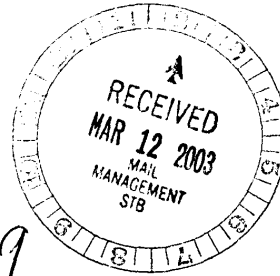




ASSOCIATION OF
AMERICAN RAILROADS

Law Department
Dennis J. Starks
Senior Commerce Counsel*



March 12, 2003

207379

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N. W.
Washington, D.C. 20423

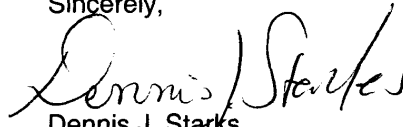
Re: Ex Parte No. 282 (Sub-No. 20) - - Railroad Consolidation Procedures -
Exemption For Temporary Trackage Rights

Dear Secretary Williams:

Enclosed for filing in the proceeding captioned above, please find an original and ten copies of the Comments of the Association of American Railroads.

Please date-stamp the extra copy provided for that purpose and return it via our messenger.

Sincerely,


Dennis J. Starks
Senior Commerce Counsel

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Public Record

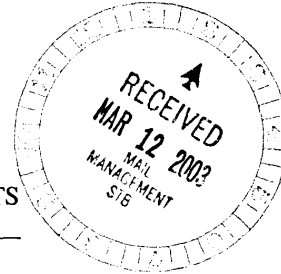
*Admitted to West Virginia, only. Practice limited to matters and proceedings before federal courts and agencies.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO.282
(Sub-No. 20)

RAILROAD CONSOLIDATION PROCEDURES -
EXEMPTION FOR TEMPORARY TRACKAGE RIGHTS

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS



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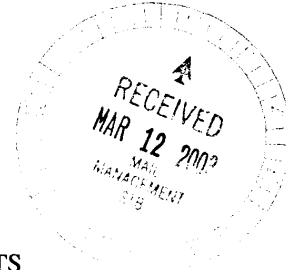
MAR 12 2003

Part of
Public Record

Dated: March 12, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO.282
(Sub-No. 20)



RAILROAD CONSOLIDATION PROCEDURES -
EXEMPTION FOR TEMPORARY TRACKAGE RIGHTS

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR) hereby submits these comments on behalf of itself and its individual members in response to the Board Notice of Proposed Exemption and Rulemaking (NPR), served February 10, 2003, (NPR). The Board has proposed to permit authorization, for a limited period of time, trackage rights that by their terms expire on a date certain. Carriers utilizing this new class exemption would not be required to file for discontinuance authority. Rather, the temporary trackage rights would automatically terminate on the date specified.

In support of the proposal the Board explains that authorizations of trackage rights approved under the current class exemption remain in effect indefinitely, regardless of any durational contract provisions. But in recent years parties have sought authorization for temporary trackage rights involving carriers in need of planned reroutes to accommodate extensive maintenance over portions of their heavily used track, line relocation and rehabilitation projects, as well as other such operational and maintenance projects. The Board goes on to note that current regulatory practices require carriers seeking such time limited authorizations to file initially a notice of exemption to acquire authority to exercise trackage rights indefinitely over a particular line, and then a subsequent request to allow the authorization to expire on a certain

date. The Board stresses that in the past, it has analyzed these subsequent filings on a case-by-case basis, routinely granting requests to allow trackage rights authorizations to expire on a specific date. Accordingly, the Board concludes that given its experience in such instances, it believes that both rail carriers and the public would benefit from a rule that expressly provides a class exemption from 49 U.S.C. 11323 to permit authorization, for a limited period of time, of trackage rights that by their terms expire on a date certain. (NPR at 2-3)

COMMENT

The AAR supports the Board's proposal. The short-term temporary trackage rights requests that are the subject of the NPR have been both routinely limited in scope and have been proposed without specific shipper objection or any other party opposition. As such, the Board has routinely found that regulation of such transactions is not necessary to carry out the rail transportation policy, or to protect shippers from the abuse of market power.¹

Exempting such transactions as a class will minimize regulation of the rail system (49 U.S.C. 10101(2)), promote the continuation of a sound rail system by facilitating line repair and maintenance (49 U.S.C. 10101(4)), and promote coordination between rail carriers (49 U.S.C. 10101(5)). The grant of discontinuance authority simultaneous with the grant of the temporary rights themselves will permit carriers to more easily cooperate and enable other carriers to progress such major operational and maintenance projects. As such, the AAR believes that the proposed class exemption should aid carrier and shipper interests by further reducing regulatory

¹ See Kansas & Oklahoma Railroad, Inc. – Trackage Rights Exemption – Central Kansas Railway, L.L.C., STB Finance Docket No. 34047 (Sub-No. 1) (STB served November 8, 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); Union Pacific Railroad Company – Trackage Rights Exemption – The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33879 (Sub-No. 1) (STB served June 23, 2000); The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company, STB Finance Docket No. 33833 (Sub-No. 1) (STB served Feb. 4, 2000); CSX Transportation, Inc. – Trackage Rights Exemption – Consolidated Rail Corporation, STB Finance Docket No. 33733 (Sub-No. 1) (STB served May 7, 1999); The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption – The Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999); and Union Pacific Railroad Company – Trackage Rights Exemption – Chicago, Central & Pacific

uncertainty, facilitating the ability to reach agreements on temporary trackage rights granted for operational or maintenance purposes, and by reducing filing fees associated with acquiring and then discontinuing such rights. In short, the AAR submits that exempting the approval of such trackage rights as a class will, in many cases, surely promote the public interest overall, by eliminating a regulatory burden that has, under the circumstances, seemingly become all to perfunctory and wasteful of valuable resources of the Board and affected parties.

The AAR recommends, however, one caveat to the Board's proposal. Specifically, the proposal targets trackage rights of temporary duration; however the NPR tends to focus on trackage rights to address short-term operational needs. In the AAR's view, it is the temporary nature of such transactions (especially in the context of the operational needs cited by the Board) that renders them uniquely eligible for an exemption. "Temporary" agreements, even with definite termination dates, could encompass lengthy periods of time and carry significant ramifications beyond mere operational or maintenance convenience. The termination of these agreements may, therefore, not necessarily be limited in scope and they may have market implications. Accordingly, they may require STB review on a case-by-case basis.

So that there would be no issue about either the intended effects of an exemption granted under the proposal or the nature of the underlying trackage rights involved, the AAR suggests placing a limit on the term of the temporary trackage rights granted. Placing a term limit of one year on such trackage rights would distinguish short-term trackage rights, that are intended to be covered by the class exemption, from trackage rights involving a broader range of purposes, but which remain eligible for processing under current Board exemption policies. In short, a one-year limitation on such trackage rights should avoid the unintended consequence of the proposed exemption being used for trackage rights terminations that should have required more regulatory scrutiny.

The AAR does not mean to suggest that, by placing a regulatory term limit on the duration of temporary trackage rights subject to the class exemption, parties would not be permitted to fashion, at the outset, trackage rights of sufficient durational length to meet a particular need beyond the short term. In such instances, parties should and do remain free to pursue either an extension and or waiver of the proposed class exemption, or pursue an individual exemption. But as noted above, the NPR seemingly focuses more on temporary trackage rights designed to address short-term needs. Placing a regulatory term limit on such temporary trackage rights should make the STB's intended purposes clear, be consistent with the public interest, and avoid any policy issues that might be presented by operation of long-term rights.

Accordingly, consistent with the above comment the AAR would suggest the following revision to the proposed rules: at the end of proposed rule 1180.2 (d) (8) (iii), add "not to exceed one year from the effective date of the exemption. If, after the passage of one year, the operations contemplated by this exemption have not been concluded, then the parties may either file for a renewal of the exemption, or pursue an individual exemption."

CONCLUSION

The AAR urges the Board to modify its proposal in a manner consistent with the views expressed above.

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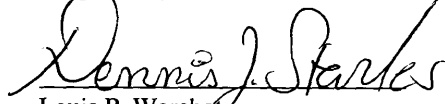
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Canadian National Rwy.

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Dated: March 12, 2003

Respectfully submitted,



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