

### Surface Transportation Board Announces Results of May 9 Voting Conference

Surface Transportation Board (Board) Chairman Roger Nober has announced the results of the open voting conference held by the Board today concerning the following cases.

- **STB Finance Docket No. 34079, San Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation and Exemption--Build-Out to the Bayport Loop Near Houston, Harris County, TX.** In this case, the Board voted, 2-0, to grant final approval for an exemption from Board regulation that would permit San Jacinto Rail Limited to construct, and The Burlington Northern and Santa Fe Railway Company to operate, a 12.8-mile line of railroad to serve the Bayport Industrial District ("Bayport Loop") in southeast Houston, Harris County, Texas, near Galveston Bay. The Board also voted to impose 80 conditions to address environmental issues and community concerns raised during the proceeding.
- **STB Finance Docket No. 34040, Riverview Trenton Railroad Company--Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI.** In this case, the Board voted, 2-0, to grant an exemption from Board regulation that would allow the Riverview Trenton Railroad Company (RTR), currently a non-railroad entity, to become a railroad for the purpose of operating an intermodal terminal in the Detroit, Michigan, area. The Board also voted to impose environmental conditions and to reserve the agency's jurisdiction over this matter for three years so that it may ensure that RTR follows through on its representations about the project.
- **Docket No. 41185, Arizona Public Service Company & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, and STB Docket No. 42077, Arizona Public Service Co. & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company.** At issue in this matter was a request by The Burlington Northern and Santa Fe Railway Company (BNSF) that the Board reopen the proceeding in Docket No. 41185, in which the agency had prescribed the maximum rate BNSF could charge the Arizona Public Service Co. (Arizona) to haul coal from the McKinley mine in New Mexico to Arizona's electricity-generating plant in Joseph City, Arizona. BNSF and Arizona agree that circumstances have changed since the Board set the current rate, as the McKinley mine's reserves will be exhausted sooner than had been anticipated at the time of the Board's prior decisions. The Board voted, 2-to-0, to allow both parties to update the record regarding the accuracy of the forecasts made in prior decisions, but not to change the basic assumptions underlying the earlier "stand-alone" cost analysis, other than how coal may be re-sourced once the McKinley mine shuts down. The Board also voted to direct BNSF not to change the rate it charges Arizona while the case is under consideration, and to order both parties to keep account of amounts paid during litigation so that either party may be made whole, if appropriate, when the case is over.
- **STB Docket No. NOR 42072, Carolina Power & Light Company v. Norfolk Southern Railway Company.** In this case, the Board voted, 2-0, not to admit into the public record updated traffic-data evidence that the Norfolk Southern Railway Company (NS) wanted to submit in this maximum rate reasonableness complaint proceeding involving coal transported by NS from various origins in West Virginia, Kentucky, and Virginia to electricity-generating plants in North Carolina. Consistent with its recent decision in STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company (see Surface Transportation Board "News" release No. 03-13, issued March 21, 2003) the Board voted to disallow as untimely the updated traffic data submitted along with NS's brief after the close of the evidentiary record. The Board pointed out that the parties could ask the agency to reopen the evidentiary phase of this proceeding if they could demonstrate that the information sought to be introduced is central to Central Power & Light Company's case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding.
- **STB Finance Docket No. 33989, Pejepscot Industrial Park, d/b/a Grimm Industries--Petition for Declaratory**

**Order.** In this case, the Board voted, 2-0, to find that the Maine Central Railroad Company, the Springfield Terminal Railway Company, and Guilford Transportation Industries, Inc. (Guilford) failed to provide railroad service over a rail line as requested by a shipper, Pejepscot Industrial Park, Inc., doing business as Grimmel Industries (Pejepscot). Although some of the traffic that Pejepscot would have tendered has been exempted from Board regulation, the Board found that, by failing to quote a rate for the remainder of the traffic, Guilford violated its "common carrier obligation" to provide rail service to Pejepscot's facility upon reasonable request.

• **STB Docket No. AB-55 (Sub-No. 618), CSX Transportation, Inc.--Discontinuance--at Memphis, in Shelby County, TN.** In this case, the Board voted, 2-0, to deny a request that it reopen and reverse a prior decision authorizing CSX Transportation, Inc. to discontinue service over a line of railroad near Memphis, Tennessee, that runs over a bridge that the Board found needs substantial rehabilitation and, ultimately, replacement.

• **STB Finance Docket No. 34236, Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc., and Ex Parte No. 346 (Sub-No. 25), Rail General Exemption Authority--Lumber or Wood Products.** In this case, the Board voted, 2-0, to find that CSX Transportation, Inc. (CSX) did not act unlawfully by failing to repair a damaged bridge on a line near Memphis, TN, that was the subject of a proceeding at the Board in which CSX was seeking authority to discontinue its operations over the line.

• **STB Finance Docket No. 33740, The Burlington Northern and Santa Fe Railway Company--Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights.** In this case, the Board voted, 2-0, to issue a rail line-construction license for a line, built before the Interstate Commerce Act was adopted, to ensure that The Burlington Northern and Santa Fe Railway (BNSF) would be able to continue to cross a line of Keokuk Junction Railway Company track, as BNSF or its predecessors have done for over 100 years.

• **STB Finance Docket No. 34293, Metro-North Commuter Railroad Company--Acquisition and Operation Exemption--Line of Norfolk Southern Railway and Pennsylvania Lines LLC.** In this case, the Board voted, 2-0, to find that its approval is not required for a non-railroad entity, Metro-North Commuter Railroad Company, to acquire through a sublease and to operate a rail line owned by Pennsylvania Lines LLC and leased and operated by the Norfolk Southern Railway Company.

• **STB Finance Docket No. 34145, Bulkmatic Railroad Corporation--Acquisition Exemption--Bulkmatic Transport Company, and STB Finance Docket No. 34179, Bulkmatic Railroad Corporation--Operation Exemption--Bulkmatic Transport Company.** In this case, the Board voted, 2-0, to deny a request that it reconsider its prior decision finding that the operations of a new railroad over a short line of track are common carrier operations requiring a license from the Board.

• **STB Finance Docket No. 34284, Southwest Gulf Railroad Company--Construction and Operation Exemption--Medina County, TX.** In this case, the Board voted, 2-0, to grant a petition filed by the Southwest Gulf Railroad Company's (SGR) for an exemption from the Board's prior-approval requirements to allow SGR to construct and operate an approximately seven-mile railroad line in Medina County, TX.

• **STB Docket No. AB-596, New York City Economic Development Corporation--Adverse Abandonment--New York Cross Harbor Railroad in Brooklyn, NY.** In this case, the Board voted, 2-0, to grant the New York City Economic Development Corporation's (NYCEDC) application, on behalf of New York City, requesting that the Board find that the public convenience and necessity require or allow the adverse abandonment of the New York Cross Harbor Railroad's tracks and facilities at the Bush Terminal Yards (also known as the "First Avenue Yards") and the floatbridge and related tracks at the Harborside Industrial Center (also known as the "Brooklyn Army Terminal"). The grant of the adverse abandonment means that NYCEDC may go to court to seek to have the right of way used for some purpose other than rail service.

- **STB Finance Docket No. 34299, Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen--Continuance in Control Exemption--Chattahoochee & Gulf Railroad Co., Inc.** In this case, the Board voted, 2-0, to allow a non-railroad entity, Gulf & Ohio Railways Holding Co., Inc., to continue to control the Chattahoochee & Gulf Railroad (CGR), and various other railroads, once CGR becomes an operating railroad by acquiring and beginning to operate a 24.2-mile portion of a Central of Georgia Railroad Company line by means of a related transaction.
  
- **STB Finance Docket No. 34316 (Sub-No. 1), The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company.** In this case, the Board voted, 2-0, to grant the request of The Burlington Northern and Santa Fe Railway Company (BNSF) that the Board allow temporary trackage rights (arrangements under which one railroad rents the use of another railroad's tracks) between BNSF and the Union Pacific Railroad Company to expire upon the completion of the construction of BNSF's line between Kamey and Seadrift, TX.
  
- **STB Finance Docket No. 34320 (Sub-No. 1), Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company.** In this case, the Board voted, 2-0, to grant a request by the Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) that the Board allow the expiration of an arrangement allowing UP to use BNSF's track to handle UP's overhead traffic. "Overhead" traffic does not originate or end on the track section at issue but, rather, merely passes over that section from another origin to another destination.
  
- **STB Finance Docket No. 34321 (Sub-No. 1), Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company.** In this case, the Board voted, 2-0, to grant a request by the Union Pacific Railroad Company (UP) asking the Board to allow UP's overhead trackage rights over certain lines of The Burlington Northern and Santa Fe Railway Company to expire, as agreed by the railroads.
  
- **STB Finance Docket No. 34333 (sub-No. 1), Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company.** In this case, the Board voted, 2-0, to grant a request by the Union Pacific Railroad Company (UP) to allow a temporary trackage-rights arrangement between UP and The Burlington Northern and Santa Fe Railway Company to expire on or about May 10, 2003, when UP expects to complete maintenance and repair activities on one of its mainlines.
  
- **STB Ex Parte No. 282 (Sub-No. 20), Railroad Consolidation Procedures--Exemption for Temporary Trackage Rights.** In this case, the Board voted, 2-0, to adopt a rule to establish a new class exemption under which railroads could obtain authority for trackage-rights arrangements that would automatically expire on a certain date. This rulemaking streamlines a process that would otherwise require the parties to make multiple filings with the Board to achieve the same result.
  
- **Docket No. AB-389 (Sub-No. 1X), Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.-Abandonment and Discontinuance Exemption--Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, GA.** In this case, the Board voted, 2-0, to grant a petition to vacate a notice of interim trail use so that active rail service may be restored on a 13-mile rail line in Georgia that had been "railbanked" under Section 8(d) of the National Trails System Act, codified at Section 1247(d) of Titled 16, United States Code [16 U.S.C. 1247(d)].
  
- **STB Docket No. MC-F-20995, Peter Pan Bus Lines Trust--Purchase and Acquisition of Control--Arrow Line Acquisition, LLC, Bonanza Acquisition, LLC, Maine Line, LLC, Pawtuxet Valley, LLC, Peter Pan Boston, LLC,**

**and Peter Pan Bus Lines, Inc.** In this case, the Board voted, 2-0, to deny a request by Entertainment Tours, Inc. that the agency deny final approval for the purchase and acquisition of direct control by Peter Pan Bus Lines Trust of five motor passenger carriers (bus lines) currently controlled by Coach USA, Inc. Tentative approval had been granted in a December 2002 decision of the Board.

• **STB Docket No. WCC-105, DHX Inc. v. Matson Navigation Company and Sea-Land Service, Inc.** In this case, the Board voted, 2-0, to dismiss a portion of a complaint filed by DHX, Inc. (DHX), a freight forwarder, challenging the reasonableness of the rates and practices of two water carriers, the Matson Navigation Company and SL Service, Inc. (former Sea-Land Service, Inc.), engaged in the noncontiguous domestic trade between the United States Mainland and Hawaii. The Board also voted to deny DHX's motion to require one of the water carriers to file a further "answer" to certain allegations in DHX's complaint.

The Board provides the case summaries above as a courtesy to the public and the media. The actions of the Board in the cases, however, are the Board's written decisions, which will be forthcoming. Printed copies of the decisions will be available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via [da2dalegal@earthlink.net](mailto:da2dalegal@earthlink.net). The decisions also will be available for viewing and downloading under "Decisions & Notices" on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

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