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SERVICE DATE – JANUARY 8, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 10)]

Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF

Railway Company

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP¹ over BNSF’s line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.²

¹ UP submits that the trackage rights being granted here are only temporary rights, but, because they are “local” rather than “overhead” rights, they do not qualify for the Board’s class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Railroad Consolidation Procedures, 6 S.T.B. 910 (2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 11), Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF Railway Company, wherein UP, with the support of BNSF, requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2009. That petition will be addressed by the Board in a separate decision.

² The original trackage rights granted in Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), on March 23, 2006, in STB Finance Docket No. 34554 (Sub-No. 5), on March 13, 2007, in STB Finance Docket No. 34554 (Sub-No. 7), and on March 20, 2008, in STB Finance Docket

(continued . . .)

The transaction is scheduled to be consummated on January 22, 2009.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 8) to further extend the expiration date to on or before December 31, 2009. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 15, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities

(. . . continued)

No. 34554 (Sub-No. 9), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on February 11, 2005, in STB Finance Docket No. 34554 (Sub-No. 4), served on March 3, 2006, in STB Finance Docket No. 34554 (Sub-No. 6), served on January 12, 2007, and in STB Finance Docket No. 34554 (Sub-No. 8), served on January 4, 2008, to expire. At the time of the last extension, it was anticipated by the parties that the rights would expire on or about December 31, 2008. However, this authority has not yet been exercised.

at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 10), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

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Decided: January 2, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary