

SERVICE DATE - APRIL 22, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36353

ALABAMA SOUTHERN RAILROAD, L.L.C.—LEASE EXEMPTION WITH
INTERCHANGE COMMITMENT—THE KANSAS CITY SOUTHERN RAILWAY
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 Alabama Southern Railroad, L.L.C., to continue to lease from The Kansas City Southern Railway Company and operate approximately 85.6 miles of rail lines in Mississippi and Alabama, on or after April 25, 2021.

Decided: April 21, 2021

On March 26, 2021, Alabama Southern Railroad, L.L.C. (ABS), filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to lease from The Kansas City Southern Railway Company (KCS) and operate approximately 85.6 miles of rail lines extending between: (1) milepost 17.0 near Columbus, Miss., and milepost 78.9 at Tuscaloosa, Ala. (the Tuscaloosa Subdivision); (2) milepost 0.0 at Tuscaloosa and milepost 9.3 near Fox, Ala. (the Warrior Branch); and (3) milepost 443.5 at Brookwood Junction, Ala., and milepost 429.1 at Brookwood, Ala. (the Brookwood Branch) (collectively, the Lines).² ABS states that it is the current operator of the Lines under an existing lease agreement with KCS, and that the parties have entered into an amended lease agreement, which extends the term of the lease until November 30, 2034. (Verified Notice 2-3.)

In its verified notice, ABS states that its projected annual revenue is anticipated to exceed \$5 million. (*Id.* at 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require ABS, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake

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 ABS was granted authority to lease and operate the Lines in Alabama Southern Railroad—Lease & Operation Exemption—Kansas City Southern Railway, FD 34754 (STB served Dec. 2, 2005). ABS was granted authority for an amendment to the lease extending its term to November 30, 2024, in Alabama Southern Railroad—Lease & Operation Exemption Including Interchange Commitment—Kansas City Southern Railway, FD 35889 (STB served Jan. 2, 2015).

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, concurrently with its verified notice of exemption, ABS filed a petition for waiver of those notice requirements.

Notice of the exemption was served and published in the Federal Register on April 9, 2021 (86 Fed. Reg. 18,585). 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, ABS argues that the labor notice requirements are unnecessary, as ABS has been the operator of the Lines since 2005, the proposed transaction would maintain the operational status quo in effect since then, and the continuation of ABS's operations would not affect the employees of ABS or KCS. (Pet. 1, 3.) ABS states that no ABS or KCS jobs would be abolished or relocated as a result of the proposed transaction, and that the proposed 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. (*Id.*) No opposition to this waiver request has been filed.

DISCUSSION AND CONCLUSIONS

The purpose of the Board's 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 requirements here. ABS employees would continue to conduct the same operations 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, the Board will grant the waiver request, thereby allowing the related exemption authority to lease and operate the Lines to become effective on April 25, 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. ABS's request for waiver is granted.

2. ABS's exemption will be effective on April 25, 2021, unless stayed.
3. This decision is effective on its date of service.

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