

SERVICE DATE – JULY 14, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36407

MISSISSIPPI SOUTHERN RAILROAD, L.L.C.—
OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT—
THE KANSAS CITY SOUTHERN 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 Mississippi Southern Railroad, L.L.C., to enter into an amended lease agreement with The Kansas City Southern Railway Company (KCS) and continue to operate approximately 26.5 miles of rail line, and to also lease from KCS and operate approximately 129.7 miles of additional rail line, all in Mississippi, on or after July 19, 2020.

Decided: July 13, 2020

On June 19, 2020, Mississippi Southern Railroad, L.L.C. (MSR), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to: (1) continue to lease from The Kansas City Southern Railway Company (KCS) and operate approximately 26.5 miles of rail line between milepost 133.0 near Bay Springs, Miss., and milepost 159.5 near Newton, Miss., (Bay Springs Branch),² and (2) lease from KCS and operate approximately 114.2 miles of rail line from milepost 87.2 at the switch south of the Columbus & Greenville Railway crossing near West Point, Miss., to milepost 161.7 near Newton (Louisville Subdivision) and approximately 15.5 miles of rail line from milepost 0.0 near Union, Miss., to milepost 15.5 near Sebastopol, Miss. (Pearl River Industrial Lead).

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 In its verified notice, MSR states that it has leased and operated the Bay Springs Branch since 2005, see Miss. S. R.R.—Lease & Operation Exemption—Kan. City S. Ry., Docket No. FD 34684 (STB served Apr. 21, 2005) (authorizing original lease and operation of the Bay Springs Branch); Miss. S. R.R.—Lease & Operation Exemption—Kan. City S. Ry., Docket No. FD 36060 (STB served Sept. 9, 2016) (authorizing continued lease and operation), and that it has reached an agreement with KCS to amend the lease and extend its term to November 30, 2034.

MSR states that its annual revenues will exceed \$5 million as a result of the transaction. (Pet. 1.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require MSR, 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.

MSR certified on May 20, 2020, that on May 19, 2020, it had provided the required advance labor notice in accordance with 49 C.F.R. § 1150.42(e) with respect to its proposed lease of the Louisville Subdivision and the Pearl River Industrial Lead. On June 19, 2020, along with its verified notice of exemption, MSR filed a petition requesting a waiver of the 60-day advance labor notice requirements with respect to its amended lease for the Bay Springs Branch. (Pet. 1.) MSR states that it has been the exclusive operator of the Bay Springs Branch since 2005 and, as such, the lease extension for this line would not affect the employees of either MSR or KCS. (*Id.* at 2.) MSR also states that it contemplates no changes to the workforce it currently employs on the Bay Springs Branch and therefore argues that, under the circumstances, compliance with the 60-day labor notice requirements would not further the purpose of the regulation and should be waived. (*Id.* at 3-4.) No opposition to this waiver request has been filed.

Notice of MSR's operation exemption was served and published in the Federal Register on July 2, 2020 (85 Fed. Reg. 39,968). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

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 with respect to the amended lease for the Bay Spring Branch. MSR states that none of its employees on the Bay Spring Branch would be affected, as it does not contemplate any workforce changes as a result of the lease extension. Additionally, no KCS employees would be affected, as MSR has been the exclusive operator over the Bay Springs Branch since 2005.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver with respect to the lease amendment for the Bay Springs Branch. MSR has complied with the labor notice requirement for the Louisville Subdivision and the Pearl River Industrial Lead that are the subject of the new lease.

Accordingly, MSR's operation exemption, unless stayed, will become effective on July 19, 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. MSR's request for waiver is granted.
2. MSR's exemption will be effective on July 19, 2020, unless stayed.
3. This decision is effective on its date of service.

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