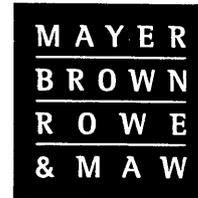


File 2015
304



December 23, 2002

1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrownrowe.com

Kathryn A. Kusske
Direct Tel (202) 263-3223
Direct Fax (202) 263-5223
kkusske@mayerbrownrowe.com

By Hand and Fax

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W., Room 504
Washington, D.C. 20423

Re: Finance Docket No. 34305, The Burlington Northern And Santa Fe Railway Company – Construction and Operation Exemption – In Merced County, California

Dear Ms. Rutson:

The Burlington Northern and Santa Fe Railway Company (“BNSF”) (“Petitioner”) plans to construct and operate an approximate 850 foot rail line that will connect the Quebecor World Inc. (“Quebecor”) printing and distribution facility in Merced, CA with BNSF’s existing Stockton Subdivision mainline between Stockton and Bakersfield, CA. The purpose of the proposed construction is to provide the Quebecor facility, which is presently served only by the Union Pacific Railroad Company (“UP”), with competitive rail service.

As we informed you and Dave Navecky, a member of your staff, during a meeting on December 17, 2002, Petitioner has developed detailed project information during the project development phase, including maps and photos of the area. The proposed alignment will cross the existing UP loop track that currently provides service to the Quebecor facility with a diamond crossing.¹ The line will also cross one public road – Santa Fe Road, which is a two-lane light density road maintained by the City of Merced. The crossing will be at grade and will

¹ BNSF intends to promptly engage in discussions with UP regarding the proposed crossing of the UP track. Should BNSF be unsuccessful in reaching an agreement with UP concerning the terms and conditions for the crossing of the UP track, BNSF will seek authority to cross such track pursuant to 49 U.S.C. § 10901(d). See *The Burlington Northern and Santa Fe Railway Co. – Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, Fin. Dkt. Nos. 33740 and 33740 (Sub-No. 1), at 5 (“an existing carrier may not thwart its competitor by refusing to allow its competitor to build across its tracks to serve shippers”) (June 22, 2001).

Victoria J. Rutson
December 23, 2002
Page 2

utilize active warning devices. Both crossings will be designed in accordance with industry standards, customs and practices. BNSF will operate the line exclusively and will assume and bear all common carrier obligations for the line. No residences or recreational lands will be necessary for the construction, and the line is to be located adjacent to an existing railroad corridor. The adjacent land is used for agricultural and industrial activities.

The vast majority of the inbound traffic will consist of shipments of non-hazardous paper rolls in boxcars. Outbound traffic will be primarily empty boxcars. BNSF expects that the traffic will consist of one inbound train per day consisting of a switch engine and six loaded boxcars. The switch engine will leave the loaded boxcars and will pick up six empty boxcars and depart. Thus, the total traffic on the new line will be one inbound and one outbound train per day consisting of six boxcars. Service will be provided to the Quebecor facility 6 days per week.²

The proposed turnout for the new rail line would be located on the BNSF mainline (Stockton Subdivision) at Milepost ("MP") 1058.0. The BNSF line currently averages approximately 25 freight and 10 Amtrak trains per day, for a total traffic level of 35 trains per day. Traffic to and from the Quebecor facility would be blocked and switched at the Calwa Yard near Fresno, CA at MP 994.0. Each day, a local would be blocked with loaded railcars destined for Quebecor, as well as cars billed to other customers in the vicinity along the BNSF mainline. The local would operate from Calwa Yard and move to either the siding at Merced (MP 1056.1) or Fluhr (MP 1062.9). The local would leave the train on the siding and then proceed to Quebecor with just the six loaded cars intended for Quebecor. The local would spot the loaded cars at the Quebecor facility, pick up the empty railcars, then proceed back to the siding, pick up the rest of the train and proceed to deliver railcars to the remaining customers.

Because it is anticipated that there will be a diversion of traffic from rail to rail, no impact is expected with respect to energy. No significant impact to air quality is anticipated as a result of the proposed project. It is also not anticipated that there will be any significant impact to noise, or that the project will exceed the Board's threshold for noise analysis based on planned operations. In terms of biological resources, preliminary investigation indicates that no known endangered or threatened species or species of concern or any critical habitats are known to occur in the immediate project vicinity. Although a records search of cultural resources has not been conducted, the project area is highly disturbed and is unlikely to have any historical or archaeological resources. As there are no residential areas within or adjacent to the proposed project area, no impacts are anticipated to minority or low-income populations. No significant impact to water resources, groundwater, surface water or wetlands, is expected to result from the proposed project.

² As Quebecor expands its operations, shipments of inbound paper rolls could potentially increase to a total of eight loaded boxcars per day. In addition to the inbound paper rolls, one outbound load of waste paper could potentially be shipped each week.

Victoria J. Rutson
December 23, 2002
Page 3

As described during our consultation and in the environmental background provided herewith, three alternatives were considered for the proposed project: the proposed alignment, the no-action alternative and an alternative crossing Black Rascal Creek. The Black Rascal Creek alternative raised environmental concerns associated with a new bridge crossing of Black Rascal Creek.

To the extent that 49 C.F.R. § 1105.6(a) might be read to apply to the proposed action, BNSF hereby requests a waiver of the requirement in 49 C.F.R. § 1105.10(a) that an applicant consult with the Section of Environmental Analysis ("SEA") at least six months prior to the filing of a petition for an exemption from 49 U.S.C. § 10901 to construct and operate a rail line if the proposed construction might require filing an Environmental Impact Statement. We believe that the 6-month prenotification is not needed with respect to this project in light of the detailed information that has already been developed and provided to SEA, as well as the attached supplemental background information. In addition, BNSF intends to utilize a third-party consultant, to be selected by SEA, to prepare the necessary environmental documentation. A 6 month delay would needlessly impede the progress of this very important competitive access project. Finally, BNSF notes that granting of the requested waiver is consistent with SEA's past practice in transactions which are similar in nature to the proposed action.

Please let me know if you have any questions. We greatly appreciate your assistance and look forward to working with you on this project.

Sincerely,



Kathryn A. Kusske

Enclosure

cc: Dave Navecky
Sarah W. Bailiff, Esq.