

Surface Transportation Board Clarifies "Burlington Northern" Trackage Rights Over "Union Pacific's" Houston-Memphis-St. Louis Corridor; Finds Certain Restrictions Inapplicable

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision addressing the Houston-Memphis-St. Louis corridor trackage rights issues raised in the fifth annual round of the "Union Pacific (UP)-Southern Pacific (SP)" "general oversight" proceeding. Specifically, the Board clarified that the "entry/exit" and "Texas/Louisiana" restrictions placed on those trackage rights received by The Burlington Northern and Santa Fe Railway Company (BNSF) in connection with the 1996 UP-SP merger are not applicable to certain BNSF traffic.

Today's Decision

In General. As the Board noted, BNSF's trackage rights in the Houston-Memphis-St. Louis corridor largely addressed 2-to-1 shippers in Texas and Louisiana that, prior to the merger, moved traffic over the entire corridor to and from the St. Louis Gateway via either UP or SP (St. Louis Gateway traffic), and the trackage rights allowed BNSF to perform "directional running" for traffic moving over the parallel UP and SP lines comprising the corridor. The "entry/exit" restriction provided that BNSF cannot enter or exit the trackage rights lines at "intermediate points," such as Jonesboro and Hoxie, Arkansas (the points at which the trackage rights lines intersect BNSF's own line that runs from and to the Powder River Basin), and the "Texas/Louisiana" restriction provided that the traffic that BNSF can handle on these trackage rights lines is limited to traffic that *either* originates in, terminates at, or moves through Texas or Louisiana, *or* originates in or terminates at 10 named points in Arkansas and Missouri. Even though this traffic generally moved over the entire corridor, BNSF and UP agreed on these restrictions to ensure that BNSF would use UP and SP track for the St. Louis Gateway traffic that the trackage rights were primarily designed to address, and that BNSF would use its own lines (especially its line between Memphis, Tennessee and St. Louis, Missouri) for other, non-merger related traffic. UP argued that these two restrictions should remain in full force and effect for BNSF traffic, while BNSF argued, to the contrary, that these two restrictions should be removed.

The Board ruled, however, that neither of these restrictions can be applied to BNSF traffic that moves: (1) pursuant to the "build-in/build-out" condition that was imposed on the merger (this condition allows BNSF to handle traffic moving from or to "build-in/build-out" lines constructed after the merger); or (2) pursuant to the "new facilities" condition that was imposed on the merger (this condition allows BNSF to handle traffic moving from or to "new facilities" constructed on any line over which BNSF received trackage rights in connection with the merger); or (3) from or to the 10 named points in Arkansas and Missouri (these points are Camden, Pine Bluff, Fair Oaks, Baldwin, Little Rock, North Little Rock, East Little Rock, Forrest City, and Paragould, AR, and Dexter, MO). The Board further ruled that, in all other respects, the restrictions continue to apply. The Board directed the carriers to revise their proposed "restated and amended" agreement accordingly.

Relief for Entergy. Also in today's decision, the Board addressed an issue concerning Entergy Arkansas, Inc. (formerly Arkansas Power & Light Company), and ruled that coal trains operated by BNSF, when moving from and to Entergy's electric generating facility at White Bluff, AR, can be routed via UP/BNSF line connections at Jonesboro and Hoxie, and need not be routed via Memphis. The issue arose recently after Entergy and UP reached a settlement intended to resolve various complaints that Entergy had made against UP. As part of that settlement, UP agreed that, even if a certain 8.6-mile build-out line is not constructed, BNSF will be allowed to access White Bluff off of the line that UP itself uses to access White Bluff; however, the parties did not specify the route that BNSF would have to use when accessing White Bluff. Entergy argued that any BNSF trains moving to or from White Bluff should be allowed to enter and exit the trackage rights lines at Jonesboro and Hoxie. Union Pacific argued, to the contrary, that, on account of the entry/exit restriction, any BNSF trains moving to or from White Bluff would have to be routed via Memphis (and would not be allowed to enter and exit the trackage rights lines at Jonesboro and Hoxie).

The Board held that its 1996 decision had been intended to result in the preservation of all of Entergy's pre-merger build-out options, and therefore BNSF trains moving to or from White Bluff must be allowed to enter and exit the trackage rights lines at Jonesboro and Hoxie as SP could have done prior to the merger. The Board noted, among other things, that the BNSF access that had been provided in Entergy's settlement with UP was a substitute for the BNSF access that would have been provided by the construction of the 8.6-mile build-out line. The Board ruled that, just as BNSF trains operating over the 8.6-mile build-out line could not be required to adhere to the entry/exit restriction, BNSF trains operating via the substituted access provided in Entergy's settlement with UP similarly could not be required to adhere to the entry/exit restriction. Because the Jonesboro/Hoxie routing involves less mileage than the Memphis routing, the decision issued today is expected to make the BNSF routing more efficient than it otherwise would have been.

Prior Decisions Relating to Entergy

Original Merger Decision. In a decision issued August 12, 1996, the Board approved the merger of the UP and SP railroad systems subject to a number of conditions. One such condition was imposed in favor of Entergy. Entergy argued that, although UP was the only railroad that could serve the White Bluff plant (because that plant is located off of a UP line), Entergy had been exploring the possibility of constructing a 21-mile "build-out" line that would connect the White Bluff plant with a SP line at Pine Bluff, so that it would no longer be "captive" to UP. In the decision issued August 12, 1996, the Board preserved Entergy's pre-merger competitive options by ordering that, if the build-out line were ever constructed, BNSF would be allowed to transport coal trains to and from White Bluff via the build-out line (to supplant the potential competitive service SP could have provided prior to the merger). The decision issued August 12, 1996, was Decision No. 44 in the case entitled *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760.

Clarification of Build-out Option. In a decision issued March 21, 2000, the Board again addressed Entergy's pre-merger build-out options. When Entergy discovered that its White Bluff facility could be connected to a former SP line by construction of an 8.6-mile line, as an alternative to constructing a 21-mile line, the Board ruled that the 1996 decision had preserved all of Entergy's pre-merger build-out options, and that, therefore, if the 8.6-mile build-out line were ever constructed, BNSF would be allowed to transport coal trains to and from White Bluff via the 8.6-mile build-out line. The decision issued March 21, 2000, was Decision No. 88 in the case entitled *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760.

Line Construction Authority. In a decision issued May 4, 2000, the Board conditionally exempted Entergy's construction and operation of the 8.6-mile build-out line from the otherwise applicable approval requirements imposed by law, subject, however, to further consideration of the anticipated environmental impacts of the build-out proposal. That decision was issued in the case entitled *Entergy Arkansas and Entergy Rail--Construction and Operation Exemption--White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782. Following completion of the necessary environmental review, in a decision issued October 2, 2001, the Board adopted certain environmental mitigation measures applicable to the construction, operation, and maintenance of the 8.6-mile build-out line, and ordered that the exemption that had been conditionally approved in the decision issued May 4, 2000, would be effective on November 1, 2001, subject to the condition that Entergy comply with the imposed mitigation measures. The decision issued October 2, 2001, was in the case entitled *Entergy Arkansas and Entergy Rail--Construction and Operation Exemption--White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782.

The Board's decision issued today is Decision No. 19 in the case entitled *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (General Oversight)*, STB Finance Docket No. 32760 (Sub-No. 21). A printed copy of the decision is available for a fee by contacting **D-2-D Legal, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293-7776**, or via http://Da_To_Da@Hotmail.com. The decision is also available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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