

SERVICE DATE - MAY 22, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36401

INDIANA & OHIO RAILWAY COMPANY—OPERATION EXEMPTION—
FULTON RAILROAD CO. LTD.

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows Indiana & Ohio Railway Company to enter into an amended and restated operating rights agreement with Fulton Railroad Co. Ltd. and continue to operate approximately 4,800 feet of rail line in Ohio, on or after May 28, 2020.

Decided: May 21, 2020

On April 28, 2020, Indiana & Ohio Railway Company (IORY), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to operate a Fulton Railroad Co. Ltd. (Fulton Railroad) rail line, from its connection at IORY milepost 0.0 and continuing to the end of Fulton Railroad's tracks in the City of Cincinnati, Millcreek Township, Hamilton County, Ohio, a total distance of approximately 4,800 feet (the Line). IORY states that it is the current operator of the Line under a previous agreement with Fulton Railroad (Current Agreement)² and that the parties have entered into an amended and restated operating rights agreement (Amended Agreement) for continued operation of the Line.³ (Verified Notice 1-2.)

In its verified notice, IORY certifies that its revenues currently exceed \$5 million. (Id. at 3.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require IORY, at least 60

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 Ind. & Ohio Ry.—Trackage Rights Exemption—Fulton Ry., FD 34800 (STB served Dec. 23, 2005).

³ IORY states that it filed its 2005 verified notice for the Current Agreement under the trackage rights class exemption at 49 C.F.R. § 1180.2(d)(7) but filed its verified notice here under 49 C.F.R. § 1150.41 because the Amended Agreement “contains characteristics more closely aligned with a lease than a trackage rights agreement.” (Verified Notice 2-3.)

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.

Notice of IORY's operation exemption was served and published in the Federal Register on May 14, 2020 (85 Fed. Reg. 29,015). 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, IORY 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 5.) IORY states that no employees of Fulton Railroad have worked on the Line since at least 2005, and there are no employees of Fulton Railroad who would be affected as a result of the Amended Agreement. (*Id.*) Moreover, according to IORY, there would be no operational changes, and no employees of IORY would be affected. (*Id.*) Therefore, IORY 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 be waived. (*Id.*) IORY also notes that, notwithstanding that there would be no effect on employees of IORY, it provided notice of the Amended Agreement 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 5 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. IORY states that no employees of Fulton Railroad would be affected because none have worked on the Line since at least 2005 and that no IORY employees would be affected as there would be no operational changes on the Line as a result of the Amended Agreement.

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 operation exemption, unless stayed, will become effective on May 28, 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. IORY's request for waiver is granted.
2. IORY's exemption will be effective on May 28, 2020, unless stayed.
3. This decision is effective on its date of service.

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