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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 34693 (SUB-NO. 1)

KAW RIVER RAILROAD, LLC
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY

FD 35015 (SUB-NO. 1)

KAW RIVER RAILROAD, LLC
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
BNSF RAILWAY COMPANY

PETITION FOR WAIVER FROM THE REQUIREMENTS OF 49 C.F.R. § 1150.42(e)

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**ATTORNEYS FOR KAW RIVER
RAILROAD, LLC**

Dated: May 1, 2025.

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Kaw River Railroad, LLC (“KAW”), a Class III rail carrier, hereby submits this Petition to the Surface Transportation Board (the “Board”) for waivers of the sixty (60)-day labor notice requirement at 49 C.F.R. § 1150.42(e), which notice requirements would otherwise apply to the lease renewal transactions that are the subject of the above-referenced proceedings.

Since 2005, KAW has leased and operated approximately 15.69 miles of railroad line, and maintained incidental trackage rights over an additional 1.21 miles of railroad line (collectively, the “Kearney Lines”), extending between the towns of Birmingham and Kearney, in Clay County, Missouri, from its owner, BNSF Railway Company (“BNSF”). *See Kaw River R.R., Inc. – Lease Exemption – BNSF Ry. Co.*, FD 34693 (STB served May 12, 2005). When the lease was executed in 2005, KRR was a Kansas corporation. It is now a Kansas limited-liability company, so converted in 2011.

Since 2007, KAW has also leased from BNSF and operated approximately 14.66 miles of railroad line, and maintained incidental trackage rights over an additional 1.52 miles of railroad line (collectively, the “Bedford Lines”), located in North Kansas City, Clay County, Missouri. *See Kaw River R.R., Inc. – Lease Exemption – BNSF Ry. Co.*, FD 35015 (STB served Apr. 20, 2007). As above, KAW was a Kansas corporation when it leased the Bedford Yard Line from BNSF, and later converted into a Kansas limited-liability company.

KAW and BNSF have recently reached agreements whereby KAW will update and extend its leases of the Kearney Lines and the Bedford Lines. KAW has invoked the Board’s class exemption procedures to authorize its continued operation of these Lines under the updated and extended lease terms. KAW’s annual revenues do not exceed those of a Class III carrier, but they do exceed \$5 million, triggering application of Section 1150.42(e) in both proceedings (unless otherwise waived by the Board in response to this petition).

The Board’s regulations provide that when the annual revenue of an acquiring Class III carrier exceeds, or because of the transaction before the Board would exceed, \$5 million, the prospective acquirer must post advanced notice of the transaction (the “Labor Notice”) at the workplace of the transferor’s affected employees, and serve the Labor Notice on the national office of each labor union representing the transferor’s affected employees. *See* 49 C.F.R. § 1150.42(e). Barring a waiver of the Labor Notice requirement, a notice of exemption involving a transaction qualifying for a class exemption will not become effective until sixty (60) days after the Class III acquirer has certified its compliance with the foregoing posting and advanced notice requirements. *Id.*

The Labor Notice serves two purposes: (1) to permit the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) to permit affected railroad

employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *See Acquisition of R.R. Lines under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting this rule, the Board indicated it would entertain waivers of the notice requirement in appropriate circumstances. *Id.* at 601.

The Board has historically waived the sixty (60)-day notice requirement where the transaction at issue extends arrangements the Board has authorized previously, the effect of which would be to continue the operational and labor *status quo*. *See, e.g., Dak., Mo. Valley & W. R.R., Inc. – Lease and Operation Exemption – Soo Line R.R. Co.*, FD 34904 (STB served Jul. 24, 2006) (“*DMV&W*”). The Board requires petitions for such waivers to be reasonable. *See Portland & W. R.R. – Lease and Operation Exemption – Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in *DMV&W*, the Board granted a petition for waiver where, as here, the exemption proceeding applied to the renewal of an existing lease, recognizing in so doing that no railroad labor employees would be affected by the renewal of the lease. “Here, no [Soo Line] employees will be affected because no [Soo Line] employees are currently working on the lines and no [Soo Line] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W* at 2.

Here, the renewal and extension of KAW’s leases maintains the operational and labor *status quo* in effect since KAW assumed operation of the Kearney Lines and the Bedford Lines in 2005 and 2007, respectively. Consequently, extending these leases will not affect any employees of either KAW or BNSF. A waiver of the sixty (60)-day Labor Notice requirement in this case is therefore reasonable. Further, such waivers are consistent with the Board’s historical practice. *See DMV&W* at 2; *see also Ala. S. R.R., Inc. – Lease and Operation Exemption Including Interchange Commitment – Kan. City S. Ry. Co.*, FD 35889 (STB served Jan. 13,

2015), at 2-3 (waiving notice requirement where record indicated waiver would have no adverse effects on any railroad labor employees; where the acquirer's employees would continue maintaining and operating the line; and where none of the transferor's employees worked on the line).

The update and extension of KAW's leases in this case will continue the *status quo* in place since 2005 and 2007. No KAW or BNSF jobs will be "abolished or relocated as a result of the proposed transaction." *See DMV&W* at 2. Further, the update and extension of the leases will have no effect upon any BNSF employees, since there have been no BNSF employees working on the Kearney Lines for the last 19 years, or on the Bedford Line for the last 17 years. Accordingly, no Labor Notice is necessary in either proceeding.

WHEREFORE KAW respectfully petitions the Board to waive the sixty (60)-day labor notice requirements published at 49 C.F.R. § 1150.42(e), for purposes of the current class exemption proceedings only.

Respectfully submitted,

By: /s/**Stephen J. Foland**

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