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SERVICE DATE – DECEMBER 14, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36648

ABERDEEN CAROLINA AND WESTERN RAILWAY COMPANY
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY

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

Digest:¹ This decision waives a 60-day advance labor notice requirement and allows Aberdeen Carolina and Western Railway Company to acquire from Norfolk Southern Railway Company and operate approximately 104 miles of rail in North Carolina beginning on or after December 15, 2022.

Decided: December 13, 2022

On November 15, 2022, Aberdeen Carolina and Western Railway Company (ACWR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Norfolk Southern Railway Company (NSR) approximately 104 miles of rail line between milepost 282.63 at Gulf, Chatham County, and milepost 386.91 at Charlotte, Mecklenburg County, and running through Mecklenburg, Cabarrus, Stanly, Montgomery, and Chatham Counties, N.C. (the Line). The verified notice states that ACWR and NSR have negotiated a Purchase and Sale Agreement and that ACWR will continue to operate the Line. (Verified Notice 2.)

ACWR certifies that its current annual revenues exceed \$5 million. (Pet. for Waiver 2.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require ACWR, 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, ACWR has simultaneously filed a petition for waiver of those notice requirements.

ACWR argues that the labor notice requirements should be waived because the proposed transaction will not result in any change in operations. (Pet. for Waiver 2.) ACWR states that it has operated the Line since 1989 pursuant to a Lease and Option to Purchase Agreement with

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).

NSR, and it does not plan any transfer, reduction, or increase in employment. (Verified Notice 1; Pet. for Waiver 2.) ACWR certifies that on August 15, 2022, a notice of the proposed acquisition transaction was posted at the workplaces of ACWR employees who already work on the Line and certified that action to the Board. (Pet. for Waiver 3.) No opposition to this waiver request has been filed.

Notice of ACWR's acquisition and operation exemption was served and published in the Federal Register on December 1, 2022 (87 Fed. Reg. 73,802). 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 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. There are no NSR employees on the Line, and the transaction would not have any effect on ACWR's employees because ACWR has been the exclusive operator of the Line since 1989 and 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, ACWR's acquisition exemption, unless stayed, will become effective on December 15, 2022, 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 Amend. & 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. ACWR's request for waiver is granted.
2. ACWR's exemption will be effective on December 15, 2022, unless stayed.
3. This decision is effective on its date of service.

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