

SERVICE DATE - NOVEMBER 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34047 (Sub-No. 1)

KANSAS & OKLAHOMA RAILROAD, INC.—TRACKAGE RIGHTS EXEMPTION—
CENTRAL KANSAS RAILWAY, L.L.C.

Decided: November 1, 2001

By petition filed October 3, 2001, the Kansas & Oklahoma Railroad, Inc. (K&O) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34047¹ to expire on a date that coincides with K&O's completion of a line-relocation project near Kingman, KS, and a line-rehabilitation project between Wichita and Kingman, via Conway Springs, KS (collectively projects). K&O states that it expects to complete the projects some time in October 2001.²

Prior to the trackage rights arrangement exempted in STB Finance Docket No. 34047, the Board had granted CKR's abandonment of the trackage rights line in Central Kansas Railway, L.L.C.—Abandonment Exemption—in Sedgwick County, KS, STB Docket No. AB-406 (Sub-No. 14X) (STB served Apr. 10, 2001) (CKR Abandonment Exemption). CKR's abandonment of

¹ On May 25, 2001, K&O filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by Central Kansas Railway, L.L.C. (CKR) to grant temporary overhead trackage rights to K&O over CKR track located between CKR milepost 19.5, near Garden Plain, KS, and CKR milepost 3.5, at Wichita, KS, a distance of 16 miles (trackage rights line). See Kansas & Oklahoma Railroad, Inc.—Trackage Rights Exemption—Central Kansas Railway, L.L.C., STB Finance Docket No. 34047 (STB served June 12, 2001) (STB Finance Docket No. 34047). The trackage rights operations under the exemption were scheduled to be consummated on or shortly after June 1, 2001.

² In a related proceeding, K&O was authorized to acquire substantially all of the rail lines, with the exception of the trackage rights line, formerly owned and operated by CKR, including the former CKR route between Wichita and Kingman via Conway Springs. See Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, L.L.C., STB Finance Docket No. 34030 (STB served June 12, 2001). With the acquisition of CKR's rail lines in STB Finance Docket No. 34030, K&O also assumed CKR's ongoing work on the relocation project and the rehabilitation project. See STB Finance Docket No. 34047 at n.3.

the trackage rights line was subject to the condition that CKR could not consummate the abandonment until it certified to the Board that the projects had been completed.

K&O states that CKR agreed to grant it temporary overhead trackage rights until K&O completed the projects and K&O was able to operate over the alternate Kingman-Conway Springs-Wichita route. K&O notes that the trackage rights arrangement was to accommodate K&O's interim needs of moving overhead traffic to Wichita and the conditions imposed by the Board in CKR Abandonment Exemption, but was not intended to jeopardize CKR's authority to abandon the trackage rights line. K&O indicates that, when it completes the projects and CKR certifies to the Board that the projects are completed and the alternative route between Wichita and Kingman, via Conway Springs, is operational, the trackage rights agreement will terminate and CKR will proceed to consummate the abandonment of the trackage rights line.

K&O maintains that, without the temporary trackage rights, it would have experienced severe operational problems handling traffic between Wichita and certain of its newly-acquired rail lines.

DISCUSSION AND CONCLUSIONS

Although CKR and K&O have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34053 (Sub-No. 1) (STB served July 17, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34058 (Sub-No. 1) (STB served July 16, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34055 (Sub-No. 1) (STB served June 22, 2001); The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34036 (Sub-No. 1) (STB served June 6, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33948 (Sub-No. 1) (STB served Nov. 22, 2000).

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.

K&O's temporary 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 that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34047 to expire on the date that CKR certifies to the Board that the relocation and rehabilitation projects have been completed, which K&O expects to be some time in October 2001.

Usually, an order granting a petition for exemption is made effective 30 days from the date of service of the decision granting the exemption. As the relief requested pertains to an intended cessation of trackage rights that could occur in October 2001, we will shorten the normal 30-day period for effectiveness of the decision in order to accommodate the parties.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34047, as discussed above, to permit the trackage rights to expire on the date that CKR certifies the completion of the relocation and rehabilitation projects.

2. Notice will be published in the Federal Register on November 8, 2001.

3. This decision is effective on November 8, 2001.

4. Petitions to reopen must be filed by November 28, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary