

SERVICE DATE – MAY 14, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36509

LONGVIEW, PORTLAND & NORTHERN RAILWAY COMPANY—ACQUISITION AND
OPERATION EXEMPTION—IN DOUGLAS COUNTY, OR.

Decided: May 14, 2021

On April 16, 2021, Longview, Portland & Northern Railway Company (LPN), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Industrial Harbor USA, LLC (Harbor), and operate a rail line that extends between a point of connection to Coos Bay Rail Line, Inc., at Gardiner Junction, milepost 0.0, and the end of track at milepost 3.32 at Gardiner, a distance of approximately 3.32 miles in Douglas County, Or. (the Line).

LPN states that its predecessor constructed the segment of the Line from Gardiner Junction to Gardiner in 1952 to serve lumber and plywood mills. (Verified Notice 2.) According to LPN, the Line was subsequently expanded several times to serve additional mills, including in 1964 to serve a large craft paper mill constructed by International Paper Company (IP). (See id. at 2-3.) LPN states that the last of these mills closed in 1998, and the last LPN traffic reported to the Oregon Department of Transportation was 20 carloads in 1999. (Id. at 3.)

LPN states that, in 2016, Harbor purchased the IP mill site and the stock of LPN. (Id.) According to LPN, Harbor’s acquisition of control of LPN did not require Board approval as “Harbor did not control any other rail carrier at that time,” citing 49 U.S.C. § 11323(a). (Verified Notice 3.)

LPN states that Harbor intends to redevelop the mill site and the surrounding property at Gardiner, which will require substantial use of rail transportation. (Id.) LPN asserts that, although the Line has not been used for a considerable time, it has never been authorized for abandonment. (Id.) According to LPN, Harbor will transfer the Line to LPN to provide the needed rail service, and LPN will refurbish the rail facilities to ensure their utility and safety. (Id.) LPN states that its verified notice of exemption seeks approval of the transfer of the Line assets from Harbor to LPN for revival of needed rail service in the Gardiner area. (Id.)

LPN’s notice raises questions about the proposed transaction that must be addressed before the notice can be evaluated and further action taken. First, although LPN indicates that Harbor acquired the stock of LPN and the IP mill site, there is no indication in the record that the Line, or the associated common carrier obligation, was ever transferred from LPN to Harbor. If Harbor acquired the Line from LPN, it does not appear that Harbor obtained Board authority to

do so. See, e.g., Commonwealth of Va.—Acquis. Exemption—Certain Assets of CSX Transp., Inc., FD 36441, slip op. at 4 (STB served Dec. 14, 2020) (“The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval.”) Therefore, LPN will be directed to clarify whether (and if so, when) it transferred the Line to Harbor and, if so, identify the relevant grant of Board authority or explain why authority was not sought. If Harbor did not acquire the Line from LPN, then LPN should explain why the verified notice of exemption in this docket is necessary.

Second, LPN’s statement that Harbor’s acquisition of control of LPN did not require Board approval since “Harbor did not control any other rail carrier at that time,” could be read to imply that Harbor currently controls additional rail carriers. LPN therefore will also be directed to clarify whether Harbor currently controls other rail carriers, and if so, whether Board authority to control multiple carriers was sought under 49 U.S.C. § 11323 or exemption therefrom.

LPN will be directed to file this supplemental information by June 3, 2021. In the meantime, this proceeding will be held in abeyance pending further Board order. See City of Belfast—Aban. Exemption—in Belfast, Me., AB 1109X (STB served Aug. 13, 2013) (holding proceeding in abeyance to allow information in supplemental filing to be considered).

It is ordered:

1. This proceeding is held in abeyance pending further Board order.
2. LPN is directed to file the supplemental information described above by June 3, 2021.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.