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SERVICE DATE - MARCH 12, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33712 (Sub No. 1)

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

Decided: March 5, 1999

By petition filed February 1, 1999, Union Pacific Railroad Company (UP or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33712¹ to extend only until March 31, 1999.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33712 is necessary because UP will be performing maintenance work on its parallel line and UP will utilize the trackage rights over BNSF's line as an alternate route for UP's traffic during that time. However, petitioner states that BNSF is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on UP's trackage. Petitioner further states that operating crew constraints on BNSF dictate that UP's operations over BNSF's trackage be handled as trackage rights rather than as a detour arrangement. Petitioner maintains that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

Although the parties have expressly agreed on the terms of the proposed 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 The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999); Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (Sub-No. 1) (STB served July 30, 1998); and The

¹ On February 1, 1999, UP 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 The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over 235.5 miles of BNSF's rail line from milepost 885.2 at Kern Junction to milepost 1120.7 at Stockton Tower, in the State of California. See Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33712 (STB served Feb. 11, 1999). The trackage rights operation under the exemption became effective and were scheduled to be consummated on or shortly after February 8, 1999.

STB Finance Docket No. 33712 (Sub-No. 1)

Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33612 (Sub-No. 1) (STB served July 1, 1998).

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.

UP'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 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. 33712 to expire on March 31, 1999.

Usually, an order granting a petition for exemption is made effective 30 days from the date of service granting the exemption. As the relief requested pertains to an intended cessation of trackage rights on March 31, 1999, we will shorten the effective date of the decision from the normal 30-day period 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. 33712, as discussed above, to permit the trackage rights to expire on March 31, 1999.
2. Notice will be published in the Federal Register on March 12, 1999.
3. This decision is effective on March 26, 1999.
4. Petitions to reopen must be filed by March 22, 1999.

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

Vernon A. Williams
Secretary