

Surface Transportation Board Directs Keokuk Junction Railway to Reopen Crossing to Allow BNSF to Continue to Serve Shippers Efficiently

Surface Transportation Board (Board) Linda J. Morgan announced today that the Board has issued a decision directing the Keokuk Junction Railway Company (KJRY) to reopen a railroad crossing in Iowa to allow The Burlington Northern and Santa Fe Railway Company (BNSF) to continue to provide more efficient service to shippers that BNSF has served for many years.

Since 1881, BNSF and its predecessors have reached various shippers in the Keokuk, Iowa area by crossing KJRY's line pursuant to a voluntarily reached crossing agreement. During the 1990s, flooding along a tributary of the Mississippi River caused considerable damage to Roquette America, Inc., one of the principal industries located at Keokuk, and so in 1995, BNSF and KJRY agreed to move the crossing to a different point. In 1998, however, KJRY terminated the crossing agreement and initially physically blocked the track, thus cutting off BNSF's ability to serve the shippers. KJRY then imposed what it termed an "interchange" arrangement over the quarter-mile stretch of track used by BNSF to cross KJRY's line and, for a substantial charge, set up an operation under which incoming BNSF trains were required to stop and wait for KJRY to place one of its own locomotives behind the BNSF train so that it could push the train and the BNSF locomotive through the crossing. Likewise, for return movements, BNSF was required to wait while a KJRY engine positioned itself immediately in front of the BNSF engine to pull the BNSF locomotive and the train back across.

The provisions of Section 10901(d) of Title 49, United States Code (49 U.S.C. 10901(d)) are part of the section of the law requiring that new rail lines be licensed. Section 10901(d) expressly prohibits railroads from preventing other railroads from building new lines across their tracks to serve shippers. Relying on section 10901(d), BNSF asked the Board to intervene and to direct KJRY to permit BNSF to resume crossing the KJRY track. KJRY responded that, because there was no new construction for which a license was issued--the original crossing had been built over 100 years ago, well before railroad licensing was required, and the 1995 crossing relocation, which did not materially change the way existing shippers were served, did not require a license--the Board lacked the authority to act under section 10901(d).

Although the Board questioned why this dispute over an arrangement that had been handled cooperatively in the private sector for many years now had to be brought to the government for resolution, the agency found that it had the authority to act under section 10901(d). The Board recognized that the crossing provision focused on new entry, rather than on existing operations and crossing arrangements, out of a concern that railroads with existing operations in an area might seek to block new constructions to protect their franchises. But the Board noted that the legislative history of section 10901(d) indicated that Congress was concerned not just that new construction not be blocked, but also that the crossed railroad not prevent subsequent crossing operations. The Board found:

"The purpose of a line construction in general, and crossing rights in particular, would be thwarted if a carrier could be required to allow its competitor to construct a crossing, but then--in a day, or a week, or years later--block the other carrier from operating over the crossing track to serve shippers in interstate commerce. Thus, there is no reason why Congress would have given the agency the authority to require a carrier to allow another carrier to construct a crossing, but then deny the agency the authority to ensure that the carrier be able to operate over it at any subsequent time. Such a result would be particularly untenable in circumstances like those here, where continuing crossing operations by BNSF and its predecessors, and longstanding shipper expectations flowing from those operations, have been a fixed presence in the Keokuk area for over a century."

The Board issued its decision today in the case entitled *The Burlington Northern and Santa Fe Railway Company-Petition For Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, STB Finance Docket No. 33740. A printed copy of the decision is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293-7776**, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The

decision also is available for viewing and downloading via the Board's Website at <http://www.stb.dot.gov> .

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