

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34880

UNION PACIFIC RAILROAD COMPANY
--TRACKAGE RIGHTS EXEMPTION--
BNSF RAILWAY COMPANY

216681

PETITION FOR STAY ^{*/}

ENTERED
Office of Proceedings
JUN 1 2006
Part of
Public Record

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

June 1, 2006

Attorney for John D. Fitzgerald

*/ Expedited action is requested inasmuch as the exemption is noticed to become effective at 12:01AM, Friday, June 2, 2006.

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--TRACKAGE RIGHTS EXEMPTION--
BNSF RAILWAY COMPANY

PETITION FOR STAY

Preliminary Statement

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), petitions for stay of operation of the notice of exemption, filed May 26, 2006, by Union Pacific Railroad Company (UP), for UP to acquire trackage rights over the line of BNSF Railway Company (BNSF), between Portland and North Portland Junction, OR, a distance of 7.41 miles in Oregon. The stay should extend until the supplemental agreement between UP and BNSF governing operations between Salem (Labish) and Portland is made public, and any STB approval or exemption obtained, if necessary, and the terms of Exhibit B to the notice made known, along with other filings in connection with a UP/BNSF restructuring of operations is made known, and until such time as UTU/GO-386's petition to revoke is decided by the Board.

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

This petition for stay is submitted on an expedited basis inasmuch as UP's filing was not made public at the Board until late Friday, May 26, 2006, immediately prior to the three-day holiday, and not actually available to interested persons until the following May 30. Examination of the filing was complicated by color-coding of certain materials which did not render clear imprints on the Boards website.

Background

The proposed trackage rights are for two trains per day (Notice, 10-11), and are subject to presently undisclosed additional terms, to be provided as Exhibit B to the notice. (Notice, 16). The stated purpose of the UP/BNSF agreement is to create an additional overhead routing for UP trains in the Portland, OR area. (Notice, 4). The UP/BNSF agreement indicates it is related to a separate supplemental agreement whereby BNSF is to allow Portland & Western R.R. Inc (PNWR) to act as BNSF's agent between Portland and Labish, OR. (Notice, 9).

Almost simultaneously on filing the instant notice of exemption, UP on May 31, 2006, filed a notice of exemption in Finance Docket No. 34881, Union Pacific Railroad Company--Trackage Rights Exemption--BNSF Railway Company, for UP to acquire trackage rights over BNSF in Tacoma, WA. As in the instant UP/BNSF agreement, the Tacoma Rail Trackage Rights provides for an agency arrangement between BNSF and Tacoma Rail. (FD 34881 Notice, 9).

ARGUMENT

I. UTU/GO-386 HAS A HIGH PROBABILITY IT WILL PREVAIL IN REVOKING THE EXEMPTION

UTU/GO-386, as matters presently stand, has a high probability of success it will prevail. The notice states (1) there are terms which have not been finalized, and (2) the notice is related to a supplemental agreement wherein BNSF is to contract out its train operation to another carrier, PNWR. These missing terms, and related agreements concerning contract carrier operations, are important to the validity of any trackage rights agreement. Regulation is presently necessary in the existing posture of the proceeding, in order to carry out the rail transportation policy.

II. RAIL EMPLOYEES WILL LIKELY SUFFER IRREPARABLE INJURY WITHOUT A STAY.

Railroad employees have a strong interest in knowing the full scope of a transaction so that they may evaluate whether certain employee conditions are satisfactory to protect their interests. As matters presently stand, the paucity of information, particularly with respect to the BNSF/PNWR agency agreement, indicate that BNSF train service personnel will suffer irreparable injury in loss of work to PNWR.

The verified statement of John D. Fitzgerald is attached.

III. UP WILL NOT BE INJURED IF A STAY IS GRANTED.

UP will not suffer injury if a stay is granted at this time. As its notice indicates, UP presently has satisfactory routes in

the Portland area. The purpose of the trackage rights is merely to create an additional route for overhead traffic. (Notice, 4, 9). Moreover, the advantageous use of the trackage rights is dependent upon a supplemental agency agreement, which has not been made public and perhaps not finalized.

IV. THE PUBLIC INTEREST WARRANTS A STAY.

The public interest will be best served by a stay at this time. All of the facts and ancillary agreements, with or without Board approval or exemption, should be made known. UP and BNSF should not proceed piecemeal, and should place all of their cards on the table.

CONCLUSION

The Board should stay the operation of the exemption pending further order of the Board.

Respectfully submitted,


GORDON P. MacDOUGALL
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Washington DC 20036

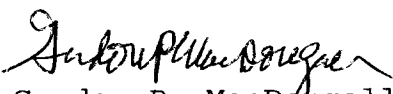
June 1, 2006

Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing by overnight express service, facsimile, and telephone notice, upon counsel for applicant, Robert T. Opal, UPRR, Omaha, NE.

Washington DC


Gordon P. MacDougall

VERIFIED STATEMENT
OF JOHN D. FITZGERALD

My name is John D. Fitzgerald, with offices at 400 E. Evergreen Blvd., Vancouver, WA. I serve as General Chairman for United Transportation Union General Committee of Adjustment 386. for lines of BNSF Railway. This is full-time elective position, which I have held since August 1993. I am a Conductor.

I have read the Union Pacific's notice of exemption, filed May 26, although I did not receive a copy until May 31, 2006.

I have been made aware that UP and BNSF are desirous of effecting changes in operations in the Portland area and, generally, in the territory between Seattle, WA and Eugene, OR. However, I do not know the preferences of UP and BNSF in this regard.

The instant transaction involving UP's 7.41-mile trackage rights over BNSF appears merely part of a plan to contract out various BNSF work by means of an agency agreement with Portland & Western RR. This is apparent from Exhibit 2, page 1 of the UP/BNSF trackage rights agreement:

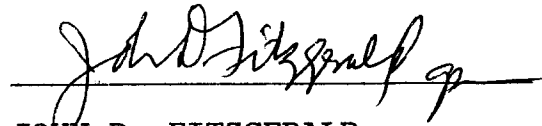
"...UP will enter into a separate supplemental agreement with BNSF of even date granting BNSF the right to allow the Portland & Western R.R., Inc. ("PNWR") to act as BNSF's agent between Portland, OR and Labish, OR ("Agency Rights");"

The instant trackage rights, with the agency agreement, would divert considerable traffic from BNSF train and engine service employees.

The Board should stay the UP's exemption to prevent irreparable injury to BNSF employees.

Under the penalties of perjury, I affirm the foregoing is true and correct as stated.

Dated at
Vancouver WA
June 1, 2006


JOHN D. FITZGERALD