

SERVICE DATE – DECEMBER 2, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36545

DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.—LEASE AND  
OPERATION EXEMPTION INCLUDING INTERCHANGE COMMITMENT—  
UNION PACIFIC RAILROAD COMPANY

Digest:<sup>1</sup> The Board waives a 60-day advance notice requirement and allows Dallas, Garland & Northeastern Railroad, Inc. (DGNO), to enter into an amended lease agreement with Union Pacific Railroad Company and continue to operate approximately 30.7 miles of rail line in Texas (the Lines), on or after December 3, 2021. The Board also denies a request by DGNO to confirm its current authority to operate on the Lines.

Decided: December 2, 2021

On November 3, 2021, Dallas, Garland & Northeastern Railroad, Inc. (DGNO), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.43 to lease from Union Pacific Railroad Company (UP) and continue to operate approximately 30.7 miles of rail line in Texas owned by UP (the Lines). The Lines consist of: (1) a portion of the Garland Subdivision (also known as the Greenville Subdivision) from milepost 741.3 near Lake Ray Hubbard to milepost 713.6 at Greenville, Tex.; and (2) the Sprecher Lead (also known as the Safeway Lead) at Garland, Tex. DGNO states that the Sprecher Lead has no official mileposts, but DGNO informally designates the mileposts as extending from milepost 0 to milepost 3 beginning at the switch at milepost 753.4.

DGNO states that its annual revenues currently exceed \$5 million. (Verified Notice 7.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require DGNO, 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, DGNO has petitioned for waiver of those notice requirements.

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<sup>1</sup> 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).

Notice of DGNO's lease and operation exemption was served and published in the Federal Register on November 19, 2021 (86 Fed. Reg. 64,987). The published notice announced that the Board would address the waiver request in a separate decision.

DGNO states that it has been the sole common carrier operator on the Lines since at least 2001. (Verified Notice 8); see also Dall., Garland & Ne. R.R.—Lease Exemption—Union Pac. R.R., FD 33686 (STB served Feb. 5, 1999). DGNO states that it reached an agreement for an amended lease (Amended Lease) with UP whereby DGNO will lease the Lines from UP and continue as the operator of the Lines. (Verified Notice 3, 8.) DGNO states that there will be no operational changes as a result of the transaction and no DGNO employees will be affected. (Id.) DGNO also states that no employees of UP have worked on the Lines since at least 2001 and therefore no UP employees will be affected by the transaction. (Id.)

In addition, DGNO states that, in preparing the verified notice, it determined that DGNO's acquisition of Board authority for lease and operation of the Lines under the current lease appears to have been incomplete because the authority only applies to a portion of the Garland Subdivision and none of the Sprecher Lead.<sup>2</sup> (Verified Notice 3-4); see also Dall., Garland & Ne. R.R., FD 33686 (granting authority to operate from milepost 741.3 to milepost 729.5 of the Garland Subdivision). DGNO states that in addition to seeking authority to operate under the Amended Lease, it also is seeking to "correct the Board's records of the lines operated by DGNO, and to confirm its authority to operate" on the Lines. (Verified Notice 4.)

## DISCUSSION AND CONCLUSIONS

Waiver of the labor notice requirement. 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 the notice requirements seriously, 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. DGNO states that no UP employees would be affected because none have worked on the Lines since at least 2001 and that no DGNO employees would be affected as there would be no operational changes on the Lines 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 December 3, 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).

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<sup>2</sup> DGNO notes that it was acquired by Genesee & Wyoming Inc. in 2012. See Genesee & Wyo. Inc.—Control—Rail Am., Inc., FD 35684 (STB served Dec. 20, 2012).

Current authority to operate. DGNO asks the Board to “confirm” DGNO’s current authority to operate over the entirety of the Lines, even though DGNO acknowledges that the authority previously granted to DGNO “appears” not to extend that far. The nature of DGNO’s request is unclear, but the request will be denied, as DGNO is receiving, through this proceeding, authority to operate on the Lines under the Amended Lease, and that authority will become effective on December 3, 2021, as stated above.

The Board appreciates that DGNO has raised the issue here. However, rail carriers must be cognizant of the Board’s licensing regulations and, if any issues do arise, provide a more thorough description of the circumstances that led to the rail carrier failing to seek the required authority.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. DGNO’s request for waiver is granted.
2. DGNO’s exemption will be effective on December 3, 2021, unless stayed.
3. DGNO’s request for confirmation of its current authority to operate is denied.
4. This decision is effective on its date of service.

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