

SERVICE DATE – JUNE 2, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36515

SOUTHWEST PENNSYLVANIA RAILROAD COMPANY
—ACQUISITION EXEMPTION—
LINES OF WESTMORELAND COUNTY
INDUSTRIAL DEVELOPMENT CORPORATION

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

Digest:¹ This decision grants a request for partial waiver of a 60-day advance notice requirement and allows Southwest Pennsylvania Railroad Company to acquire from Westmoreland County Industrial Development Corporation and continue to operate approximately 43.34 miles of rail line in Greensburg, Pa., on or after June 6, 2021.

Decided: June 1, 2021

On May 7, 2021, Southwest Pennsylvania Railroad Company (SWP), a Class III rail carrier,² filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Westmoreland County Industrial Development Corporation (WCIDC) and operate approximately 43.34 miles of rail line in Fayette and Westmoreland Counties, Pa. The lines consist of the following: (1) from milepost 0.05 in Greensburg, Pa., through milepost 2.5 at County Home Junction, Pa., and milepost 17.54 at the Westmoreland/Fayette County border near Everson, Pa., to the end of track at milepost 23.8 in Bullskin, Pa., a distance of approximately 23.75 miles; (2) from the connection with Norfolk Southern Railway Company at milepost 3.9 in Greensburg to milepost 0.0 at County Home Junction (milepost 2.5 on the first line above), a distance of approximately 3.9 miles; (3) the Yukon Branch from milepost 0.0 at Hunker, Pa., to the end of track at milepost 3.5 at Waltz, Pa., a distance of approximately 3.5 miles; (4) the Mt. Pleasant Sub from milepost 3.31 near Everson, Pa., to the end of track at approximately milepost 15.3 at Westmoreland Yard near Mount Pleasant, Pa., a distance of approximately 11.99 miles,

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 SWP is a wholly owned subsidiary of Carload Express, Inc., a noncarrier holding company that also controls two other Class III rail carriers operating in Pennsylvania, Maryland, Delaware, and Virginia. (Verified Notice 2 (citing Carload Express, Inc.—Continuance in Control Exemption—Delmarva Cent. R.R., FD 36072 (STB served Dec. 2, 2016)).)

including certain yard tracks and a 0.58-mile spur track at Westmoreland Yard;³ and (5) the W&LE Connector from the connection with SWP at milepost 0.05 to the connection with Wheeling & Lake Erie Railway Company at milepost 0.25 near Everson, a distance of approximately 0.20 miles (the Lines). (Verified Notice 4-5.) According to the verified notice, SWP has leased and operated the Lines since 1995.⁴ (*Id.* at 5.)

In a petition filed concurrently with its verified notice, SWP indicates that its revenues currently exceed \$5 million. (Pet. 2.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require SWP, 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. In its petition, however, SWP seeks partial waiver of those notice requirements, allowing the proposed transaction to proceed upon 30 days' notice to SWP's own employees.⁵ (Pet. 1.)

Notice of SWP's acquisition and operation exemption was served and published in the Federal Register on May 21, 2021 (86 Fed. Reg. 27,664). 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, SWP argues that the requested waiver is reasonable and appropriate, as the proposed transaction would result in no operational changes on the Lines, which SWP has operated pursuant to lease for more than 25 years. (Pet. 1.) Furthermore, SWP states that WCIDC, the seller, is a "non-operating rail carrier" that has never provided rail service or conducted maintenance on the Lines, and no WCIDC employees work on the Lines. (Pet. 2.) SWP likewise argues that the transaction would not change the rail service that SWP currently provides or have any effect on SWP employees. (*Id.*) Nonetheless, SWP states that it

³ SWP states that it previously acquired the segment of the Mt. Pleasant Sub from milepost 0.0 in Broad Ford, Pa., to milepost 3.31 in Southwest Pennsylvania Railroad—Acquisition Exemption—Laurel Hill Development Corp., FD 35584 (STB served Jan. 13, 2012).

⁴ See Sw. Pa. R.R.—Acquis. & Operation Exemption—Lines of Consol. Rail Corp., FD 32692 (ICC served July 21, 1995); Sw. Pa. R.R.—Lease & Operation Exemption—Lines of Westmoreland Cnty. Indus. Dev. Corp., FD 32737 (ICC served July 21, 1995); Westmoreland Cnty. Indus. Dev. Corp.—Acquis. Exemption—Sw. Pa. R.R., FD 32767 (ICC served Nov. 3, 1995).

⁵ On May 7, 2021, SWP certified to the Board that it had posted notice of the proposed transaction at the workplaces of SWP's existing employees on the Lines. (SWP Certification, May 7, 2021; see also Pet. 3.)

posted notice of the proposed transaction at the workplace of SWP's existing employees on the Lines on May 7, 2021.⁶ 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. Because the record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements here, it does not appear that the purpose behind the requirements would be thwarted if the requested waiver is granted in this case.

SWP already provides service on the Lines and has stated that its proposed acquisition of the Lines would not change the rail service SWP already provides or have any effect on SWP's employees, as they would continue to provide the same service they currently provide. Moreover, no employees of WCIDC would be affected because WCIDC employees have not performed work on the Lines since WCIDC acquired them. Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the partial waiver. Accordingly, SWP's acquisition exemption, unless stayed, will become effective on June 6, 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. SWP's request for partial waiver is granted.
2. SWP's exemption will be effective on June 6, 2021, unless stayed.
3. This decision is effective on its date of service.

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

⁶ SWP states that its employees are not represented by any labor union.