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SERVICE DATE – DECEMBER 29, 2022

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub-No. 6)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad
Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its acquisition of restricted, local, trackage rights over two rail lines owned by Union Pacific Railroad Company (UP) between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines).

Pursuant to a written temporary trackage rights agreement, UP has agreed to grant restricted trackage rights to BNSF over the Lines. The purpose of this transaction is to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, which is adjacent to the Lines. The agreement provides that the trackage rights are temporary and scheduled to expire on December 31, 2023.¹

¹ BNSF states that, because the trackage rights are for local rather than overhead traffic, it has not filed under the Board's class exemption for temporary overhead trackage rights under 49 C.F.R. § 1180.2(d)(8). Instead, BNSF has filed under the trackage rights class exemption at § 1180.2(d)(7). BNSF concurrently filed a petition for partial revocation of this exemption, in Docket No. FD 36377 (Sub-No. 7), to permit these proposed trackage rights to expire at midnight on December 31, 2023, as provided

The transaction may be consummated on or after January 12, 2023, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the 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).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 5, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36377 (Sub-No. 6), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

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

in the agreement. The petition for partial revocation will be addressed in a subsequent decision.

Board decisions and notices are available at www.stb.gov.

Decided: December 19, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.