

request.<sup>12</sup> In granting similar exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;<sup>13</sup>
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.*, the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>14</sup>

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing

<sup>12</sup> See, *e.g.*, Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAx PEARL, LLC's exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083–84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations ("SROs") (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) ("BATS Options Market Order"); 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

<sup>13</sup> See 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

<sup>14</sup> See BATS Options Market Order, *supra* note 12 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order")).

requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>15</sup> The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described FINRA rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA changes a rule that the Exchange has incorporated by reference.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,<sup>16</sup> that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its members whenever FINRA proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**BILLING CODE 8011–01–P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36560]

### **BNSF Railway Company—Lease Exemption—Union Pacific Railroad Company**

On November 9, 2021, BNSF Railway Company (BNSF) filed a petition under 49 U.S.C. 10502 seeking exemption from the prior approval requirements of 49 U.S.C. 11323–25 for BNSF to lease from Union Pacific Railroad Company (UP) approximately 25 miles of rail line extending from Sterling, Colo., near UP milepost 56.71, to Union, Colo., near UP milepost 81.1, on UP's Julesburg Subdivision (the Line).<sup>1</sup>

<sup>15</sup> See BATS Options Market Order, *supra* note 12, 75 FR at 8761; *see also* 2004 Order, *supra* note 14, 69 FR at 8502.

<sup>16</sup> 15 U.S.C. 78mm.

<sup>17</sup> 17 CFR 200.30–3(a)(76).

<sup>1</sup> An executed, redacted version of the lease agreement was filed with the petition for exemption. An unredacted version was submitted to the Board under seal along with a motion for protective order, which was granted by decision served on November 24, 2021.

The petition explains that BNSF and its predecessors have operated over the Line since 1900, and that, concurrently with the petition, BNSF filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(7) pertaining to a trackage rights agreement to supersede the agreement that had been in effect since 1951. (Pet. 2.)<sup>2</sup> According to the petition, BNSF and UP have agreed to enter into a lease that would modify certain roles and responsibilities set forth in the new trackage rights agreement; in particular, the lease would "allow BNSF to occupy UP's property for the purposes of maintenance, construction, repair, and renewal of the track and appurtenant structures and facilities on the Line." (Pet. 2.)<sup>3</sup> BNSF states that by permitting maintenance responsibilities to shift to BNSF, the sole user of the Line, the lease will streamline maintenance activity and produce more efficient rail operations. (Pet. 2.) According to BNSF, the lease transaction will have no adverse impact on commercial or operational access to the Line. (*Id.* at 5; *see also id.* at 6–7 (stating that the lease "is simply intended to produce more efficient rail operations by streamlining the Line's maintenance activities" and "will have no adverse impact on the national, regional, or local rail industry").)<sup>4</sup>

BNSF asserts that the Board has previously exempted similar lease agreements from the prior approval requirements of sections 11323–25 pursuant to section 10502, and that the Board should grant this petition and exempt the lease for the same reasons. (Pet. 3.)

### **Discussion and Conclusions**

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) Regulation is not necessary to carry out the rail

<sup>2</sup> Notice of the trackage rights exemption was published in the **Federal Register** on November 24, 2021 (86 FR 67111), and the exemption took effect on December 9, 2021. *See BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36561 (STB served Nov. 24, 2021).

<sup>3</sup> BNSF's reference to "construction" is in connection with the planned repair and maintenance of the existing Line. (*See* Pet. 2.) Therefore, the Board does not construe that reference as involving any new line of railroad for which construction authority would be needed pursuant to 49 U.S.C. 10901, and this decision does not grant any such authority.

<sup>4</sup> Pursuant to 49 CFR 1121.3(d), BNSF certifies that the lease does not contain a provision or agreement that may limit future interchange with a third-party connecting carrier. (Pet. 7–8.)

transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323–25 is not necessary here to carry out the rail transportation policy. The proposed transaction would simply permit maintenance responsibilities for the Line to shift to BNSF, the sole user of the Line. As described in the petition, the lease is intended to streamline maintenance activity and would produce more efficient rail operations over the Line with no adverse competitive impacts. Therefore, the proposed transaction would promote a safe and efficient rail transportation system, (49 U.S.C. 10101(3)), foster sound economic conditions in transportation and ensure effective competition, (49 U.S.C. 10101(5)), encourage honest and efficient management, (49 U.S.C. 10101(9)), and promote energy conservation, (49 U.S.C. 10101(14)). Further, an exemption from the application process would expedite regulatory action, (49 U.S.C. 10101(2)), and reduce regulatory barriers to entry and exit, (49 U.S.C. 10101(7)). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is also not necessary to protect shippers from the abuse of market power.<sup>5</sup> Nothing in the record indicates that any shipper would lose an existing rail service option as a result of the proposed lease transaction. According to the petition, the transaction will have no adverse impact on commercial or operational access to the Line. (See Pet. 5 (noting that the lease agreement specifically states that nothing contained in the lease would “amend, change or supersede the commercial access . . . terms as provided for in the Trackage Rights Agreement”).) BNSF states that it will continue to provide common carrier service to shippers over the Line and that there will be no material change in the service provided to shippers, because the lease simply shifts the Line’s maintenance responsibilities to BNSF, the sole user of the Line. (*Id.* at 6.) Indeed, the lease transaction should benefit shippers by producing more efficient rail operations by streamlining the Line’s maintenance activities.

<sup>5</sup> Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).

Moreover, no shippers or other parties have filed any objections to the proposed transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).

*It is ordered:*

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 BNSF’s lease of the Line, subject to the employee protective conditions in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

2. Notice of the exemption will be published in the **Federal Register** on February 2, 2022.

3. The exemption will become effective on March 4, 2022.

4. Petitions to stay must be filed by February 14, 2022.

5. Petitions for reconsideration and petitions to reopen must be filed by February 22, 2022.

Decided: January 25, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

**Jeffrey Herzig,**  
Clearance Clerk.

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**BILLING CODE 4915–01–P**

## TENNESSEE VALLEY AUTHORITY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** 30-Day notice of submission of information collection approval request to OMB.

**SUMMARY:** Tennessee Valley Authority (TVA) provides notice of submission of this information clearance request (ICR) to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The general public and other federal agencies are invited to comment. TVA previously published a 60-day notice of the proposed information collection for public review (December 10, 2021) and no comments were received.

**DATES:** The OMB will consider all written comments received on or before March 4, 2022.

**ADDRESSES:** Written comments for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### SUPPLEMENTARY INFORMATION:

*Type of Request:* New collection.

*Title of Information Collection:* Distribution Technology Capability Assessment.

*Frequency of Use:* Every 2 years.

*Type of Affected Public:* State, local, and tribal governments; small businesses; non-profit organizations.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 455.

*Estimated Number of Annual Responses:* 153.

*Estimated Total Annual Burden Hours:* 306.

*Estimated Average Burden Hours per Response:* 2.0.

*Need For and Use of Information:* As the Balancing Authority of the region, TVA must ensure the electrical grid is reliable. With the growth of Distributed Energy Resources (DER) on the distribution system, TVA and the Local Power Companies (LPCs) must work in tighter coordination to ensure the DER generation does not impact the reliability of the bulk electric system. To support this goal, TVA must understand the current distribution capabilities of the LPCs. Examples of capabilities include but are not limited to customer analytics, advanced asset management, advanced AMI, automated switching, DER monitoring & control, grid planning and voltage optimization. To ease access and completion, information will be submitted online. Once collected, the information will be reviewed by TVA staff and consultants to determine each LPC’s state of and plan for system modernization and will inform strategic investment roadmaps and implementation plans that are being developed as part of the Regional Grid Transformation initiative. Summary