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SERVICE DATE - NOVEMBER 20, 1998

SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 33610

#### NORFOLK SOUTHERN RAILWAY COMPANY--LEASE AND OPERATION EXEMPTION--UNION PACIFIC RAILROAD COMPANY

Decided: November 12, 1998

By petition filed September 9, 1998, Norfolk Southern Railway Company (NSR), successor by merger to Norfolk and Western Railway Company (NW), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to lease and operate approximately 4.7 miles of Union Pacific Railroad Company's (UP) line between Monterey Lead Milepost 4.4 at Monterey Mine No. 1, near Carlinville, IL, and Monterey Lead Milepost 0.0 at Monterey Junction, IL, and a leg of the wye track and related trackage between mileposts 104.5 and 104.8 at Monterey Junction.<sup>1</sup> The United Transportation Union seeks the imposition of employee protective conditions. We will grant the exemption, subject to standard labor protective conditions.

### BACKGROUND

NSR is a Class I rail carrier and a wholly owned subsidiary of Norfolk Southern Corporation, a non-railroad holding company. NSR owns and operates lines of railroad in 20 states and Canada. UP, also a Class I railroad, owns and operates lines of railroad in 24 states extending throughout the western and mid-western United States. NSR has been operating over the line since February 1998, under local access trackage rights authorized through exemption in Norfolk and Western Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33488 (STB served Oct. 21, 1997). Both UP and NSR will have the non-exclusive right to use the entire wye track area at Monterey Junction, along with sufficient tail room to turn trains. UP will retain the right to operate over the entire leased track.

NSR states that no shipper will suffer any loss of service or change of operators as a result of this transaction. Indeed, petitioner points out that it is already providing direct service to the shipper under contract over the entire route of movement. NSR avers that the lease and transfer of the line will allow NSR to maintain and, if necessary, improve a line that it uses in its existing operations for

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<sup>1</sup> Also on September 9, 1998, NSR filed a petition for exemption wherein it proposed to purchase from UP and to operate approximately 15.3 miles of rail line between milepost 104.8 at Monterey Junction (including the southwest leg of the wye track at Monterey Junction, which is approximately between milepost 104.5 and milepost 104.8) and milepost 119.8 at DeCamp, IL, plus certain yard tracks at Madison, IL. That petition was granted in Norfolk Southern Railway Company--Union Pacific Railroad Company, STB Finance Docket No. 33609 (STB served Oct. 29, 1998).

a single-line movement of coal to an electric utility. NSR further maintains that this will result in economies and increased efficiencies in maintenance and service by both UP and NSR, which will improve overall service to shippers.

NSR avers that, prior to the activation of NSR's local access trackage rights, coal was shipped via UP-NSR (NW) joint line service from Monterey Mine No. 1 near Carlinville, on the UP, to the Coffeen Generating Station of Central Illinois Public Service Company at Coffeen, IL, on NSR/NW. NSR further states that this coal traffic was interchanged between UP and NSR/NW at Edwardsville, IL. NSR adds that this lease and the related line sale in STB Finance Docket No. 33609 will enable it to provide more efficient, direct, single-line service from the mine to the generating station. Finally, NSR states that UP's retention of the right to operate over the track being leased to NSR will enable UP to continue to serve Monterey Mine No. 1 from the north.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), our prior approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation 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 (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed lease under 49 U.S.C. 11323 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the administrative expense of the application process, thus reducing regulatory barriers to entry and exit [49 U.S.C. 10101(7)]. An exemption also will foster sound economic conditions and encourage efficient management by integrating operations, better utilizing resources, and improving transit time and routing options [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, an exemption will preserve competition by ensuring that a sound rail transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)].

Regulation is not necessary to protect shippers from the abuse of market power. NSR and UP will continue to serve businesses on the line and, as such, no shipper will lose service as a result of this line transfer. There will be no loss of rail competition, no adverse change in the competitive balance in the relevant regional transportation market, and no change in operations. However, to ensure that the shipper is informed of our action, we will require NSR to serve a copy of this decision on the shipper within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Mendocino Coast

Ry., Inc.--Lease and Operate., 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Petitioner has requested that we make this decision effective on or before December 16, 1998, “[i]n order to achieve a favorable tax consideration and to help the parties rationalize their operations.” We will issue a decision that is scheduled to become effective on December 16, 1998.

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).<sup>2</sup>

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 from the prior approval requirements of 49 U.S.C. 11323-25 the lease by NSR of the above-described line segment, subject to the employee protective conditions in Mendocino Coast Ry., Inc.--Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).
2. Notice will be published in the Federal Register on November 20, 1998.
3. NSR must serve a copy of this decision on the shipper on the line within 5 days of the service date of this decision and certify to the Board that it has done so.
4. This decision will be effective on December 16, 1998.
5. Petitions to stay must be filed by December 2, 1998, and petitions to reopen must be filed by December 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,  
Secretary

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<sup>2</sup> The transaction does not involve a significant change in carrier operations, NSR has no plans to dispose of or alter historic properties, and further Board approval would be required for NSR to abandon any service.