

SERVICE DATE – APRIL 24, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36391

PORTLAND & WESTERN RAILROAD, INC.—AMENDED LEASE AND OPERATION
EXEMPTION CONTAINING INTERCHANGE COMMITMENT—
BNSF RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ This decision waives a 60-day advance notice requirement and allows Portland & Western Railroad, Inc., to enter into a replacement lease agreement with BNSF Railway Company and continue to operate approximately 76.75 miles of rail line in Oregon, on or after April 30, 2020.

Decided: April 23, 2020

On March 31, 2020, Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to lease from BNSF Railway Company (BNSF) and operate a BNSF rail line between milepost 64.70 (located on main track between Quinaby and Salem, Ore.) and milepost 141.45, at the end of track, near Eugene, Ore., a total distance of approximately 76.75 miles (the Line). PNWR states that it has entered into a lease agreement (New Lease) with BNSF that supersedes and replaces a previous lease (Original Lease) that took effect in 2003.²

In its verified notice, PNWR certifies that its revenues currently exceed \$5 million. Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require PNWR, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction setting forth certain information at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Portland & W. R.R.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry., FD 34255 (STB served Jan. 3, 2003). PNWR states that the Original Lease ended on February 29, 2020, and that PNWR and BNSF executed the New Lease effective March 1, 2020. PNWR also states that it will continue to operate under the terms of the Original Lease until the New Lease is authorized. (Verified Notice 2.)

affected lines, and certify to the Board that it has done so. However, the verified notice includes a request for waiver of those notice requirements.

Notice of PNWR's lease amendment and operation exemption was served and published in the Federal Register on April 16, 2020 (85 Fed. Reg. 21,279). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

In its request for waiver of the labor notice requirements, PNWR argues that it should not be required to comply with the requirements of § 1150.42(e) because there would be no changes for any employees working on the Line. (Verified Notice 6.) PNWR states that no employees of BNSF or its predecessor have worked on the Line since 2003, and there are no employees of BNSF or its predecessor who would be affected as a result of the New Lease. (*Id.*) According to PNWR, there would be no operational changes, and no employees of PNWR would be affected. (*Id.*) Therefore, PNWR argues, under the circumstances of this transaction, compliance with the 60-day labor notice requirements would not further the purpose of the regulation and it should therefore be waived. (*Id.* at 6-7.) No opposition to this waiver request has been filed.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the notice requirements, but it does not appear that the purpose behind the requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements here. PNWR states that no employees of BNSF or its predecessor would be affected because none have worked on the Line since 2003 and that no PNWR employees will be affected as there will be no operational changes on the Line as a result of the New Lease.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, the related lease amendment and operation exemption, unless stayed, will become effective on April 30, 2020, the effective date under the Board's rules absent the notice requirement. See, e.g., N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—Lease Amendment & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252, slip op. at 2 n.3, 3 (STB served Dec. 14, 2018).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. PNWR's request for waiver is granted.
2. PNWR's exemption will be effective on April 30, 2020, unless stayed.
3. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.