

Surface Transportation Board Conditionally Approves Proposed Construction & Operation of "Bayport Loop" Rail Line Near Houston

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has conditionally granted an exemption from regulation for the San Jacinto Rail Limited (San Jacinto), a subsidiary of The Burlington Northern and Santa Fe Railway Company (BNSF) and four chemical shippers, to construct a 12.8-mile railroad line near Houston, Texas and for BNSF to provide service over the line. Emphasizing that this proposal is subject to ongoing environmental review to address significant concerns raised in the case (see Surface Transportation Board "News" release No. 02-24 issued July 19, 2002), the Board stressed that no construction could begin until that environmental process is complete and the agency issues a further decision assessing the potential environmental impacts of the proposal and making the exemption effective at that time, if appropriate, subject to any necessary mitigation conditions.

The new line would run between the Bayport Industrial District (Bayport Loop) in southeast Houston, near Galveston Bay, and a connection with the former Galveston, Henderson and Houston Railroad line now owned by the Union Pacific Railroad Company (UP). The new line would allow BNSF to serve certain chemical manufacturing facilities in the Bayport Loop.

In conditionally granting the exemption, the Board cited the fact that the national rail transportation policy favors the construction of new rail lines. The Board found that San Jacinto's proposed line would increase competition among railroads by providing an alternative rail service to Bayport Loop shippers that now depend solely on UP to meet their rail service needs.

The shippers who would be served by the line filed in support of the construction. In addition to those filings and those parties raising concerns related to the ongoing environmental review process, the United Transportation Union (UTU) expressed concern that service might be provided by a nonunion subsidiary of the BNSF, rather than by BNSF itself. The Board stated that those fears are premature, and noted that only BNSF has sought Board authority to provide the service. The Board added that, if any other railroad, including a BNSF affiliate, seeks to provide the service, it, too, would need to seek Board authority in a subsequent proceeding, and that the UTU could raise its concerns at that time. The Board also found unpersuasive the concerns expressed by UP that BNSF lacks adequate rail infrastructure in the Bayport Loop area to properly support the construction proposal. The Board noted that BNSF's proposal fulfills a condition imposed on the 1996 "UP-Southern Pacific (SP)" railroad merger to preserve pre-merger competition between UP and SP.

The Board issued its decision today in the case entitled *San Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption--Build-Out To The Bayport Loop Near Houston, Harris County, TX*, STB Finance Docket No. 34079. The Board also published notice of the decision in today's *Federal Register*. A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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