

SERVICE DATE – JUNE 22, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35238 (Sub-No. 1)

BNSF RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION— UNION PACIFIC RAILROAD COMPANY

Decided: June 16, 2009

By petition filed on April 9, 2009, BNSF Railway Company (BNSF) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in STB Finance Docket No. 35238¹ to expire at midnight on December 31, 2009.

BNSF states that the trackage rights arrangement exempted in STB Finance Docket No. 35238 is necessary to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, CA, which is adjacent to the UP rail line, for use in the maintenance of BNSF's tracks. But BNSF is only seeking, and UP is only willing to grant, temporary operating rights over UP's trackage until midnight on December 31, 2009.

DISCUSSION AND CONCLUSION

Although BNSF and UP have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pacific Railroad Company—Trackage Rights Exemption—The

¹ In that docket, on April 9, 2009, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant temporary local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles, and (2) UP milepost 219.4 at Elsey, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 35238 (STB served Apr. 24, 2009).

Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds 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 temporary trackage rights already have 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 because the trackage rights that are the subject of the exemption are solely for the movement of empty and loaded ballast trains for use in the maintenance of BNSF's tracks. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 35238 to expire at midnight on December 31, 2009.

In order to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

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

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights described in STB Finance Docket No. 35238 are exempted, as discussed above, to permit the trackage rights to expire at midnight on December 31, 2009, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on June 22, 2009.
4. This decision is effective on July 22, 2009. Petitions to stay must be filed by July 2, 2009. Petitions for reconsideration must be filed by July 13, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary