

50903
EB

SERVICE DATE – AUGUST 25, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36527

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

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

Digest:¹ The Board waives a 60-day advance notice requirement and allows South Kansas and Oklahoma Railroad, L.L.C., to enter into a lease agreement with Tulsa’s Port of Catoosa Facilities Authority and continue to operate approximately 7.1 miles of rail line in Catoosa, Okla., on or after August 27, 2021.

Decided: August 24, 2021

On July 28, 2021, South Kansas and Oklahoma Railroad, L.L.C. (SKOR), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to lease from Tulsa’s Port of Catoosa Facilities Authority (the Port) and continue to operate a railroad line extending approximately 7.1 miles between milepost 0.00, in Owasso, Okla., and milepost 7.07, in Catoosa, Okla. (the Line).

SKOR states that its annual revenues currently exceed \$5 million and are expected to continue to exceed \$5 million. (Verified Notice 3; Pet. 1.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require SKOR, 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, SKOR has filed a petition for waiver of those notice requirements.

Notice of SKOR’s lease and operation exemption was served and published in the Federal Register on August 13, 2021 (86 Fed. Reg. 44,767). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

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).

In its petition for waiver, SKOR states that it has been the leasehold operator of the Line since 1992. (Pet. 1); see also S. Kan. & Okla. R.R.—Lease Exemption—The Atchison, Topeka & Santa Fe Ry., FD 32082 (ICC served Aug. 11, 1992). SKOR states that it has recently reached an agreement with the Port whereby SKOR will, among other things, lease from the Port and continue to operate the Line. (Pet. 1.) SKOR asserts that the proposed transaction would maintain the operational status quo in effect since the commencement of SKOR's operations in 1992 and that the continuation of SKOR's operations would not affect the employees of SKOR or the Port. (Id. at 3.) SKOR states that no SKOR or Port jobs would be abolished or relocated as a result of the proposed transaction and the transaction would have no effect on any of the Port's employees, as there have been no Port-staffed operations, track maintenance, or dispatching on the Lines, since at least 1992. (Id.)

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. 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 60-day notice requirements here. SKOR states that none of the Port employees would be affected because none have worked on the Line since at least 1992 and that no SKOR employees would be affected as there would be no operational changes on the Line as a result of the proposed transaction.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, the lease and operation exemption, unless stayed, will become effective on August 27, 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. SKOR's request for waiver is granted.
2. SKOR's exemption will be effective on August 27, 2021, unless stayed.
3. This decision is effective on its date of service.

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