

SERVICE DATE – MAY 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36395

PUGET SOUND & PACIFIC RAILROAD—LEASE AMENDMENT AND OPERATION
EXEMPTION INCLUDING INTERCHANGE COMMITMENT—UNION PACIFIC
RAILROAD 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 Puget Sound & Pacific Railroad to enter into an amended lease with Union Pacific Railroad Company and continue to operate 3.65 miles of rail line in Washington, on or after May 9, 2020.

Decided: May 7, 2020

On April 9, 2020, Puget Sound & Pacific Railroad (PSAP), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to amend an existing rail line lease between PSAP and Union Pacific Railroad Company (UP). PSAP states that, under the new lease (Amended Lease),² it will continue to lease and operate 3.65 miles of rail line: between milepost 53.83 and milepost 54.23 and between milepost 55.28 and milepost 56.70, in Aberdeen and Hoquiam, Wash.; and between milepost 2.41 at Blakeslee Junction, Wash., and milepost 4.26 at Raisch, Wash. (collectively, the Line). (Verified Notice 4.)

In its verified notice, PSAP certifies that its annual revenues exceed \$5 million. (*Id.* at 6.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require PSAP, 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 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.

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 The Amended Lease is the existing lease with the addition of the new amendment for which authority is sought in this proceeding. The Amended Lease would extend the lease term for an additional 10 years and revise other commercial terms.

Notice of PSAP's lease amendment and operation exemption was served and published in the Federal Register on April 24, 2020 (85 Fed. Reg. 23,121).³ 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, PSAP 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 7.) PSAP states that no employees of UP have worked on the Line since at least 2003, and therefore there are no employees of UP who would be affected. (Id.) According to PSAP, there would be no operational changes, and no employees of PSAP would be affected. (Id.) Therefore, PSAP 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 7-8.) PSAP also notes that, notwithstanding that there would be no effect on employees of PSAP, it provided notice of the Amended Lease to the national office of the union that represents the employees working on the Line by serving it with a copy of its verified notice. (Id. at 7 n.1.) 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. PSAP states that no UP employees would be affected because none have worked on the Line since at least 2003 and that no PSAP employees would be affected as there would be no operational changes on the Line as a result of the Amended 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 May 9, 2020, the effective date under the Board's rules absent the notice requirement. See, e.g., N.C. & Va. R.R., Chesapeake

³ In its notice of exemption, PSAP disclosed that the Amended Lease contains an interchange commitment. On May 4, 2020, PSAP filed a supplemental pleading stating that the Amended Lease contains a second interchange commitment applicable to a different portion of the Line and provided information relevant to that interchange commitment under seal. Both of the interchange commitments were in the existing lease before the most recent amendment that is the subject of this proceeding. PSAP further states that all other information in the verified notice was complete.

& Albemarle R.R. Div.—Lease Amendment & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252, slip op. at 2 n.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. PSAP's request for waiver is granted.
2. PSAP's exemption will be effective on May 9, 2020, unless stayed.
3. This decision is effective on its date of service.

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