



SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub-No. 11)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific

Railroad

Company

By petition filed on December 26, 2024, BNSF Railway Company (BNSF) requests that the Board permit the trackage rights granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36377 (Sub-No. 10) to expire under the terms agreed to by BNSF and the grantor of the rights, Union Pacific Railroad (UP).

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377 (Sub-No. 10), BNSF and UP entered into an agreement granting BNSF restricted, local trackage rights over two rail lines owned by UP between (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey, and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines). BNSF Verified Notice of Exemption 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 10). BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded unit ballast trains to and from the ballast pit located at Elsey. *Id.* According to BNSF, it filed its verified notice of exemption under the Board's trackage rights class exemption at 49 CFR 1180.2(d)(7), instead of the temporary trackage rights exemption at 49 CFR 1180.2(d)(8), because the trackage rights covered by the notice are local rather than overhead. BNSF Verified Notice of Exemption 1 n.1, 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 10).

In its petition, BNSF asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2025, pursuant to the parties' agreement. (*See* BNSF Pet. 1, 3); *see also* BNSF Verified Notice of Exemption, Ex. B at 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 10.) BNSF argues that granting this petition will promote the rail transportation policy at 49 U.S.C. 10101 and that the partial revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3-4.) In addition, BNSF asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire, including petitions involving prior iterations of the trackage rights agreement at issue here. (*Id.* at 4.)

Discussion and Conclusions

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has taken action to allow such rights to expire after a limited time rather than lasting in perpetuity, based on the parties' agreement. *See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 9) (STB served Oct. 8, 2024) (allowing trackage rights under 49 CFR 1180.2(d)(7) to expire).

Permitting the trackage rights to expire at the end of 2025 would eliminate the need for BNSF to separately seek discontinuance authority at a later date, thereby minimizing the need for federal regulatory control (49 U.S.C. 10101(2)), reducing regulatory barriers to entry into and exit from the rail industry (49 U.S.C. 10101(7)), and allowing for the expeditious handling and resolution of this transaction (49 U.S.C. 10101(15)). Moreover, doing so would not result in an abuse of market power because the trackage rights at issue are solely to allow BNSF to move empty and loaded unit

ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (*See* BNSF Pet. 2.)¹ Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 (Sub-No. 10) to expire at midnight on December 31, 2025.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. BNSF's petition to permit expiration of the trackage rights in Docket No. FD 36377 (Sub-No. 10) per the agreement of the parties is granted.

2. As discussed above, the trackage rights in Docket No. FD 36377 (Sub-No. 10) are permitted to expire at midnight on December 31, 2025, subject to the employee protective conditions set forth in *Oregon Short Line*.

3. Notice of this decision will be published in the Federal Register.

4. This decision is effective on May 30, 2025. Petitions for stay must be filed by May 12, 2025. Petitions for reconsideration must be filed by May 20, 2025.

Decided: April 29, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

¹ Because the proposed transaction is of limited scope, the Board need not make a market power finding. *See* 49 U.S.C. 10502(a).

