

SERVICE DATE – JANUARY 17, 2023
SURFACE TRANSPORTATION BOARD
DECISION

Docket No. FD 36028 (Sub-No. 1)

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

Digest:¹ The Board waives a 60-day advance notice requirement and allows Kanawha River Railroad, L.L.C., to enter into an amended lease agreement with Norfolk Southern Railway Company and continue to operate on nine segments of rail line totaling 309.45 miles in West Virginia and Ohio on or after January 18, 2023.

Decided: January 13, 2023

On December 19, 2022, Kanawha River Railroad, L.L.C. (KRR), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to amend the terms of its lease with Norfolk Southern Railway Company (NSR) and operation of nine rail segments totaling 309.45 miles in West Virginia and Ohio (the Lines).²

KRR states that its current rail revenues exceed \$5 million. (Verified Notice 6.) Therefore, unless waived, 49 C.F.R. § 1150.42(e) would require KRR, 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. KRR, however, has simultaneously petitioned for waiver of these notice requirements.

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).

² These line segments extend between (1) milepost V 381.8 at Maben, W. Va., and milepost V 435.0 at DB (Deepwater Bridge), W. Va.; (2) milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) milepost WV 125.6 at Conco, Ohio, and milepost WV 253.4 at Cornelia, W. Va.; (4) milepost 0.0 VC at Vaco Junction, W. Va., and milepost 0.84 VC at Deepwater, W. Va.; (5) Hitop RT at milepost TP 0.0 at Charleston, W. Va., and the end of the track at milepost TP 1.0; (6) Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) milepost VG 0.0 at Virwest, W. Va., and milepost VG 12.5 at Bolt, W. Va.; (8) milepost MY 0.0 at Milam, W. Va., and the end of the track at milepost MY 1.01; and (9) milepost PE 0.0 at Putt, W. Va., and milepost PE 2.3 at Putt End Branch, W. Va. (Verified Notice 3-4.)

KRR has operated the Lines since 2016. (Verified Notice 3); see also Kanawha River R.R.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry., FD 36028 (STB served July 15, 2016). It has recently reached an agreement with NSR whereby KRR would, among other things, continue to lease and operate the Lines. (Pet. for Waiver 1.) In furtherance of its waiver request, KRR claims that there would be no operational changes on the Lines and none of its employees would be affected. (*Id.* at 3.) It adds that no NSR employees have worked on the Lines since 2016, so no NSR employees would be affected either. (*Id.*) No opposition to this waiver request has been filed.

Notice of KRR's lease and operation exemption was served and published in the Federal Register on January 4, 2023 (88 Fed. Reg. 398). The published notice announced that the Board would address the requested waiver in a separate decision.

DISCUSSION AND CONCLUSION

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 waiver is granted here.

The record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements. KRR already operates the Lines and explains that the proposed transaction maintains the operational status quo in effect since the commencement of KRR's operations in 2016. (Pet. for Waiver 3.) No KRR jobs would be abolished or relocated, and there have been no NSR-staffed operations, track maintenance, or dispatching on the Lines since 2016. (*Id.*)

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 January 18, 2023, 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. KRR's request for waiver is granted.
2. KRR's exemption will become effective on January 18, 2023, unless stayed.

3. This decision is effective on its service date.

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