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BNSF



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August 2, 2004

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

**Re: STB Finance Docket No. 34503; Timber Rock Railroad, Inc. – Lease Exemption –
The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of BNSF's Comments in Support of Timber Rock Railroad's Reply to Petition to Revoke. An electronic copy of the filing is also enclosed on a 3.5 inch disc for the Board's use.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely,

Sarah Whitley Bailiff

Sarah Whitley Bailiff

SWB/srs
Encs.

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Part of
Public Record

211711

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34503

TIMBER ROCK RAILROAD, INC.
--LEASE EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

BNSF'S COMMENTS IN SUPPORT OF
TIMBER ROCK RAILROAD'S
REPLY TO PETITION TO REVOKE



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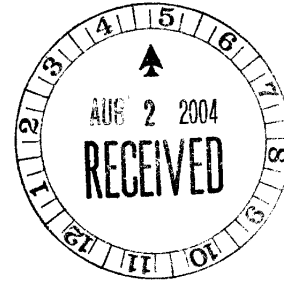
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Dated: August 2, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34503

TIMBER ROCK RAILROAD, INC.
--LEASE EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY



BNSF'S COMMENTS IN SUPPORT OF
TIMBER ROCK RAILROAD'S
REPLY TO PETITION TO REVOKE

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits its comments in support of Timber Rock Railroad Inc.'s ("TRRR") reply in opposition to the Petition To Revoke ("Petition") filed by the United Transportation Union ("UTU") on July 13, 2004.

BACKGROUND

On June 24, 2004, TRRR filed a Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E – *Exempt Transactions Under 49 U.S.C. 10902*, to permit TRRR to lease 117.82 miles of rail lines from BNSF between Beaumont and Dobbin, Texas. With this transaction, TRRR collectively leases BNSF's rail lines extending from BNSF MP 4.5 near Beaumont, Texas, to BNSF MP 150.2 near Tenaha, Texas, and from MP 152.56 near Silsbee, Texas, to MP 52.5 near Dobbin, Texas ("Leased Lines").¹ As part of the transaction, TRRR also sought to acquire

¹ TRRR originally leased BNSF's lines between Kirbyville and Tenaha, TX in 2002. See *Timber Rock Railroad, Inc. – Lease Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34245 (STB served Sept. 16, 2002). Since that arrangement had worked well for both parties, TRRR and BNSF agreed to add trackage to the lease arrangement, whereby TRRR leased BNSF's lines between Kirbyville and Silsbee, Texas earlier this year. See *Timber Rock Railroad, Inc. – Lease Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34443 (STB served March 3, 2004). This transaction extends that relationship further with an experienced and tested operator and now includes a lease of track between Dobbin and Beaumont, Texas.

incidental trackage rights over 54.72 miles of BNSF rail lines in order to interchange traffic with BNSF. In addition, BNSF reserved unto itself overhead trackage rights over the Leased Lines. The exemption was effective on July 3, 2004, and TRRR consummated the transaction. On July 13, 2004, UTU filed a Petition to Revoke the exemption.

SUPPORTING COMMENTS

Under 49 U.S.C. 10502(d), an exemption may be revoked, in whole or in part, when application of the Board's regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The burden of proof is on the petitioner, who must articulate reasonable, specific concerns under the revocation criteria. *Portland & Western Railroad, Inc. – Lease and Operation Exemption – Lines of Burlington Northern Railroad Company*, STB Finance Docket No. 32766 (STB served Oct. 15, 1997); *Iowa, Chicago & Eastern RR Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177 (STB served Jan. 21, 2003). Labor interests have standing to question the appropriate level of labor protection in a petition to revoke. See 49 U.S.C. 10502(g); *Simmons v. ICC*, 900 F.2d 1023 (7th Cir. 1990). UTU has neither challenged the appropriate level of labor protection, nor has it articulated a reasonable, specific concern under the revocation criteria. Accordingly, UTU's petition should be denied.

UTU merely speculates that the lease of this line to TRRR will exacerbate capacity problems in the Houston area generally, but UTU fails to satisfy its burden in showing why there would be such a result from this transaction. While it is true that this route does comprise an alternate overhead route in Southeast Texas, it does not follow that the lease of the route results in a discontinuance of overhead traffic. The lease of line does not magically result in disappearance of rail capacity. In any event, BNSF was careful to ensure that it retained

flexibility in routing by reserving overhead trackage rights along with the right to have TRRR haul overhead traffic for BNSF at BNSF's election. *See* Verified Statement of Chris Randall, attached as Exhibit A. If anything, this transaction should help alleviate traffic congestion in the surrounding areas where rail service is in high demand. By outsourcing local operations on the route to a qualified shortline operator, BNSF has been able to redeploy and concentrate its resources in capacity constrained areas. *See Id.*

UTU also claims without any supporting rationale (much less evidence) that the lease of this route will somehow be detrimental to the continued delivery of military supplies for the ongoing war effort. Not only is the claim unsupported by any facts, it defies logic. As explained above, the route continues to remain available for overhead traffic as needed, and BNSF now has freed up resources previously dedicated to local service for redeployment in other capacity constrained areas. Generalized challenges to the efficiency and viability of shortline railroads do not, standing alone, support revocation. *See Chicago-Chemung RR. Corp. – Exemption, Acquisition and Operation – Rail Line of Chicago and North Western Transp. Co.*, ICC Finance Docket No. 31110 (ICC served Mar. 14, 1998). Nor does the mere preference for one carrier's service over another support a revocation. *See Yolo Shortline RR. Co. – Lease and Operation Exemption – Port of Sacramento*, STB Finance Docket No. 34114 (STB served Feb. 3, 2003).

CONCLUSION

UTU has failed to sustain its burden here. Its allusion to traffic congestion in Houston is real, no doubt. But UTU's vague and unsupported speculation that this transaction will exacerbate those conditions does not hold water. In fact, review of this transaction, as structured with retained flexibility for overhead routing, leads inexorably to the opposite conclusion. The transaction adds locally focused shortline assets to this area and frees up BNSF's resources to

help meet capacity demands in other areas of its system. Accordingly, BNSF supports and joins with TRRR in urging the Board to deny UTU's Petition.

Respectfully submitted,

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Sarah Whitley Bailiff
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Santa Fe Railway Company
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Fort Worth TX 76131
(817) 352-2354
Fax: (817) 352-2397

Dated: August 2, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2004, I have caused a copy of the foregoing Reply to Petition to Revoke to be served on counsel for UTU and TRRR by first-class, prepaid mail.

Sarah W. Bailiff/als

Sarah W. Bailiff

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

TIMBER ROCK RAILROAD, INC.)
-- LEASE EXEMPTION --)
THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY)

DOCKET NO. 34503

**VERIFIED STATEMENT
OF
CHRISTOPHER M. RANDALL**

1. My name is Christopher M. Randall. I am Director, Shortline Development for The Burlington Northern and Santa Fe Railway Company (BNSF), and I have been employed by BNSF and its predecessors for 14 years. My current duties and responsibilities include negotiation and administration of shortline arrangements for and on behalf of BNSF.
2. As part of my duties at BNSF, I recently handled the negotiation of the lease of BNSF's Conroe and Silbee subdivisions to Timber Rock Railroad, Inc. (TRRR).
3. In 2002, BNSF leased its Kirbyville to Tenaha, Texas line to TRRR. The arrangement was working well and, earlier this year, we leased the adjoining track from Kirbyville to Silsbee, Texas.
4. As capacity constraints in the Houston area have required BNSF to concentrate its core assets and resources on high density routes to maintain system fluidity, BNSF and TRRR proposed to enter into arrangements to add another segment, Beaumont to Silsbee, Texas and further to Dobbin, Texas, which culminated in the lease which is the subject of this Finance Docket.
5. In each transaction resulting in the lease of the Conroe and Silsbee subdivisions to TRRR, BNSF wanted to retain the flexibility to route its overhead trains on its leased routes. Accordingly, BNSF reserved unto itself the right to operate overhead trains over the entirety of the leased lines. In addition, BNSF also has the right to have TRRR handle overhead trains under the lease arrangements.
6. As a result of the transaction, BNSF was able to redeploy immediately its experienced crews and other resources to higher traffic density and capacity constrained rail corridors in need of immediate infusion of those resources. The transaction not only addresses short term capacity constraints in the area, but also facilitates BNSF's capacity objectives over the long run. BNSF has preserved, if not enhanced, its through route capacity as needed for the future and has expanded its relationship with an operator with a proven record of providing quality local services to customers to focus on increasing traffic to and from customers on the line.

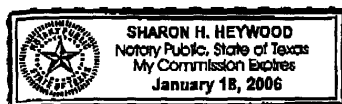
VERIFICATION

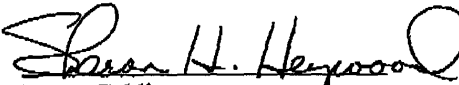
STATE OF TEXAS)
) ss
COUNTY OF TARRANT)

Christoper M. Randall makes oath and says he is Director of Shortline Development of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Verified Statement in FD 34503; that he has knowledge of the facts and matters relied upon in this Verified Statement; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.


Christopher M. Randall
Director of Shortline Development

Subscribed and sworn to before me this 2nd day of August, 2004.




Notary Public