

SERVICE DATE — MAY 6, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36607

HAMILTON NORTHWESTERN RAILROAD CO.—
ACQUISITION AND OPERATION EXEMPTION—IN ALLEGAN COUNTY, MICH.

Docket No. FD 36608¹

HAMILTON HARTFORD GROUP, LLC—CONTINUANCE IN CONTROL EXEMPTION—
HAMILTON NORTHWESTERN RAILROAD CO.

Digest:² This decision permits the acquisition and operating authority granted to Hamilton Northwestern Railroad Co. and the continuance in control authority granted to Hamilton Hartford Group, LLC, to become effective on May 6, 2022.

Decided: May 6, 2022

In Docket No. FD 36607, on April 6, 2022, as supplemented on April 22, 2022, Hamilton Northwestern Railroad Co. (HNW), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 6.10 miles of track in Allegan County, Mich. (the Line). Notice of the exemption was published in the Federal Register on May 6, 2022 (87 Fed. Reg. 27,198). This transaction is related to a concurrently filed and supplemented verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) in Docket No. FD 36608, in which Hamilton Hartford Group, LLC (HHG), seeks to continue in control of HNW upon HNW's becoming a Class III rail carrier. Notice of that exemption was published in the Federal Register on May 6, 2022 (87 Fed. Reg. 27,198).

Under 49 C.F.R. § 1150.32(b), a notice of exemption filed pursuant to § 1150.31 becomes effective 30 days after it is filed. Similarly, under 49 C.F.R. § 1180.4(g)(1), a notice of exemption filed pursuant to § 1180.2(d)(2) must be filed at least 30 days before a transaction is consummated. Here, the Board's published notices indicate that April 22, 2022, the date that HNW and HHG filed supplemental information clarifying that HNW seeks to acquire the Line as a line of railroad as well as operate over it, was deemed the filing date for the verified notices in

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² 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).

both Docket No. FD 36607 and Docket No. FD 36608. Accordingly, the verified notices normally would become effective on May 22, 2022.

On April 29, 2022, HNW and HHG jointly filed a petition to partially waive the 30-day effectiveness period and to allow the exemptions to become effective by May 6, 2022, or as soon as possible thereafter.³ The parties explain that they expected the exemptions to be effective on May 6, 2022, based on the April 6, 2022 filing date of their initial verified notices, and that several involved parties have been actively working toward a May 6, 2022 transition date for operations on the Line. (Pet. 3.) They further state that the requested waiver would minimize the risk of service disruption to Endeavor Ag and Energy, LLP, the only active shipper on the Line. (*Id.* at 3-4.) No party has filed in opposition to the request for waiver.

A waiver is appropriate here, as accelerating the effective date of the exemptions will minimize the risk of disruption of rail service on the Line and there is no opposition to the waiver request. Therefore, for good cause shown, the Board will partially grant the unopposed petition.⁴ The Board will waive the 30-day requirement under § 1150.32(b) to the extent necessary to permit the exemption in FD 36607 to take effect on May 6, 2022, and will waive the 30-day requirement under § 1180.4(g)(1) to the extent necessary to permit the exemption in FD 36608 to take effect on May 6, 2022.

It is ordered:

1. The petition for waiver is granted, in part, as described above.
2. The 30-day provision under 49 C.F.R. § 1150.32(b) is waived as to Docket No. FD 36607, and the exemption in that docket shall become effective on May 6, 2022.
3. The 30-day provision under 49 C.F.R. § 1180.4(g)(1) is waived as to Docket No. FD 36608, and the exemption in that docket shall become effective on May 6, 2022.
4. This decision is effective on its service date.

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

³ HNW and HHG request that the Board waive 49 C.F.R. § 1180.4(g)(1)(iii), which concerns when the Board shall publish a notice of exemption filed pursuant to § 1180.2(d) in the Federal Register. It appears that the parties intended instead to request waiver of § 1180.4(g)(1), which, as noted above, requires a notice of exemption filed pursuant to § 1180.2(d)(2) to be filed at least 30 days before a transaction is consummated. The Board will consider the petition as a request to waive § 1180.4(g)(1).

⁴ HNW and HHG also request waiver of 49 C.F.R. § 1150.42(b). However, 49 C.F.R. § 1150.42(b) applies to certain transactions by existing Class III carriers. No existing Class III carriers are involved in these case dockets, and the Board will, therefore, deny this waiver request as moot.