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BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36452

WISCONSIN & SOUTHERN RAILROAD, L.L.C.
– ACQUISITION AND OPERATION EXEMPTION –
SOO LINE RAILROAD COMPANY

**PETITION FOR WAIVER OF THE
REQUIREMENTS OF 49 C.F.R. § 1121.4(h)**

EXPEDITED CONSIDERATION REQUESTED

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Wisconsin & Southern Railroad, L.L.C. (“WSOR”), a Class II railroad common carrier, hereby petitions for relief from the otherwise-applicable advance notice requirements of 49 C.F.R. § 1121.4(h) in connection with WSOR’s concurrently-filed petition in the above-referenced docket for an exemption authorizing WSOR to purchase (and to continue to operate) a roughly 4.79-mile railroad line that WSOR has operated pursuant to a lease for roughly 13 years. The advance notice requirements of Section 1121.4(h) serve no practical purpose in the current context, where the sale of the subject rail assets to the longstanding leasehold operator (WSOR) would not impact the employees of either the prospective purchaser of the line or the seller (Soo Line Railroad Company – “Soo”). Board precedent supports a Board waiver of the requirements of Section 1121.4(h) under the circumstances.

BACKGROUND

As explained in greater detail in the accompanying Petition for Exemption, WSOR has leased an approximately 4.79-mile railroad line (the “Line”) in Milwaukee County,

Wisconsin from Soo, and has operated it, since 2007.¹ Since it assumed its leasehold interest, WSOR has operated the Line, and has performed all maintenance and dispatching. WSOR has no plans to modify its operation of the Line once its leasehold interest is converted to ownership. Thus, no WSOR employees would be adversely affected by the sale. Similarly, no Soo employees will be adversely affected by the transaction.

ARGUMENT

In the case of an exemption proceeding involving the acquisition or operation of a rail line by a Class II rail carrier, 49 C.F.R. § 1121.4(h) provides that the exemption may not become effective until 60 days after the applicant certifies to the Board that it has posted notice at the workplaces of the employees on the affected line, and that it has served notice of the transaction on the national offices of the labor unions with employees on the affected line. The notice must identify the railroad line(s) to be transferred, and set forth the types and numbers of jobs expected to be available, and the terms of employment and principles of employee selection.

The regulation is intended to afford the seller's employees advance notice of a new operator of the line on which they work, and to list the potential job opportunities with that new operator. The Board has explained that such notice requirements are necessary to "assist employees who are confronted with major adjustments and decisions relating to their livelihoods." *Acquisition of Rail Lines Under 49 U.S.C. §§ 10901 and 10902 -- Advance Notice of Proposed Transactions*, Ex Parte No. 562, 2 S.T.B. 592 (1997) ("*Advance Notice*

¹ *Wisconsin & Southern R.R. Co. — Lease and Operation Exemption — Soo Line R.R. Co. d/b/a Can. Pac. Ry.*, FD 35012 (STB served Jul. 13, 2007) ("*Lease Decision*"). In the *Lease Decision*, the southern milepost of the Line was listed as "milepost 88.4," whereas in the Asset Purchase Agreement governing the sale of the Line, the southern limit of the Line is listed as "milepost 88.41." The minimal difference in mileposts – less than 53 feet – is believed to be a rounding error, and was not intended to signify a different point on the Line.

Procedures”) at 599-600. The Board has stated that the exemption procedures for line sale transactions usually meant “that employees on the lines that have been sold are forced to make career choices – such as whether they will accept employment under the new carrier or retain whatever rights they have to exercise seniority or later be reemployed on the seller’s line – in a very short period of time.” *Id.* at 597.

The Board’s rationale for adopting Section 1121.4(h) does not apply to the subject transaction. Indeed, compliance with the labor notice requirement would serve no useful purpose under the circumstances. No Soo employees have worked on any portion of the Line for more than 13 years, and they (and the unions representing them) were advised of the transition to WSOR operation of the Line in connection with the *Lease Decision* transaction as of May 24, 2007. *Lease Decision*, 2. No Soo employees will be displaced. Moreover, in this transaction, there is no “new carrier.” WSOR has been the operator of the Line and has assumed responsibility for maintaining it for more than a decade. WSOR will continue in that capacity following the proposed sale of the railroad assets.

The labor notice requirements are intended to provide information on the transaction and potential job opportunities to the seller’s employees. The Board specifically rejected a proposal to expand the notice requirements to the buyer’s employees, stating that, “to the extent that [the buyer’s] employees desire or need this information, we find that they would have sufficient access to any pertinent information through the notice we are requiring to be given to employees of the seller.” *Advance Notice Procedures* at 600. Thus, there is no independent requirement that WSOR employees be provided with notice of the proposed transaction. Nor would notice to WSOR employees serve the intended purpose of Section 1121.4(h). Existing WSOR employees working on the Line will not be adversely affected by the

proposed transaction.

Relief by way of favorable Board action on WSOR's waiver request is supported by precedent in individual exemption proceedings. *See, e.g., Wheeling & Lake Erie Railway Company – Acquisition and Operation Exemption – CSX Transportation, Inc.*, FD 34341 (STB served Sep. 2, 2003) (waiver of Section 1121.4(h) granted in petition for exemption filed under 49 U.S.C. § 10502 to acquire freight easement over rail line not operated by the easement holder in over a decade); and *Wisconsin & Southern Railroad, L.L.C. – Acquisition and Operation Exemption – Union Pacific Railroad Company*, FD 35848 (STB served Nov. 6, 2014) (Section 1121.4(h) compliance waived for acquisition by individual exemption of freight easement over lines leased for 18 years by easement acquirer).

Waivers such as that sought here are also routinely granted under closely analogous circumstances in class exemption proceedings initiated under 49 C.F.R. Part 1150, subpart E. *See, e.g., Mississippi Southern Railroad, L.L.C. – Operation Exemption with Interchange Commitment – The Kansas City Southern Railway Company*, FD 36407 (STB served Jul. 14, 2020); *Allegheny Valley Railroad Company – Acquisition Exemption – Lines of CSX Transportation*, FD 36282 (STB served May 14, 2019); *Lancaster & Chester Railway Company – Acquisition and Operation Exemption – Norfolk Southern Railway Company*, FD 34334 (STB served Apr. 28, 2003), (involving the purchase of a rail line by current tenant operator); *Lake Michigan & Indiana Railroad Company LLC – Acquisition and Operation Exemption – Keystone Railroad, Inc.*, FD 34140 (STB decided Dec. 26, 2001)(same).

EXPEDITED CONSIDERATION REQUESTED

For reasons set forth in its concurrently-filed Petition for Exemption, WSOR has requested expedited Board action to authorize its purchase of the Line after 13 years of leasehold

operations. WSOR respectfully requests here that the Board grant the subject waiver request at the same time that it acts upon the merits of the underlying Petition for Exemption.

CONCLUSION

For all of the foregoing reasons, WSOR respectfully requests that the Board waive the labor notice requirements of 49 C.F.R. § 1121.4(h) in connection with the proposed railroad line transaction.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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