

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36719]

Red River Valley & Western Railroad Company—Acquisition and Operation

Exemption—Rail Line of BNSF Railway Company

Red River Valley & Western Railroad Company (RRVW), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from BNSF Railway Company (BNSF) and to operate an approximately 0.4-mile rail line, extending from milepost 54.55 to milepost 54.95 in Casselton, Cass County, N.D. (the Line).¹

According to the verified notice, RRVW reached an agreement with BNSF in 2006 for acquisition and operation of the Line. RRVW states that the parties' transaction was consummated in 2006 and that RRVW has been operating over the Line since that time.² RRVW states, however, that it recently discovered that it inadvertently neglected to seek acquisition and operation authority for the Line from the Board when it acquired

¹ On September 1, 2023, RRVW filed an errata to its verified notice of exemption to note that the Line is an approximately 0.4-mile rail segment, rather than a 0.5-mile rail segment as previously indicated in its notice filed on August 23, 2023.

² RRVW states that, in 1987, it received authority from the agency to acquire the tracks, physical assets, and common carrier obligation for 656 miles of various rail lines from BNSF. See Red River Valley & W. R.R.—Acquis. & Operation Exemption—Certain Lines of Burlington N. R.R., FD 31071 (ICC served July 22, 1987). According to RRVW, the Line was not part of that original transaction but provides a connection from the lines acquired in 1987 to one of RRVW's customers, Tharaldson Ethanol.

the Line from BNSF. RRVW now seeks after-the-fact Board authorization for its prior acquisition and operation of the Line.³

RRVW certifies that the proposed acquisition of the Line does not involve any interchange commitments. RRVW further certifies that its projected revenues as a result of this transaction will not (and did not) result in the creation of a Class II or Class I rail carrier. Pursuant to 49 C.F.R. § 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction 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, RRVW has filed a request for partial waiver of the 60-day advance labor notice requirements to allow the exemption to take effect as soon as its waiver request is granted, but no earlier than 30 days after the filing of RRVW's notice of exemption. RRVW's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 15, 2023.

³ RRVW is not seeking retroactive effectiveness for the exemption.

All pleadings referring to Docket No. FD 36719 should be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on RRVW's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.

According to RRVW, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c)(1)(i) and from historic reporting requirements under 49 C.F.R. § 1105.8(b)(1).

Board decisions and notices are available at www.stb.gov.

Decided: September 5, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.