

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35601

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

Decided: March 21, 2012

This decision postpones the effective date of the exemption sought in this proceeding.

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) with respect to trackage rights granted by Union Pacific Railroad Company (UP) over a portion of a line of railroad known as the Lockport Branch, between milepost 0.1 at Raceland Junction and milepost 14.2 at Jay, a distance of 14.1 miles, in LaFourche Parish, La. (the Line).¹ Notice of the exemption was served and published in the Federal Register on March 8, 2012 (77 Fed. Reg. 14,058-59). The exemption is scheduled to become effective on March 22, 2012 (30 days after the notice was filed), unless stayed by the Board.

BNSF states that it is seeking trackage rights authority pursuant to the First Supplemental Agreement to protect its interests in the Lockport Branch. In Docket No. AB 33 (Sub-No. 277X), UP filed a verified notice of exemption to abandon most of the Lockport Branch over which BNSF now seeks trackage rights authority.² BNSF has asserted, in that abandonment proceeding, that it has authority sanctioned by the Board to provide service on the Line. UP has contested BNSF's claim, and by decision served on January 30, 2012, the Board postponed the effective date of UP's abandonment exemption and allowed the parties to file additional evidence and argument, which BNSF and UP did on February 9, 2012. In its verified notice of

¹ A copy of the trackage rights agreement was submitted with the notice of exemption. BNSF states that this agreement, dated August 1, 2000 (First Supplemental Agreement), is a supplement to the Trackage Rights Agreement dated September 10, 1998, between UP and BNSF, which was authorized by the Board in Burlington Northern & Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co., FD 33663 (STB served Oct. 19, 1998). BNSF adds that, while the First Supplemental Agreement covers all former Southern Pacific Transportation Company branches connecting to the rail line between Dawes, Tex., and Avondale, La., in this proceeding BNSF seeks trackage rights authority only over the portion of the Lockport Branch between milepost 0.1 and milepost 14.2.

² Specifically, UP seeks authority to abandon the portion of the Lockport Branch between milepost 1.7 and milepost 14.2.

exemption in this docket, BNSF describes UP's February 9 filing in the abandonment docket as asserting that BNSF does not have direct access to the Lockport Branch because the Board never expressly authorized such operations. BNSF states that, while it disagrees with UP's argument, it is now seeking trackage rights authority over the Line in this docket out of an abundance of caution.

On March 15, 2012, UP filed a petition to reject BNSF's verified notice of exemption due to the controversy and UP's objections. UP argues that the class exemption process is inappropriate for the transaction contemplated by BNSF. UP also asks that, if necessary, the Board stay the effectiveness of BNSF's exemption until the Board can act on UP's petition to reject the notice. BNSF filed a reply in opposition to UP's petition on March 19, 2012.

Because a dispute has been raised, and evidence has been filed, that bears on the controversy in Docket No. AB 33 (Sub-No. 277X), a housekeeping stay of the effective date of BNSF's exemption is appropriate so that the issues raised in both proceedings can be considered together. See Union Pac. R.R.—Aban. Exemption—in LaFourche Parish, La., AB 33 (Sub-No. 277X) (STB served Jan. 30, 2012). Thus, the effective date of the exemption will be postponed until further order of the Board.

It is ordered:

1. The effective date of the exemption in this proceeding is postponed until further order of the Board.
2. This decision is effective on its date of service.

By the Board, Chairman Daniel R. Elliott.