

BEFORE THE
SURFACE TRANSPORTATION BOARD

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FD 36527

SOUTH KANSAS AND OKLAHOMA RAILROAD, L.L.C.
— LEASE AND OPERATION EXEMPTION —
TULSA'S PORT OF CATOOSA FACILITIES AUTHORITY

**PETITION FOR WAIVER
OF 49 C.F.R. § 1150.42(e)**

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**ATTORNEYS FOR SOUTH KANSAS AND
OKLAHOMA RAILROAD, L.L.C.**

Dated: July 28, 2021

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South Kansas and Oklahoma Railroad, L.L.C. (“SKOR”) hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) in connection with the lease transaction from Tulsa’s Port of Catoosa Facilities Authority (the “Port”) that is the subject of the above-captioned class exemption.

Since 1992, SKOR has been the leasehold operator of the Port-owned line that is the subject of the present proceeding. *South Kansas & Oklahoma Railroad, Inc. — Lease Exemption — The Atchison, Topeka & Santa Fe Railway Company*, FD 32082 (ICC served Aug. 11, 1992). SKOR has recently reached an agreement with the Port whereby the SKOR will, among other things, continue to lease and operate the Lines. Accordingly, SKOR has invoked the Board’s class exemption procedures to authorize its continued operations under the new lease terms. The anticipated annual revenue of SKOR is expected to continue to exceed \$5 million.

The Board’s rules provide that when the annual revenue of the acquiring Class III carrier exceeds—or as a consequence of the transaction before the Board would exceed—\$5 million, the prospective Class III acquirer must arrange to post advance notice of the transaction

(the “Labor Notice”) at the workplace of the transferor railroad’s employees on the affected lines, and serve the Labor Notice on the national office of each labor union representing the transferor carrier’s affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver of the Labor Notice requirement, a notice of exemption involving a transaction qualifying for a class exemption will not become effective until 60 days after the Class III acquirer has certified to the Board its compliance with the foregoing posting and advance notice requirements. *Id.*

The purpose of the Labor Notice is to permit – (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 — Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waivers of the notice requirement in appropriate circumstances. *Id.* at 601.

The Board has customarily waived the 60-day notice requirement where the transaction at issue extends a prior Board-authorized arrangement, the effect of which would be to continue the operational and rail labor *status quo*. See, e.g., *Dakota, Missouri Valley and Western Railroad, Inc. — Lease and Operation Exemption — Soo Line Railroad Company*, FD 34904 (STB served Jul. 24, 2006) (“DMV&W”). To be granted, the waiver request must also be “reasonable.” See *Portland and Western Railroad — Lease and Operation Exemption — Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in DMV&W, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the renewal an existing lease of Soo Line rail lines. In doing so, the Board observed that, “Here, no [Soo Line] employees will be affected because no [Soo Line] employees are currently working

on the lines and no [Soo Line] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W* at 2.

In the instant matter, the proposed transaction maintains the operational *status quo* in effect since the commencement of SKOR’s operations in 1992, and the continuation of SKOR operations will not affect the employees of SKOR or the Port. No SKOR or Port jobs will be “abolished or relocated as a result of the proposed transaction” (*DMV&W* at 2), and the FD 36527 transaction would have no effect on any of the Port employees, as there have been no Port-staffed operations, track maintenance, or dispatching on the Lines, since at least 1992 (or perhaps ever). Consequently, a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) is reasonable and consistent with Board precedent. *Wisconsin & Southern R., L.L.C. — Acquisition and Operation Exemption — Soo Line R. Company*, FD 36452 (STB served Dec. 14, 2020), 3; *Arkansas-Oklahoma Railroad Company — Lease and Operation Exemption including Interchange Commitment — Union Pacific Railroad Company*, FD 36411 (STB served Jul. 31, 2020), 2; *Hainesport Industrial Railroad — Lease and Operation Exemption — Hainesport Secondary, LLC*, FD 36185 (STB served Jul. 3, 2018), 3.

WHEREFORE, SKOR respectfully requests for purposes of the current class exemption proceedings that the Board waive the application of the 60-day advance notice period set forth at 49 C.F.R. § 1150.42(e).

Respectfully submitted,

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