

SERVICE DATE – APRIL 13, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36497

D&I RAILROAD COMPANY—ACQUISITION AND OPERATION EXEMPTION—IN
LINCOLN AND UNION COUNTIES, S.D., AND LYON, SIOUX, AND PLYMOUTH
COUNTIES, IOWA

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows D&I Railroad Company to acquire from the State of South Dakota and operate approximately 68 miles of rail line in South Dakota and Iowa on or after April 14, 2021.

Decided: April 11, 2021

On March 15, 2021, D&I Railroad Company (D&I), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from the State of South Dakota, acting by and through its Department of Transportation (SDDOT), and operate approximately 68 miles of rail line, consisting of two interconnected lines: (1) from milepost 0.0 at East Wye Switch, S.D., to milepost 49.40 in Canton, S.D.; and (2) from milepost 0.00 at Hawarden, Iowa, to milepost 18.60 in Beresford, S.D. (the Lines). According to the verified notice, SDDOT currently leases the Lines to the Sioux Valley Regional Railroad Authority (SVRRA), which subleases the Lines to D&I. (Verified Notice 3.) D&I has operated the first segment of the Lines since 1982 and the second segment since 1986, pursuant to modified certificates. See D&I R.R.—Operation—Between Sioux Falls, S.D. & Sioux City, Iowa, FD 29910 (ICC served May 4, 1982); D&I R.R.—Operation—Between Hawarden, Iowa & Beresford, S.D., FD 30940 (ICC served Nov. 24, 1986).² D&I and SDDOT have negotiated terms for the transfer of the Lines pursuant to a sale agreement the parties executed on

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 D&I states that it will give notice that it intends to terminate service under the modified certificates pursuant to 49 C.F.R. § 1150.24, which requires that a carrier provide 60 days’ notice before termination of service. (Verified Notice 3 n.4.) D&I should provide its notices of termination of operations under the modified certificates to the appropriate parties and file with the Board in the appropriate dockets, and, given the circumstances, should indicate in its notice that it will continue to provide service pursuant to its authority granted in this docket.

February 2, 2021, with closing to occur following the effective date of the exemption. (Verified Notice 2.) As a result, SVRRA's lease and D&I's sublease will terminate. (Id. at 3.)

In its verified notice, D&I certifies that its revenues currently exceed \$5 million. (Id. at 4.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require D&I, 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, D&I has filed a petition for waiver of those notice requirements.

Notice of D&I's acquisition and operation exemption was served and published in the Federal Register on March 31, 2021 (86 Fed. Reg. 16,813). 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 petition for waiver, D&I argues that the labor notice requirements are unnecessary, as the proposed transaction would maintain the operational status quo in effect since the commencement of D&I's operations over 30 years ago. (Pet. 3.) Furthermore, D&I states that neither SDDOT nor SVRRA has any railroad operating employees on the Lines and never has, and that "accordingly, no SDDOT or SVRRA jobs will be 'abolished or relocated as part of the proposed transaction.'" (Id. (quoting Dakota, Mo. Valley & W. R.R.—Lease & Operation Exemption—Soo Line R.R., FD 34904 (STB served July 24, 2006)).) 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. Specifically, because D&I states that it intends to maintain the operational status quo, D&I employees would continue to provide the same service they currently provide, and neither SDDOT nor SVRRA employees have ever performed work on the Lines. Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, D&I's lease and operation exemption, unless stayed, will become effective on April 14, 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. D&I's request for waiver is granted.
2. D&I's exemption will be effective on April 14, 2021, unless stayed.
3. This decision is effective on its date of service.

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