

SERVICE DATE – AUGUST 10, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36424

UNION PACIFIC RAILROAD COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—BNSF RAILWAY COMPANY

Docket No. FD 36425¹

UNION PACIFIC RAILROAD COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—BNSF RAILWAY COMPANY

Digest:² This decision waives the requirement that a notice of exemption be filed 30 days prior to consummating a transaction and allows the temporary trackage rights exemptions in these dockets to take effect immediately.

Decided: August 10, 2020

On August 6, 2020, Union Pacific Railroad Company (UP) filed verified notices of exemption in the above-captioned dockets under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary trackage rights for overhead operations. In Docket No. FD 36424, UP seeks to acquire temporary trackage rights over approximately 566.6 miles of rail line owned by BNSF Railway Company (BNSF) between milepost 737.3 on BNSF's Needles Subdivision near Daggett, Cal., and milepost 191.6 on BNSF's Phoenix Subdivision near Phoenix, Ariz. In Docket No. FD 36425, UP seeks to acquire temporary trackage rights over approximately 674.4 miles of rail line owned by BNSF between milepost 787.4 on BNSF's Clovis Subdivision near Vaughn, N.M., and milepost 191.6 on BNSF's Phoenix Subdivision near Phoenix, Ariz. In each docket UP submits a written trackage rights agreement, dated August 6, 2020, governing the trackage rights described above (the Agreements).³ Simultaneously with its verified notices,

¹ These proceedings have not been consolidated but are being addressed in the same decision for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

³ UP attached to each verified notice a redacted copy of the trackage rights agreement relevant to the trackage rights described in that notice. An unredacted copy of each trackage rights agreement has been filed under seal along with a motion for protective order pursuant to 49 C.F.R. § 1104.14 in both dockets. Those motions are addressed in separate decisions.

UP filed a petition in both dockets to waive the 30-day effectiveness requirement under 49 C.F.R. § 1180.4(g)(1) and allow both exemptions to take effect immediately.

UP explains that on July 29, 2020, a train derailed on a bridge over the Tempe Town Lake in Tempe, Ariz., and the bridge was subsequently taken out of service for repairs. (Pet. 2.) The bridge is located on UP's Phoenix Subdivision, which provides a route between Tempe and Arlington, Ariz. (*Id.*) UP states that, due to the bridge outage, it is currently rerouting trains over BNSF's rail lines using BNSF crews pursuant to detour agreements between UP and BNSF. (*Id.*) Because UP is uncertain how long the bridge will be out of service, it has entered into the Agreements with BNSF for the sole purpose of allowing UP's crews to handle its own trains in overhead service over BNSF's rail lines described above while the repairs are being made. (*Id.*) UP states that the temporary trackage rights will expire on September 18, 2020. (Notice of Exemption 1, FD 36424; Notice of Exemption 1, FD 36425.)

Under 49 C.F.R. § 1180.4(g), a verified notice of exemption must be filed at least 30 days before the covered transaction can be consummated. Thus, under the regulations, the earliest date UP may consummate the transactions would be September 5, 2020. However, as noted above, UP has filed a petition to waive the 30-day requirement and allow the exemptions to take effect immediately. UP states that this waiver would allow UP crews to operate as soon as possible, thereby relieving the strain on BNSF of having to provide BNSF crews for both UP and BNSF trains. (Pet. 2.) UP further states that the temporary trackage rights are needed to facilitate a return to normal service for its customers and to prevent disruptions in service. (*Id.*)

For good cause shown, the Board will grant the petition, waive the 30-day requirement under 49 C.F.R. § 1180.4(g), and allow the exemptions to become effective immediately. See Ala. & Gulf Coast Ry.—Temp. Trackage Rights Exemption—Kan. City S. Ry., FD 36418 (STB served July 2, 2020); Norfolk S. Ry.—Temp. Trackage Rights Exemption—Kan. City S. Ry., FD 36359 (STB served Oct. 11, 2019); Kan. City S. Ry.—Temp. Trackage Rights Exemption—Norfolk S. Ry., FD 36314 et al. (STB served June 13, 2019). As a condition to these exemptions, UP acknowledges that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). Notice of the exemptions will be published in the Federal Register.

According to UP, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting under 49 C.F.R. § 1105.8(b)(3).

It is ordered:

1. The petition for waiver is granted.

2. The exemptions for temporary trackage rights will be effective on the service date of this decision.

3. As a condition to these exemptions, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.