

SERVICE DATE – AUGUST 23, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36798

WATERLOO RAILROAD, LLC—CHANGE OF OPERATOR EXEMPTION WITH
INTERCHANGE COMMITMENT—UNION PACIFIC RAILROAD COMPANY

Docket No. AB 284 (Sub-No. 5X)

IOWA NORTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN BLACK HAWK COUNTY, IOWA

Digest:¹ The Board is issuing a notice of exemption to permit Waterloo Railroad, LLC, to replace Iowa Northern Railway Company (IANR) as the lessee and operator of a rail line owned by Union Pacific Railroad Company. The Board is also denying as moot IANR's petition for exemption to discontinue its service over that line that was filed in a separate docket.

Decided: August 22, 2024

On July 25, 2024, in Docket No. FD 36798, Waterloo Railroad, LLC (WTRL), filed a verified notice for a change in operator exemption. Under this exemption, WTRL would lease and operate approximately 6.9 miles of rail line owned by Union Pacific Railroad Company (UP), between milepost 325.1 and milepost 332.0, along with connecting ancillary trackage (yard and side tracks), in Black Hawk County, Iowa (the Line). In doing so, WTRL would replace the Line's current lessee and operator, Iowa Northern Railway Company (IANR). On August 7, 2024, in Docket No. AB 284 (Sub-No. 5X), IANR filed a petition for exemption to discontinue its operations on the Line.²

As discussed below, WTRL's notice of exemption will be issued, and IANR's petition for exemption will be denied as moot.

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 proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

WTRL's Notice of Exemption, Docket No. FD 36798

Under 49 CFR 1011.7(a)(2)(x)(A), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption under 49 U.S.C. 10502 for lease and operation transactions under 49 U.S.C. 10901. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board will revoke the delegation to the Director with respect to issuance of the pending notice of exemption for a change in operator on the Line. The Board determines that this notice of exemption should be issued and does so here.

Notice

WTRL, a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to lease and operate approximately 6.9 miles of rail line owned by UP, between milepost 325.1 and milepost 332.0, along with connecting ancillary trackage (yard and side tracks), in Black Hawk County, Iowa. The Line, known as the Waterloo Industrial Line, is currently operated by IANR, pursuant to a lease with UP. See Iowa N. Ry.—Lease Exemption with Interchange Commitment—Rail Line of Union Pac. R.R., FD 36277 (STB served March 20, 2019).

According to the verified notice, WTRL will replace IANR as the operator of the Line. Upon WTRL's assumption of operations, IANR will have no common carrier obligation on the Line.

Although IANR stated in its July 26 Reply that it “could not consent to the change in operator filing,” (IANR Reply 1, July 26, 2024, FD 36798; see also IANR Pet. 6, Aug. 7, 2024, AB 284 (Sub-No. 5X); IANR Reply 2, Aug. 14, 2024, FD 36798), IANR subsequently filed a petition in Docket No. AB 284 (Sub-No. 5X), itself seeking Board authorization to discontinue its operations on the Line. Prior to that submission, IANR acknowledged termination of its lease with UP and stated it is working “cooperatively and expeditiously” with WTRL and UP to coordinate the transfer of operations to WTRL. (See IANR Reply 1, July 26, 2024, FD 36798; IANR Reply 2, July 31, 2024, FD 36798.) While IANR states that the “steps necessary for a smooth transition of operations have not been completed,” (IANR Pet. 6, Aug. 7, 2024, AB 284 (Sub-No. 5X)), it offers no support for this assertion nor any indication as to what such steps entail. Nor does IANR, in requesting expedited consideration of its petition, indicate that the standard 14-day period between publication of a change in operator notice and its effectiveness,³ which the Board will apply here, would be insufficient.

This transaction is related to a concurrently filed verified notice of exemption in OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Continuance in Control Exemption—Waterloo Railroad, LLC, Docket No. FD 36797, in which OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC, seek to continue in control of WTRL upon WTRL's becoming a Class III rail carrier.

³ See 49 CFR 1150.32(b).

WTRL certifies that the draft lease agreement between WTRL and UP contains an interchange commitment that affects interchange with third-party connecting carriers.⁴ WTRL has provided additional information regarding the interchange commitment as required by 49 CFR 1150.33(h).

WTRL certifies that its projected annual revenues as a result of this transaction will not result in it becoming a Class II or Class I rail carrier and that its projected annual revenues will not exceed \$5 million.

Under 49 CFR 1150.32(b), a change of operator requires that notice be given to shippers. The verified notice indicates that WTRL provided notice of the transaction and interchange commitment to shippers on the Line.

The earliest this transaction may be consummated is September 6, 2024, the effective date of the exemption.

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 August 30, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36798, must 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, a copy of each pleading must be served on WTRL's representative, William A. Mullins, Mullins Law Group PLLC, 2001 L Street, N.W., Suite 720, Washington, DC 20036.

According to WTRL, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirement under 49 CFR 1105.8(b).

Decisions of the Board are available at www.stb.gov.

IANR's Petition for Exemption, Docket No. AB 284 (Sub-No. 5X)

IANR filed its petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue its lease operations over the Line. IANR states that the proposed discontinuance of service would allow IANR "to effectuate an orderly transfer of rail operations from IANR to WTRL." (IANR Pet. 2, Aug. 7, 2024, AB 284 (Sub-No. 5X).) IANR requests expedited consideration of its petition. (*Id.* at 6.)

⁴ A copy of the draft lease agreement was submitted under seal with the verified notice. See 49 CFR 1150.33(h)(1). WTRL states that it will submit a copy of the executed agreement when it is fully executed.

Because the change of operator exemption issued here in Docket No. FD 36798 effectively discontinues IANR's common carrier obligation on the Line, IANR's petition to discontinue its operations on the Line will be denied as moot, effective concurrently with effectiveness of the change in operator exemption.

It is ordered:

1. The delegation of authority to the Director under 49 CFR 1011.7(a)(2)(x)(A) to determine whether to issue a notice of exemption in this proceeding is revoked.
2. WTRL's notice of exemption is issued and is effective September 6, 2024.
3. IANR's petition for exemption is denied as moot, effective on September 6, 2024.
4. This decision will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz. Board Member Fuchs concurred with a separate expression.

BOARD MEMBER FUCHS, concurring:

While I agree with today's decision and find sufficient indication that IANR consents to exiting the Line,¹ I write separately to suggest that the Board consider revising its change-in-operator exemption regulations to explicitly require a verified notice to indicate that the exiting carrier consents to the transaction. The notice of exemption process is built for speed and typically involves little to no opposition or controversy,² and the process allows simultaneous entry and exit licensing to facilitate efficient changes in operators. Consistent with this purpose, the Board—in case law—has rightly required an indication that the exiting carrier consents to the change-in-operator notice. See SMS Rail Serv., Inc.—Change in Operator Exemption Including Acquisition by Lease—Salem Branch Line in Salem and Gloucester Counties, N.J., FD 36529, slip op. at 2, 2 n.4 (STB served July 15, 2022) (notice of change-in-operator exemption under 49 C.F.R. § 1150.41 discontinuing operating authority for a carrier that consented, but not for a second carrier that was unreachable and thus had not consented). However, the Board's regulations contain no explicit requirement. Here, when IANR contested the transaction, the case soon generated an atypical amount of litigation for a notice of exemption proceeding, and the

¹ I also agree that IANR has not demonstrated that the standard 14-day period before the change-in-operator exemption becomes effective is insufficient to permit the “orderly transfer of operations from IANR to WTRL.” (IANR Pet. 2, Aug. 7, 2024, AB 284 (Sub-No. 5X).)

² Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901, EP 392 (Sub-No. 1), slip op. at 3 (STB served Jan. 15, 1986) (stating that the exemption process “is designed to meet the need for expeditious handling of a large number of requests that are rarely opposed,” and “to reduce regulatory delay and costs”).

controversy showed the potential for further complications if a carrier were to never consent to exiting. Forcing a carrier off a line is no simple, permissive matter, and—in stand-alone exit licensing proceedings brought by a third party where the subject carrier does not consent (i.e., a typical “adverse” discontinuance or abandonment case)—the Board has rightly rejected the use of exemptions. Wisconsin Dept. of Transp.—Aban. Exemption, FD 31303, slip op. at 4 (ICC served Dec. 5, 1988) (holding that the exemption authority could not be used to force abandonment or discontinuance where the carrier opposes this action).³ Revising the change-in-operator regulations⁴ to explicitly include a consent requirement would promote the purpose of the regulations, provide needed clarity for parties, and mitigate potential inconsistencies across exit licensing proceedings.

³ If, in a future proceeding, the Board were to conclude that it does not have adverse discontinuance or abandonment authority, the agency would have an independent reason to require consent in this type of proceeding.

⁴ I note that the agency’s decision promulgating the applicable regulations appears to focus on the agency’s entry licensing statute, and not the exit licensing statute for discontinuances and abandonments, even though a change in operator involves an exit. See Class Exemption, EP 392 (Sub-No. 1), slip op. at 10 (adopting final rule by citing to 49 U.S.C. § 10901 [acquisition and operation] but not § 10903 [abandonments]). The Board should address this apparent omission in any future rulemaking.