

SERVICE DATE – MAY 22, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36850

PORTLAND & WESTERN RAILROAD, INC.—
ACQUISITION & OPERATION EXEMPTION—PORT OF TILLAMOOK BAY

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows Portland & Western Railroad, Inc., to acquire from Port of Tillamook Bay and operate approximately 1.01 miles of rail line in Oregon, on or after May 24, 2025.

Decided: May 21, 2025

On April 24, 2025, Portland & Western Railroad, Inc. (PNWR), a Class III railroad, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Port of Tillamook Bay (POTB) and to operate approximately 1.01 miles of rail line near Banks, Or., between milepost 774.0 and milepost 775.01 in Washington County, Or. (the Line).

According to the verified notice, PNWR and POTB entered into a purchase agreement dated April 9, 2025. (Verified Notice 1.) PNWR has incidental overhead trackage rights over a portion of the Line extending from approximately milepost 774.0 to milepost 774.7, which it acquired in connection with the unrelated purchase of a parallel line. See Portland & W. R.R.—Trackage Rts. Exemption—Burlington N. R.R., FD 32765 (ICC served Oct. 13, 1995). PNWR states that, after the transaction, it will operate the Line and will no longer need to exercise the incidental trackage rights. (Verified Notice 2.)

In its verified notice, PNWR certifies that its revenues currently exceed \$5 million. (*Id.* at 3.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require PNWR, at least 60 days before the exemption becomes effective, 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 line, serve a copy of the notice on the national offices of the labor unions with employees on the affected line, and certify to the Board that it has done so. However, the verified notice includes a request for waiver of those notice requirements. (*Id.* 4-6.)

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 of PNWR's exemption was served and published in the Federal Register on May 9, 2025 (90 Fed. Reg. 19,775). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

In its request for waiver, PNWR argues that the labor notice requirements are unnecessary because the proposed transaction would result in no changes for any employees working on the Line. (Verified Notice 5.) According to PNWR, there are no current customers located on the Line and no employees of POTB or its predecessor have worked on the Line since 2007.² (Id. at 2, 5.) PNWR currently operates over the Line pursuant to its incidental overhead trackage rights, and states that it will continue operating over the Line after the transaction. (Id. at 3.) Therefore, PNWR asserts that: (1) no PNWR employees would be affected by the proposed transaction; (2) there would be no operational changes; and (3) no POTB employees would be affected by the transaction. (Id. at 5.) No opposition to this waiver request has been filed.

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. PNWR operates over a portion of the Line pursuant to its incidental overhead trackage rights, and PNWR states that there would be no operational changes or effects on PNWR employees as a result of the transaction. (Verified Notice 2, 5.) Further, PNWR states that there are no current customers located on the Line, POTB does not have railroad employees, and no POTB employees would be affected by the transaction. (Id.)

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, PNWR's acquisition and operation exemption, unless stayed, will become effective on May 24, 2025, the effective date under the Board's rules absent the notice requirement.

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

It is ordered:

1. PNWR's request for waiver is granted.
2. PNWR's exemption will be effective on May 24, 2025, unless stayed.

² PNWR states that, since 2007, "any activity on the Line in Banks [has been] conducted by contract with PNWR in the name, and for and on behalf of POTB." (Verified Notice 5 n.6.)

3. This decision is effective on its date of service.

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