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BEFORE THE
SURFACE TRANSPORTATION BOARD

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FD 36353

ALABAMA SOUTHERN RAILROAD, L.L.C
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

**PETITION FOR WAIVER
OF 49 C.F.R. § 1150.42(e)**

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**ATTORNEYS FOR ALABAMA SOUTHERN
RAILROAD, L.L.C.**

Dated: March 26, 2021

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Alabama Southern Railroad, L.L.C. (ABS), a Class III carrier, hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) in connection with the lease amendment transaction that is the subject of the above-captioned class exemption.

Since 2005, ABS has been the leasehold operator of the KCS-owned railroad lines (the “Lines”) that are the subject of FD 36353. *Alabama Southern Railroad, Inc. – Lease and Operation Exemption – The Kansas City Southern Railway Company*, FD 34751 (STB served Oct. 7, 2005). In 2015, ABS secured Board authority to continue its leasehold interest in, and its operations over, the Lines. *Alabama Southern Railroad, Inc. – Lease and Operation Exemption Including Interchange Commitment – The Kansas City Southern Railway Company*, FD 35889 (STB served Jan. 13, 2015) (“*2015 ABS Waiver*”). ABS has recently reached an agreement with KCS whereby KCS will, among other things, extend the terms of the respective leasehold operations until 2034. Accordingly, ABS has invoked the Board’s class exemption procedures to authorize its continued operations under the new lease terms. The anticipated annual revenue of ABS is expected to continue to exceed \$5 million.

The Board's regulations provide that when the annual revenue of the acquiring Class III carrier exceeds—or as a consequence of the transaction before the Board would exceed—\$5 million, the prospective Class III acquirer must arrange to post advance notice of the transaction (the “Labor Notice”) at the workplace of the transferor railroad's employees on the affected lines and serve the Labor Notice on the national office of each labor union representing the transferor carrier's affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver of the Labor Notice requirement, a notice of exemption involving a transaction qualifying for a class exemption will not become effective until 60 days after the Class III acquirer has certified to the Board its compliance with the foregoing posting and advance notice requirements. *Id.*

The purpose of the Labor Notice is to permit – (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waivers of the notice requirement in appropriate circumstances. *Id.* at 601.

The Board has customarily waived the 60-day notice requirement where the transaction at issue extends a prior Board-authorized arrangement, the effect of which would be to continue the operational and rail labor *status quo*. See, e.g., *2015 ABS Waiver and Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company*, FD 34904 (STB served Jul. 24, 2006) (“*DMV&W*”). The waiver request must be “reasonable.” See *Portland and Western Railroad – Lease and Operation Exemption – Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in *DMV&W*, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the

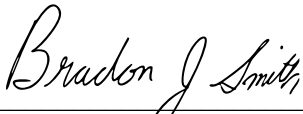
renewal of an existing lease of Soo Line rail lines. In doing so, the Board observed that, “Here, no [Soo Line] employees will be affected because no [Soo Line] employees are currently working on the lines and no [Soo Line] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W* at 2.

In the instant matter, the proposed transaction maintains the operational *status quo* in effect since the commencement of ABS operations in 2005, and the continuation of ABS operations will not affect the employees of ABS or KCS. Consequently, a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) is reasonable, warranted, and consistent with Board precedent and practice. In fact, in *2015 ABS Waiver*, the Board granted the same labor notice waiver that ABS is requesting in the present docket, observing that, “The record indicates that no employees would be adversely affected by a waiver of the requirements here. ABS employees would continue to provide the same service and maintenance they have provided since 2005 and KCS employees have performed no work on the Lines since then. Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request” *2015 ABS Waiver*, 2-3.

As was the case in *2015 ABS Waiver*, the transaction that is the subject of the FD 36353 class exemption will continue of the rail service and employment *status quo*. No ABS or KCS jobs will be “abolished or relocated as a result of the proposed transaction” (*DMV&W* at 2), and the FD 36353 transaction would have no effect on any KCS employees as there have been no KCS-staffed operations, track maintenance, or dispatching on the Lines, since 2005. As such, the labor notice is unnecessary.

WHEREFORE,ABS respectfully requests for purposes of the current class exemption proceedings that the Board again waive the application of the 60-day advance notice period set forth at 49 C.F.R. § 1150.42(e) as it ABS did in 2015.

Respectfully submitted,

By: 

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