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SERVICE DATE - OCTOBER 20, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36436

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—LEASE AND OPERATION
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows Central Railroad Company of Indianapolis to enter into an amended lease agreement with Norfolk Southern Railway Company and continue to operate approximately 15.7 miles of rail line in Indiana, on or after October 22, 2020.

Decided: October 19, 2020

On September 22, 2020, Central Railroad Company of Indianapolis (CERA), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to lease and operate a Norfolk Southern Railway Company (NSR) rail line between milepost RK-154.5, a point just east of the grade crossing at 38th Street in Gas City, Grant County, Ind., and milepost RK-138.8 at the end of the leased line at Harford City, Blackford County, Ind. (the Line), a total distance of approximately 15.7 miles. CERA states that it is the current operator of the Line under an agreement with NSR (Current Agreement)² and that the parties have entered into an amended lease (Amended Agreement) for continued operation of the Line. (Verified Notice 2-3.)

In its verified notice, CERA certifies that its revenues currently exceed \$5 million. (*Id.* at 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require CERA, 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 See Central R.R. of Ind.—Lease & Operation Exemption—Norfolk S. Ry., FD 35300 (STB served Oct. 21, 2009).

Notice of CERA's operation exemption was served and published in the Federal Register on October 8, 2020 (85 Fed. Reg. 63,636).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, CERA 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.) CERA states that no employees of NSR have worked on the Line since at least 2009, and there are no employees of NSR who would be affected as a result of the Amended Agreement. (Id.) Moreover, according to CERA, there would be no operational changes, and no employees of CERA would be affected. (Id. at 6-7.) Therefore, CERA 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. at 7.) CERA also notes that, notwithstanding that there would be no effect on employees of CERA, 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 7 n.2.) 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. CERA states that no employees of NSR would be affected because none have worked on the Line since at least 2009 and that no CERA 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, CERA's lease and operation exemption, unless stayed, will become effective on October 22, 2020, the effective date under

³ Under the Amended Agreement, the Line will end at milepost RK-138.8, making it 0.2 miles shorter than the leased track under the Current Agreement, which ends at milepost RK-138.6. The Board's published notice stated that CERA retains a common carrier obligation to operate between milepost RK-138.8 and milepost RK-138.6 until it receives and consummates authority to discontinue service over that section of track. By letter filed October 8, 2020, CERA clarified that it previously consummated the authority it obtained in Norfolk Southern Railway—Abandonment Exemption—Hartford City, Ind., AB 290 (Sub-No. 392X) et al. (STB served Aug. 21, 2017), to discontinue its operations over that 0.2-mile segment.

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. CERA's request for waiver is granted.
2. CERA's exemption will be effective on October 22, 2020, unless stayed.
3. This decision is effective on its date of service.

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