

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36028 (SUB-NO. 1)

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KANAWHA RIVER RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH INTERCHANGE
COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

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**ATTORNEYS FOR KANAWHA RIVER
RAILROAD, L.L.C.**

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**PETITION FOR WAIVER
OF 49 C.F.R. § 1150.42(e)**

Kanawha River Railroad, L.L.C. (“KRR”) hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) in connection with the lease transaction from Norfolk Southern Railway (“NSR”) that is the subject of the above-captioned class exemption.

Since 2016, KRR has been the leasehold operator of the NSR-owned lines that are the subject of the present proceeding. *Kanawha River Railroad — Lease Exemption Containing Interchange Commitment — Norfolk Southern Railway Company*, FD 36028 (STB served Jul. 15, 2016). KRR has recently reached an agreement with NSR whereby the KRR will, among other things, continue to lease and operate the Lines. Accordingly, KRR has invoked the Board’s class exemption procedures to authorize its continued operations under the new lease terms. The anticipated annual revenue of KRR is expected to continue to exceed \$5 million.

The Board’s rules provide that when the annual revenue of the acquiring Class III carrier exceeds—or as a consequence of the transaction before the Board would exceed—\$5 million, the prospective Class III acquirer must arrange to post advance notice of the transaction

(the “Labor Notice”) at the workplace of the transferor railroad’s employees on the affected lines, and serve the Labor Notice on the national office of each labor union representing the transferor carrier’s affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver of the Labor Notice requirement, a notice of exemption involving a transaction qualifying for a class exemption will not become effective until 60 days after the Class III acquirer has certified to the Board its compliance with the foregoing posting and advance notice requirements. *Id.*

The purpose of the Labor Notice is to permit – (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 — Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waivers of the notice requirement in appropriate circumstances. *Id.* at 601.

The Board has customarily waived the 60-day notice requirement where the transaction at issue extends a prior Board-authorized arrangement, the effect of which would be to continue the operational and rail labor *status quo*. See, e.g., *Dakota, Missouri Valley and Western Railroad, Inc. — Lease and Operation Exemption — Soo Line Railroad Company*, FD 34904 (STB served Jul. 24, 2006) (“DMV&W”). To be granted, the waiver request must also be “reasonable.” See *Portland and Western Railroad — Lease and Operation Exemption — Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in DMV&W, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the renewal an existing lease of Soo Line rail lines. In doing so, the Board observed that, “Here, no [Soo Line] employees will be affected because no [Soo Line] employees are currently working on the lines and no [Soo Line]

jobs will become available, abolished or relocated as a result of the proposed transaction.”
DMV&W at 2.

In the instant matter, the proposed transaction maintains the operational *status quo* in effect since the commencement of KRR’s operations in 2016, and the continuation of KRR operations will not affect the employees of KRR or the NSR. No KRR jobs will be “abolished or relocated as a result of the proposed transaction” (*DMV&W* at 2), and the captioned matter would have no effect on any of the NSR employees, as there have been no NSR-staffed operations, track maintenance, or dispatching on the Lines, since 2016. Consequently, a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) is reasonable and consistent with Board precedent. *Wisconsin & Southern R., L.L.C. — Acquisition and Operation Exemption — Soo Line R. Company*, FD 36452 (STB served Dec. 14, 2020), 3; *Arkansas-Oklahoma Railroad Company — Lease and Operation Exemption including Interchange Commitment — Union Pacific Railroad Company*, FD 36411 (STB served Jul. 31, 2020), 2; *Hainesport Industrial Railroad — Lease and Operation Exemption — Hainesport Secondary, LLC*, FD 36185 (STB served Jul. 3, 2018), 3.

WHEREFORE, KRR respectfully requests for purposes of the current class exemption proceedings that the Board waive the application of the 60-day advance notice period set forth at 49 C.F.R. § 1150.42(e).

Respectfully submitted,



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