

Surface Transportation Board Announces Results of January 31 Voting Conference

Surface Transportation Board (Board) Chairman Roger Nober has announced the results of the open voting conference held by the Board today concerning the following cases.

• **STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation.*** At issue was the application filed with the agency on August 29, 2002, by the Dakota, Minnesota & Eastern (DM&E) railroad to control the Iowa, Chicago & Eastern (IC&E) railroad. The Board voted, 3-to-0, to approve the transaction.

DM&E owns or operates approximately 1,103 miles of rail lines in Wyoming, South Dakota, Nebraska, Minnesota, and Iowa. IC&E owns or operates approximately 1,397 miles of rail lines in Minnesota, Iowa, Kansas, Missouri, Wisconsin, and Illinois. All of the IC&E lines were acquired on July 29, 2002, from I&M Rail Link, LLC; the decision approved today permits DM&E and IC&E to be commonly controlled.

DM&E also asked the Board to direct the Union Pacific (UP) railroad to afford DM&E unrestricted use of a small segment of UP track for DM&E to connect with IC&E at Owatonna, MN. In its vote today, the Board decided not to take that additional action. It noted that DM&E has the necessary authority to build its own track to connect with IC&E at Owatonna, but that DM&E would not likely need to do so, as the parties should be able to resolve the matter privately. The Board directed UP and DM&E to report back to the agency on the status of their negotiations within 60 days.

• **Finance Docket No. 33697, *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail.*** At issue was a request by the National Railroad Passenger Corporation (Amtrak) that the Board determine that Amtrak's rehabilitation of a 78-mile line of railroad track on the Guilford Rail System between Plaistow, New Hampshire, and Portland, Maine, meets the terms of a 1999 Board decision. The Board unanimously agreed that Amtrak has satisfactorily completed the rehabilitation.

The Board has the statutory authority to establish the terms under which freight railroads must give Amtrak access to their tracks. In a 1999 decision, the Board required Guilford to permit Amtrak to operate up to Federal Railroad Administration (FRA) "Class 4" speeds (up to 79 miles per hour) over a Guilford line in New England, provided that Amtrak rehabilitate the line to a certain level. In this case, Guilford argued that Amtrak had not adequately completed the rehabilitation. FRA--the agency with expertise, experience, and primary jurisdiction over rail safety--provided input throughout the proceeding and concluded that the track had been rehabilitated. Giving deference to FRA, the Board ordered Guilford to permit Amtrak to operate at FRA Class 4 speeds, noting that FRA has jurisdiction to address any safety concerns that Guilford may have regarding a specific section of track.

• **Ex Parte No. 282 (Sub-No. 20), *Railroad Consolidation Procedures: Class Exemption for Temporary Trackage Rights Transactions.*** In another action, the Board unanimously voted to issue a notice proposing to establish a new class exemption under which railroads could obtain authority for trackage-rights arrangements that would automatically expire on a certain date. Under the current class exemption for trackage-rights arrangements, the Board's authorization extends indefinitely until Board authority is obtained to terminate the trackage-rights operations.

A railroad may acquire trackage rights (the right to use another railroad's line) only if it receives Board authorization. Parties often acquire this authority by filing a notice to invoke a class exemption contained in the Board's rules. Those trackage rights typically extend indefinitely, however, and any railroad seeking to terminate those rights must then file an application or petition for authority to discontinue the operations. In recent years, railroads have sought temporary trackage rights authority that would expire after a finite period of time in situations where the arrangement would be short-term (for example, while other tracks are under repair). To do so, they have had to make two filings before the agency. The Board Members noted that both railroads and the public would benefit from a rule that expressly provides a means by which authorization of temporary trackage rights can be obtained through a single filing.

• **STB Finance Docket No. 33995, *SF&L Railway, Inc.--Acquisition and Operation Exemption--Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, and STB Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer--Continuance in Control Exemption--SF&L Railway, Inc.*, and STB Docket No. AB-448 (Sub-No. 2X), *SF&L Railway, Inc.--Abandonment Exemption--in Hancock, McDonough, Fulton and Peoria Counties, IL*.** At issue is a petition by SF&L Railway, Inc. (SF&L) asking the Board to reopen and reconsider its October 2002 decision revoking exemptions that permitted SF&L to acquire an approximately 72-mile portion of railroad line (the "La Harpe Line") from the Toledo, Peoria and Western Railway (TP&W). The Board unanimously voted to deny SF&L's request.

The Board had earlier found that SF&L and its owners had abused the Board's class exemption procedures, which are designed to maintain railroad service, by using them to acquire the La Harpe Line not for operation but for salvage. SF&L had argued that the Board has no authority to revoke exemptions based on abuse of Board processes. The Board rejected that argument and voted to require SF&L to refund the original purchase price of the line and return the line to its original owner.

• **STB Finance Docket No. 34114, *Yolo Shortline Railroad Company--Lease and Operation Exemption--Port of Sacramento*.** At issue is a petition by the Union Pacific (UP) railroad asking the Board to reject the notice by which another carrier, the Yolo Shortline (Yolo), was allowed, in 2001, to lease and operate approximately 3.1 miles of rail line in West Sacramento, California. Alternatively, UP asked the Board to revoke Yolo's authority to use that track. The Board voted unanimously to deny UP's petition.

For a number of years, UP and its predecessor had been operating on the trackage under a lease agreement with the Port of Sacramento. Yolo, which obtained exclusive operating rights from the Port, notified UP that it would have to terminate its operations on the track. In an attempt to avoid its own removal from the track, UP asked the Board to disallow Yolo's operations. In denying the UP petition, the Board found that the actions of the Port and Yolo in substituting Yolo for UP were not improper under the agency's procedures.

• **STB Finance Docket No. 34304, *The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--The Portland & Western Railroad, Inc.*** At issue is a notice of exemption concerning a trackage rights arrangement under which one railroad may operate over the track of another. The Burlington Northern and Santa Fe Railway (BNSF) filed a motion asking the Board to find that BNSF does not require agency authorization to obtain what it described as "overhead" trackage rights to operate over a portion of a line that BNSF has leased to the Portland & Western (P&WR) railroad. The Board voted unanimously to deny BNSF's motion.

In its motion, BNSF argued that it had retained the trackage rights when it leased the line to P&WR. Alternatively, BNSF argued that the trackage rights are simply incidental to the lease transaction. The Board rejected both arguments, and therefore voted to deny the motion.

• **STB Docket No. AB-565 (Sub-No. 11X), *New York Central Lines, LLC--Abandonment--Exemption--in Lake County, OH*, and STB Docket No. AB-55 (Sub-No. 617X), *CSX Transportation, Inc.--Discontinuance of Service Exemption--In Lake County, OH*.** At issue is a petition by the New York Central (NYC) and CSX (CSX) railroads under which NYC seeks to abandon, and CSX to discontinue service over, an approximately three-mile section of track in Lake County, Ohio. The Board voted unanimously to allow the abandonment and discontinuance.

There are three businesses located on the line. The only protest to the petition was filed by Carmeuse North America, which recently bought a lime plant located on the line, but which has not used rail service. The other two businesses had made only minimal use of rail service. In deciding to allow abandonment of the line, the Board observed that CSX showed substantial losses from operating the line, and that Carmeuse's assertion that it might use the line in the future was simply speculation.

The Board provides the summaries above as a courtesy to the public and the media. The actions of the Board in these

cases, however, are the Board's written decisions. Those decisions will be forthcoming. Printed copies of the decisions will be 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 decisions also will be available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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