

SERVICE DATE – SEPTEMBER 28, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34495 (Sub-No. 1)

BUCKINGHAM BRANCH RAILROAD COMPANY—ACQUISITION AND OPERATION
EXEMPTION WITH INTERCHANGE COMMITMENT—CSX TRANSPORTATION, INC.

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows Buckingham Branch Railroad Company to acquire, from CSX Transportation, Inc., a permanent, exclusive freight rail operating easement over, and continue to operate, approximately 164.22 miles of railroad line between Clifton Forge and Doswell, Va., on or after October 2, 2021.

Decided: September 27, 2021

On September 2, 2021, Buckingham Branch Railroad Company (BBRC) filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to acquire, from CSX Transportation, Inc. (CSXT), a permanent, exclusive freight rail operating easement over, and continue to operate, approximately 164.22 miles of railroad line, referred to as Segment 3, between approximately milepost 276.0 in Clifton Forge in Allegheny County, Va., and milepost 111.78 at Doswell in Hanover County, Va. (the Line). (Verified Notice 1.)

In its verified notice, BBRC states that its projected annual revenue is anticipated to exceed \$5 million. (*Id.* at 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require BBRC, 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, concurrently with its verified notice, BBRC filed a petition for waiver of those notice requirements. No opposition to this waiver request has been filed.

BACKGROUND

BBRC has leased and operated the Line since 2004. (Verified Notice 2.) BBRC and CSXT have agreed to convert BBRC's current leasehold interest in the Line into a permanent,

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).

exclusive rail freight operating easement. (Id. at 3-4.) The verified notice states that BBRC and CSXT will enter into, among other things, a Permanent Easement Agreement and an amended Freight Operating Agreement and will also terminate their existing lease agreement with respect to the Line. (Id.)

In its petition for waiver, BBRC argues that the labor notice requirements are unnecessary, as BBRC has been the leasehold operator of the Line since 2004, the proposed transaction would maintain the operational status quo in effect since then, and the continuation of BBRC's operations would not affect the employees of BBRC or CSXT. (Pet. 3.) BBRC states that no BBRC or CSXT jobs would be abolished or relocated as a result of the proposed transaction, and that the proposed transaction would have no effect on any CSXT employees, as there have been no CSXT-staffed operations, track maintenance, or dispatching on the Line since 2004. (Id.)

Notice of the exemption was served and published in the Federal Register on September 17, 2021 (86 Fed. Reg. 51,953). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

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. BBRC employees would continue to conduct the same operations they have provided since 2004, and CSXT employees have performed no work on the Line 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 acquire an easement over and operate the Line to become effective on October 2, 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. BBRC's request for waiver is granted.

2. BBRC's exemption will be effective on October 2, 2021, unless stayed.
3. This decision is effective on its date of service.

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