange is the type of private-sector arrangement that we have encouraged in addressing rail service in the West. It is part of a larger agreement entered into by UP and BNSF not only to help alleviate any rail congestion on this rail line, the ownership of which is already divided between the two carriers, but to improve rail service in general in the Houston/Gulf Coast region. Indeed, some of the earliest service problems that eventually led to the service emergency in the West occurred on this line. Thus, we expect the transaction to facilitate improved service to shippers served by the subject line and throughout the region.[6]

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions established in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

This transaction is exempt from the environmental reporting requirements under 49 CFR 1105.6(c)(2) and the historic reporting requirements under 49 CFR 1105.8(b)(1).[7] 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 this transaction from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).
2. Notice of the exemption will be published in the *Federal Register* on September 29, 1998.
3. The exemption is effective on October 29, 1998.
4. Petitions to stay must be filed by October 9, 1998. Petitions to reopen must be filed by October 19, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

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[6] Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

[7] The transaction does not involve a significant change in carrier operations, petitioners have no plans to dispose or alter historic properties, and further Board approval would be required for petitioners to discontinue service or abandon the line.