

SERVICE DATE – MAY 18, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36445

STILLWATER CENTRAL RAILROAD, L.L.C.—
LEASE EXEMPTION WITH INTERCHANGE COMMITMENT—
BNSF 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 Stillwater Central Railroad, L.L.C., to continue to lease from BNSF Railway Company and operate approximately 12.6 miles of rail lines in Oklahoma County, Okla., on or after May 19, 2021.

Decided: May 17, 2021

On April 19, 2021, Stillwater Central Railroad, L.L.C. (SCR), filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to lease from BNSF Railway Company (BNSF) and operate two rail line segments in Oklahoma County, Okla.: (1) from milepost 549.01 on Line Segment 1003 at Wheatland easterly to milepost 540.65 on Line Segment 7405, immediately west of Shields Blvd.; and (2) from milepost 540.0 on Line Segment 1003 easterly to the end of BNSF ownership at milepost 536.4 on the same segment (including the North Yard) (the Lines). The Lines total approximately 12.6 route miles. SCR states that it has leased and operated the Lines since 2005² and that SCR and BNSF have executed a revised lease agreement to govern SCR's leasehold of the Lines through July 31, 2030. (Verified Notice 2.)

In its verified notice, SCR states that its projected annual revenue is anticipated to exceed \$5 million. (Id. at 4.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require SCR, 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,

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 Stillwater Cent. R.R.—Lease Exemption—Burlington N. & Santa Fe Ry., FD 34610 (STB served Jan. 19, 2005).

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

Notice of the exemption was served and published in the Federal Register on May 5, 2021 (86 Fed. Reg. 24,134). 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, SCR argues that a waiver here would be reasonable and consistent with Board precedent, as SCR 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 SCR's operations would not affect the employees of SCR or BNSF. (Pet. 4.) SCR states that no SCR or BNSF jobs would be abolished or relocated as a result of the proposed transaction, and that there have been no BNSF-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. SCR employees would continue to conduct the same operations they have provided since 2005, and no BNSF employees have performed 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 May 19, 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. SCR's request for waiver is granted.
2. SCR's exemption will be effective on May 19, 2021, unless stayed.
3. This decision is effective on its date of service.

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