

SERVICE DATE – OCTOBER 11, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36222

BNSF RAILWAY COMPANY—LEASE EXEMPTION—UNION PACIFIC RAILROAD
COMPANY

Digest:¹ This decision permits BNSF Railway Company to lease from Union Pacific Railroad Company an approximately 13.62-mile rail line in Colorado.

Decided: October 10, 2018

On September 6, 2018, BNSF Railway Company (BNSF) filed a petition under 49 U.S.C. § 10502 seeking exemption from the prior approval requirements under 49 U.S.C. §§ 11323-25 for BNSF to lease from Union Pacific Railroad Company (UP) an approximately 13.62-mile rail line (Line) in Pueblo County, Colo., between milepost 591.66 at NA Junction and milepost 605.28 at Avondale (Nyberg).

BNSF explains that, its predecessor, The Atchison, Topeka and Santa Fe Railway Company (ATSF), and UP's predecessor, Missouri Pacific Railroad Company (Missouri Pacific), entered into an agreement in 1967 relating to ownership and operation, maintenance, and joint use of ATSF's and Missouri Pacific's railroad tracks and facilities between NA Junction and Pueblo, which includes the Line. Pursuant to this agreement, BNSF and UP have jointly operated over the Line for the last 50 years, and UP has been responsible for maintaining the Line. BNSF has been the primary user of the Line and currently dispatches it.

BNSF and UP have recently entered into a lease agreement that would modify certain roles and responsibilities set forth in the 1967 agreement. BNSF would “non-exclusively lease the Line in order [] to maintain, construct, repair and renew the Line's track and appurtenant structures and facilities.” (Pet. 2.)² BNSF states that the lease would align track and signal maintenance with

¹ 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² BNSF's reference to “construction” is in connection with the planned repair and maintenance of the existing Line. See Pet. 1. Therefore, the Board does not construe that
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BNSF's current dispatching responsibilities and is intended to streamline maintenance activity and improve planning processes in coordination with BNSF's maintenance of contiguous lines on either side of the Line. BNSF states that these changes would reduce the number and frequency of maintenance windows and outages, resulting in improved operations for customers along the route. According to BNSF, beyond this enhancement of operational efficiency, no other impacts to commercial or operational access to customers, either locally or in through service, would result from the transaction.³

BNSF asks for expedited consideration of its petition so that the exemption can become effective by November 1, 2018. BNSF explains that this would allow it to plan for and commence maintenance work necessary to remove slow orders and improve track conditions before winter weather makes maintenance difficult.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the rail transportation policy. The proposed transaction would align track and signal maintenance with dispatching and further align maintenance of the Line with BNSF's maintenance activities on contiguous lines, which would result in improved operations along the route. As such, the proposed transaction would, among other things, promote a safe and efficient rail transportation system (49 U.S.C. § 10101(3)), ensure continuation of a sound rail transportation system with effective competition among rail carriers (49 U.S.C. § 10101(4)), foster sound economic conditions in transportation and ensure effective competition (49 U.S.C. § 10101(5)), and encourage honest and efficient management (49 U.S.C. § 10101(9)). Further, an exemption from the application process would expedite regulatory action (49 U.S.C. § 10101(2)). Other aspects of the rail transportation policy would not be adversely affected.

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reference as involving any new line of railroad for which construction authority would be needed pursuant to 49 U.S.C. § 10901, and this decision does not grant any such authority.

³ Pursuant to 49 C.F.R. § 1121.3(d), BNSF certifies that the lease does not contain a provision or agreement that may limit future interchange with a third-party connecting carrier.

Regulation of the proposed transaction is also not necessary to protect shippers from the abuse of market power.⁴ Nothing in the record indicates that any shipper would lose an existing rail service option as a result of the proposed lease transaction. According to BNSF, the lease will not affect the routings available to customers on the Line or customers whose traffic is routed over the Line. The record indicates that the transaction would not result in any material change in UP's or BNSF's operations or commercial access to customers and that no customers would experience any degradation of, or competitive change in, rail service. Indeed, the lease transaction should benefit shippers by allowing BNSF and UP to move traffic more efficiently following improved maintenance. Moreover, no shippers or other parties have filed any objections to the proposed transaction.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions 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).

The proposed lease is exempt from both the environmental reporting requirements under 49 C.F.R. § 1105.6(c) and the historic reporting requirements under 49 C.F.R. § 1105.8(b).

As noted above, BNSF seeks an expedited effective date so that it can commence maintenance improvements as soon as possible to avoid complications from winter weather conditions. For that reason, the exemption will be effective October 31, 2018, and petitions to stay, petitions for reconsideration, and petitions to reopen will be due by October 24, 2018.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 BNSF's lease of the Line, subject to the employee protective conditions 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).
2. Notice of the exemption will be published in the Federal Register on October 16, 2018.
3. The exemption will become effective on October 31, 2018.

⁴ Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the transaction is limited in scope. See 49 U.S.C. § 10502(a).

4. Petitions to stay, petitions for reconsideration, and petitions to reopen must be filed by October 24, 2018.

By the Board, Board Members Begeman and Miller.