

Peter W. Denton
202 429 6445
pdenton@steptoe.com

Steptoe

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

308506

July 26, 2024

ENTERED
Office of Proceedings
July 26, 2024
Part of
Public Record

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 36377 (Sub-No. 9), BNSF Railway Company—
Trackage Rights Exemption—Union Pacific Railroad Company**

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is BNSF Railway Company's Petition for Partial Revocation. Pursuant to 49 C.F.R. § 1002.2(f)(61)(i), a filing fee of \$350 was paid using pay.gov.

Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

FILED
July 26, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 26, 2024
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36377 (SUB-NO. 9)

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

**PETITION FOR PARTIAL REVOCATION
OF TRACKAGE RIGHTS CLASS EXEMPTION**

Tyler R. White
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131-2828

Peter W. Denton
Onika K. Williams
Steptoe LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000

*Attorneys for BNSF Railway
Company*

Dated: July 26, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36377 (SUB-NO. 9)

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

**PETITION FOR PARTIAL REVOCATION
OF TRACKAGE RIGHTS CLASS EXEMPTION**

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. Part 1121, BNSF Railway Company (“BNSF”) hereby seeks partial revocation of the Surface Transportation Board’s (“Board”) trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as necessary to permit the trackage rights arrangement exempted in Finance Docket No. 36377 (Sub-No. 8) to expire at midnight on December 31, 2024.¹

Revoking the class exemption, in part, to limit the term of the trackage rights is consistent with the Rail Transportation Policy of 49 U.S.C. § 10101, and the limited scope of the trackage rights transaction previously exempted. Furthermore, the Board previously granted similar BNSF petitions to allow prior iterations of the trackage rights agreement at issue here to expire at midnight on December 31, 2020, December 31, 2021, December 31, 2022, and

¹ Because the temporary trackage rights covered by the Notice of Exemption in Finance Docket No. 36377 (Sub-No. 8), are “local” rather than “overhead” rights, the Board’s class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8), is not applicable to that transaction.

December 31, 2023. *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 7) (STB served Mar. 2, 2023); *See BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 5) (STB served Feb. 7, 2022); *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 3) (STB served Feb. 23, 2021); *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 1) (STB served Mar. 11, 2020).

DISCUSSION

Concurrently with this Petition, BNSF is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7), for trackage rights over two rail lines owned by Union Pacific Railroad Company (“UP”). The trackage rights agreement between BNSF and UP (“Agreement”) grants BNSF restricted, temporary trackage rights over the UP rail lines located between: (1) UP Milepost 93.2, at Stockton, CA, on UP’s Oakland Subdivision, and UP Milepost 219.4, at Elsey, CA, on UP’s Canyon Subdivision, a distance of 126.2 miles; and (2) UP Milepost 219.4, at Elsey, CA, on UP’s Canyon Subdivision, and UP Milepost 280.7, at Keddie, CA, on UP’s Canyon Subdivision, a distance of 61.3 miles. The Agreement restricts BNSF’s use of the trackage rights lines to movements of BNSF unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, CA for use in BNSF’s maintenance-of-way projects.

While BNSF and UP have expressly agreed that these trackage rights will expire at midnight on December 31, 2024, trackage rights authorized under the

§ 1180.2(d)(7) class exemption remain effective indefinitely, regardless of the duration agreed to by the parties. *See, e.g., Union Pac. R.R. Co.—Trackage Rts. Exemption—The Burlington N. & Santa Fe Ry. Co.*, FD 33712 (Sub-No. 1) (STB served March 12, 1999). Therefore, absent the partial revocation requested by this Petition, BNSF would need to file separately for discontinuance authority in order to uphold the terms of the Agreement.

Under 49 U.S.C. § 10502(d), the Board “may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out” the rail transportation policy of 49 U.S.C. § 10101. By eliminating the need to file a second pleading seeking discontinuance when the arrangement expires, granting this Petition would promote the following rail transportation policy goals: minimizing the need for Federal regulatory control (49 U.S.C. § 10101(2)); ensuring the continuation of a sound rail transportation system to meet the public need (§ 10101(4)); ensuring coordination between rail carriers (§ 10101(5)); reducing regulatory barriers to entry into and exit from the industry (§ 10101(7)); and providing for the expeditious handling and resolution of this proceeding (§ 10101(15)).

Furthermore, limiting the term of the trackage rights is consistent with the limited scope of the transaction in Finance Docket No. 36377 (Sub-No. 8), and will have no adverse impact on shippers. Finally, the Board and its predecessor have granted similar petitions for partial revocation to permit temporary trackage rights

to expire, including similar BNSF petitions regarding prior iterations of the trackage rights agreement at issue here.²

The applicable labor protective conditions for the discontinuance of the temporary trackage rights pursuant to this petition are those imposed in *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

In conclusion, BNSF respectfully requests the Board to partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in Finance Docket No. 36377 (Sub-No. 8) to expire at midnight on December 31, 2024.

Respectfully submitted,

/s/ Peter W. Denton

Tyler R. White
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131-2828

Peter W. Denton
Onika K. Williams
Steptoe LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000

*Attorneys for BNSF Railway
Company*

Dated: July 26, 2024

² See, e.g., *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 7) (STB served Mar. 2, 2023); *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 5) (STB served Feb. 7, 2022); *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 3) (STB served Feb. 23, 2021); *BNSF Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 36377 (Sub-No. 1) (STB served Mar. 11, 2020); *BNSF Ry. Co.—Temp. Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 35808 (Sub-No. 1) (STB served Apr. 10, 2014); *BNSF Ry. Co.—Temp. Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 35466 (Sub-No. 1) (STB served Apr. 5, 2011); *Union Pac. R.R. Co.—Trackage Rts. Exemption—The Burlington N. & Santa Fe Ry. Co.*, FD 34082 (Sub-No. 1) (STB served Sept. 13, 2001); *The Burlington N. & Santa Fe Ry. Co.—Trackage Rts. Exemption—Union Pac. R.R. Co.*, FD 34036 (Sub-No. 1) (STB served June 6, 2001).