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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36174

FULTON COUNTY RAILWAY, LLC
--LEASE AND OPERATION EXEMPTION--
HGS-FCR, LLC

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

ENTERED
Office of Proceedings
March 22, 2018
Part of
Public Record

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Attorney for:
FULTON COUNTY RAILWAY, LLC

Dated: March 22, 2018

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Fulton County Railway, LLC ("FCR"), a Class III rail carrier, hereby petitions the Surface Transportation Board ("Board") to waive the employee notice requirements of 49 C.F.R. § 1150.42(e).

FCR is filing with the Board a notice of exemption under 49 C.F.R. § 1150.41 to permit FCR to continue to lease and operate approximately 55 miles of rail lines located in Atlanta, Georgia. FCR leased the Lines from CSXT Transportation, Inc. ("CSX") in 2004 and since that time has been the sole operator over the rail lines. *See* STB Finance Docket No. 34542, *Fulton County Railway, LLC – Lease and Operation Exemption -- CSX Transportation, Inc.* (not printed) served October 14, 2004. HGS-FCR, LLC ("HGS-FCR") will shortly enter into an agreement to acquire the rail lines from CSX. As part of that transaction, CSX will assign the lease of the rail lines by FCR to HGS-FCR.

In addition, FCR has performed all of the maintenance on the lines since 2004.

FCR's current revenues exceed \$5 million thus invoking the employee notice requirements of Section 1150.42(e). The purpose underlying the notice requirement, however, would not be thwarted by waiver in this proceeding. The purpose of the notice requirement is to ensure that rail labor unions and employees working on a line being transferred are given adequate notice of the transaction. *See Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592 (1997). In adopting the notice requirement, the Board specifically recognized that "situations may occur necessitating acquirer requests for waiver of the 60-day notice provision...." *Id.* at 601.

Here, labor notice would serve no useful purpose. No CSX employee will be affected by the lease because no CSX employee has performed operations or maintenance on the Lines since 2004. Neither will any FCR employee be affected by the lease because FCR will continue to provide the same service and perform the same maintenance as it has since 2004. Because the transaction will simply transfer the lease agreement from CSX to HGS-FCR, providing advance labor notice would be a futile act. *See STB Finance Docket No. 34660, Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed),

served February 28, 2005; STB Finance Docket No. 34531, *The Indiana Rail Road Company – Acquisition Exemption – Line of Monon Rail Preservation Corporation* (not printed), served November 22, 2004; STB Finance Docket No. 34904, *Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served July 24, 2006.

In summary, FCR respectfully requests that the Board waive the requirements of 49 C.F.R. § 1150.42(e).

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell", written in dark ink. The signature is fluid and stylized, with the first and last names clearly legible.

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