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SERVICE DATE - APRIL 24, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33574 (Sub-No. 1)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY—TRACKAGE  
RIGHTS EXEMPTION—UNION PACIFIC RAILROAD COMPANY

Decided: April 10, 1998

By petition filed March 24, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) (collectively petitioners) request that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33574,<sup>1</sup> as it relates to the operation of the Shawnee Junction segment, to extend only until July 15, 1998, as it relates to the operation of the Fish Lake segment, to extend only until September 1, 1998, and as it relates to the operation of the Lewisville/Longview segment, to extend only until July 31, 1998.

The trackage rights arrangement exempted in STB Finance Docket No. 33574 is necessary because BNSF will be performing maintenance and repairs on its main line and will utilize the

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<sup>1</sup> On March 24, 1998, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant BNSF limited overhead trackage rights between the following points: (1) Shawnee Junction, WY, in the vicinity of UP's milepost 271.4 (North Platte Subdivision) and Northport, NE, in the vicinity of UP's milepost 117.3 (North Platte Subdivision), a distance of approximately 154 miles (Shawnee Junction segment); (2) Fish Lake, WA, in the vicinity of UP's milepost 354.7 (Spokane Subdivision) and Attalia, WA, in the vicinity of UP's milepost 215.7 (Spokane Subdivision), a distance of approximately 139 miles (Fish Lake segment); and (3)(a) Lewisville, AR, in the vicinity of UP's milepost 390.3 (Pine Bluff Subdivision) and Big Sandy, TX, in the vicinity of UP's milepost 525.0, on the Pine Bluff Subdivision (milepost 112.95 Dallas Subdivision), and (b) Longview, TX, in the vicinity of UP's milepost 89.6, on the Dallas Subdivision (milepost 0.0 Palestine Subdivision) and Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision), a distance of approximately 260 miles (Lewisville/Longview segment). The trackage rights are scheduled to expire effective July 15, 1998, for the Shawnee Junction segment, effective September 1, 1998, for the Fish Lake segment, and effective July 31, 1998, for the Lewisville/Longview segment. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 33574 (STB served Apr. 6, 1998). The trackage rights operations under the exemption became, or will become, effective on April 1, 1998, for the Shawnee Junction segment, on July 1, 1998, for the Fish Lake segment, and on June 15, 1998, for the Lewisville/Longview segment.

trackage rights over UP's lines as alternative routes for BNSF traffic. However, UP is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on BNSF's trackage. According to petitioners, operating crew constraints on UP dictate that BNSF's operations over UP's trackage be handled as trackage rights rather than as a detour or other similar arrangement. Petitioners maintain that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow BNSF to operate over UP's line, and BNSF would face the possibility of severe congestion and service disruption on its main line.

Although the parties have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions.<sup>2</sup> Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Southern Pacific Transportation Company--Trackage Rights Exemption--Peninsula Corridor Joint Powers Board, Finance Docket No. 32300 (ICC served June 8, 1993); Soo Line Railroad Company--Trackage Rights--Over a Line of Chicago, Central and Pacific Railroad Company in Rockford, IL, Finance Docket No. 32446 (ICC served Jan. 6, 1994); Union Pacific Railroad Company--Trackage Rights Exemption--Chicago, Central & Pacific Railroad Company, STB Finance Docket No. 32959 (Sub-No. 1) (STB served July 25, 1996).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BNSF's trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33574, as they relate to the operation of the Shawnee Junction segment, to expire on July 15, 1998, as they relate to the operation of the Fish Lake segment, to expire on September 1, 1998, and as they relate to the operation of the Lewisville/Longview segment, to expire on July 31, 1998.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>2</sup> In the absence of the relief sought here by exemption, petitioner would ordinarily need to seek either discontinuance authority under 49 U.S.C. 10903 or approval of a new agreement. See Milford-Bennington Railroad Company, Inc.--Trackage Rights Exemption--Boston and Maine Corporation and Springfield Terminal Railway Company, Finance Docket No. 32103 (ICC served Sept. 3, 1993).

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 33574, as discussed above, permitting them to expire, as they relate to the operation of the Shawnee Junction segment, on July 15, 1998, as they relate to the operation of the Fish Lake segment, on September 1, 1998, and as they relate to the operation of the Lewisville/Longview segment, on July 31, 1998.
2. Notice will be published in the Federal Register on April 24, 1998.
3. This decision is effective on May 24, 1998.
4. Petitions to reopen must be filed by May 14, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary