

SERVICE DATE – FEBRUARY 3, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36466

SAN JOAQUIN VALLEY RAILROAD CO.—LEASE 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 San Joaquin Valley Railroad Co. to enter into a lease agreement with Union Pacific Railroad Company and continue to operate approximately 101.5 miles of rail line in California, on or after February 5, 2021.

Decided: February 2, 2021

On January 6, 2021, San Joaquin Valley Railroad Co. (SJVR), a Class III railroad, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to continue to lease from Union Pacific Railroad Company (UP) and operate 101.5 miles of rail lines (the Lines) in California. According to SJVR, it has entered into a lease (the Lease) with UP to replace a 1994 lease (the Original Lease) between UP's predecessor company, Southern Pacific Transportation Company, and SJVR, as an assignee of Port Railroads, Inc. (Verified Notice 2-3.) SJVR is currently the operator of the Lines under the Original Lease.² (Id. at 3.) SJVR states that it entered into the Lease with UP on December 28, 2020, to further extend the term of the Original Lease and make other commercial revisions, and that SJVR will continue to be the operator after the transaction. (Id. at 2-3.)

In its verified notice, SJVR certifies that its revenues currently exceed \$5 million. (Id. at 6.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require SJVR, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Port R.Rs.—Lease & Operation Exemption—S. Pac. Transp. Co., FD 32457 (ICC served Mar. 14, 1994) (authorizing lease of approximately 107.438 miles of rail line); San Joaquin Valley R.R.—Corp. Family Transaction Exemption—Port R.Rs., FD 32906 (STB served May 9, 1996). According to the verified notice, the milepost designations differ slightly from the Original Lease, reflecting updated mileposts on the Lines. (Verified Notice 4 n.1.)

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 SJVR's exemption was served and published in the Federal Register on January 22, 2021 (86 Fed. Reg. 6731). 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, SJVR 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 Lines. (Verified Notice 7-8.) SJVR states that it or its predecessor have been the sole common carrier operator of the Lines since at least 1994, no employees of the transferring carrier, UP, have worked on the Lines since at least 1994, and no UP employees would be affected by the transaction. (*Id.*) Moreover, according to SJVR, there would be no operational changes, and no employees of SJVR would be affected. (*Id.* at 8.) Therefore, SJVR 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.*) SJVR also notes that, notwithstanding that there would be no effect on employees of SJVR, it is providing notice of the Lease to the national office of the union that represents the employees working on the Lines by serving it with a copy of SJVR's verified notice. (*Id.* at 8 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. SJVR states that no employees of UP would be affected because none have worked on the Lines since at least 1994 and that no SJVR employees would be affected, as there would be no operational changes on the Lines as a result of the transaction.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, SJVR's lease and operation exemption, unless stayed, will become effective on February 5, 2021, 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. SJVR's request for waiver is granted.
2. SJVR's exemption will be effective on February 5, 2021, unless stayed.
3. This decision is effective on its date of service.

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