

SERVICE DATE – SEPTEMBER 12, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36715

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION—
ACQUISITION AND OPERATION EXEMPTION—ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

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

Digest:¹ This decision allows the New York, Susquehanna, and Western Railway Corporation to acquire from Onondaga County Industrial Development Agency and to continue to operate approximately 10 miles of rail line, known as the Jamesville Cluster, in New York. The decision also waives the 60-day advance notice requirement to employees because no employees would be adversely affected by the transaction.

Decided: September 11, 2023

On August 7, 2023, the New York, Susquehanna and Western Railway Corporation (NYS&W), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and operate approximately 10 miles of rail line, known as the Jamesville Cluster, from the Onondaga County Industrial Development Agency (OCIDA), in Onondaga County, N.Y. The rail line consists of the following segments: (1) the Jamesville Industrial Track, extending from approximately milepost 264.3 to approximately milepost 272.0; (2) the Lake Industrial Track, extending from approximately milepost 272.0 to approximately milepost 273.5 (including the Saltland Spur); and (3) Track 7 of the Chicago Line, extending from approximately milepost 292.0 to approximately milepost 292.8 (known to NYS&W as mileposts 274.0 to 274.8) (collectively, the Line).

NYS&W states that it is the current freight rail operator on the Line, having received operating authority for local and overhead trackage rights in 1995 by assignment from Consolidated Rail Corporation (Conrail). (Verified Notice 2; see also N.Y., Susquehanna & W. Ry.—Trackage Rights Exemption—Onondaga Cnty. Indus. Dev. Agency, FD 32772 (ICC served Sept. 20, 1995).) Further, in its verified notice, NYS&W certifies that its revenues currently exceed \$5 million. (Verified Notice 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require NYS&W to post a notice of its intent to undertake the proposed

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).

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. The regulation would also require NYS&W to fulfill the notice requirements at least 60 days before the exemption becomes effective. However, NYS&W has requested a waiver of those notice requirements. (Verified Notice 6-7.)

In its request for waiver, NYS&W argues that the labor notice requirements are unnecessary because the proposed transaction would result in no operational changes on the Line. (*Id.* at 7.) According to NYS&W, it currently holds trackage rights over the rail facilities, performs all maintenance of the Line, and has been the sole common carrier operator providing local and overhead service over the Line since at least 1995. (*Id.* at 6.) Furthermore, NYS&W states that the current owner, OCIDA, has never operated the Line and that OCIDA's employees have never worked on the Line. (*Id.* at 6-7.) NYS&W also states that, although Conrail provided operations on the Line prior to 1995, no Conrail employees have worked on the Line since at least 1995. (*Id.* at 7.) Thus, NYS&W states that neither OCIDA nor Conrail employees would be affected as a result of the transaction. (*Id.*) No opposition to this waiver request has been filed.

Notice of NYS&W's exemption was served and published in the Federal Register on August 23, 2023 (88 Fed. Reg. 57,514). 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.

Here, however, it does not appear that the purpose behind the requirements would be thwarted if the requested waiver is granted. The record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements. NYS&W is the current operator of the Line and has been since 1995, and NYS&W states that there would be no operational changes on the Line as a result of the proposed transaction. Moreover, OCIDA has never operated over the Line or had employees working on it, and Conrail has had no employees on the Line since at least 1995.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, NYS&W's acquisition and operation exemption will become effective on September 12, 2023.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. NYS&W's request for waiver is granted.
2. NYS&W's exemption will be effective on September 12, 2023.
3. This decision is effective on its date of service.

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