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SERVICE DATE – FEBRUARY 29, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36753

WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP
—OPERATION EXEMPTION—
NORTH CAROLINA STATE PORTS AUTHORITY

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

Digest:¹ This decision waives the 60-day advance notice requirement with respect to Wilmington Terminal Railroad, Limited Partnership's exemption for continued operation of approximately 18 miles of rail line in Wilmington, N.C., and allows the exemption to take effect on March 9, 2024.

Decided: February 29, 2024

On February 8, 2024, Wilmington Terminal Railroad, Limited Partnership (WTR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.42 to exempt from regulation WTR's entry into an amendment (Amendment) with the North Carolina State Ports Authority (NCSPA) to extend a 2002 Rail Operating Agreement (Original Agreement) between WTR and NCSPA relating to WTR's continued operations as a common carrier over approximately 18 miles of rail line in Wilmington, N.C. The rail line consists of the following segments: (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of approximately 0.66 miles to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction approximately 3.5 miles to CSX Rail Valuation Station 185+00; and (3) the line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port of Wilmington at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on the Port of Wilmington, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails) (collectively, the Line).

WTR states that it is the current freight rail operator on the Line and has owned a permanent and exclusive railroad operating easement for the Line since 2002. (Verified

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).

Notice 4; see also Wilmington Terminal R.R.—Acquis. & Operation Exemption—N.C. Ports Ry. Comm’n, FD 34257 (STB served Oct. 31, 2002)). Further, in its verified notice, WTR certifies that its revenues currently exceed \$5 million. (Verified Notice 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require WTR 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. The regulation would also require WTR to fulfill the notice requirements at least 60 days before the exemption becomes effective. However, WTR has requested a waiver of those notice requirements. (Verified Notice 6-8.)

In its request for waiver, WTR argues that the labor notice requirements are unnecessary because the proposed transaction would result in no changes for any employees working on the Line. (*Id.* at 7.) According to WTR, it has been the sole common carrier operator providing service over the Line since at least 2002, and there will be no changes for any employees working on the Line. (*Id.*) Furthermore, WTR states that the current owner, NCSPA, does not have a common carrier obligation related to the Line and therefore has no railroad employees who will be affected by this transaction. (*Id.*) Thus, WTR states, compliance with the notice requirement would not provide notice to any NCSPA railroad employees, as there are none. (*Id.*) No opposition to this waiver request has been filed.

Notice of WTR’s exemption was served and published in the Federal Register on February 23, 2024 (89 Fed. Reg. 13,800). 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. WTR is the current operator of the Line and has been since 2002, and WTR states that there would be no changes for any employees working on the Line as a result of the proposed transaction. Moreover, NCSPA has no common carrier obligation related to the Line, and WTR indicates that NCSPA has no railroad employees who will be affected by the transaction.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. WTR’s acquisition and operation exemption will become effective on March 9, 2024, the day the exemption otherwise would take effect absent the notice requirement.

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

It is ordered:

1. WTR's request for waiver is granted.
2. WTR's exemption will be effective on March 9, 2024.
3. This decision is effective on its date of service.

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