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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36202

BUCKINGHAM BRANCH RAILROAD COMPANY
– CHANGE IN OPERATORS EXEMPTION –
CASSATT MANAGEMENT, LLC d/b/a BAY COAST RAILROAD

**PETITION FOR PARTIAL WAIVER
OF 49 C.F.R. § 1150.42(e)**

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**ATTORNEYS FOR BUCKINGHAM BRANCH
RAILROAD COMPANY**

Dated: June 28, 2018

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BUCKINGHAM BRANCH RAILROAD COMPANY
– CHANGE IN OPERATORS EXEMPTION –
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Buckingham Branch Railroad Company (“BB”), a Class III carrier, concurrent with the filing of a Notice of Exemption (“the Notice”) in the above-captioned matter, hereby petitions for a partial waiver of 49 C.F.R. § 1150.42(e) so that the Notice is effective August 1, 2018. The current carrier over the lines in question, Bay Coast Railroad (“BCR”), has lost three of its four operating employees to voluntary retirement, and ceased to operate over the Delmarva Peninsula,¹ BCR management continues to ensure operations are conducted in and around Norfolk, VA, where it retains responsibility for two residual lines not addressed in the Delmarva Central decision. However, ongoing service by BCR is tenuous at best, and BCR intends to cease operations with the effectiveness of BB’s exemption authority.

The proposed BB operations consist of: (a) a 2.6-mile rail line, owned by Canonic Atlantic Co. (“CAC”) on behalf of the Accomack-Northampton Transportation District Commission (“ANTDC”), extending between milepost 95.0 at Little Creek (Virginia Beach), VA, and milepost 97.6 at Camden Heights (Norfolk), VA (“the Little Creek Line”); and (b) a

¹ Delmarva Central Railroad Co. – Change in Operator Exemption – Cassatt Management, LLC D/B/A Bay Coast Railroad, Docket No. FD 36196 (STB served Jun. 8, 2018) (“Delmarva Central”). The Delmarva Peninsula operation represented the north end of BCR operations; the Notice of Exemption and instant Petition concern the south end, on the Virginia mainland.

4.2-mile line owned by Norfolk Southern Railway Co (“NSR”), extending between milepost SN 6.7 at Diamond Springs (Virginia Beach), VA, to milepost SN 2.5 at Coleman Place (Norfolk), VA (“the North Beach and Diamond Springs Line”) (collectively the Little Creek and Diamond Springs track referred to as “the Lines”). The Lines represent two branches forming a “Y” with an overlapping convergence into the stem at Camden Heights; milepost SN 2.5 at Coleman Place lies west of the convergence. See Notice of Exemption, Exhibit A. BB will also utilize an additional 4 miles of trackage rights to facilitate interchange with NSR at Portlock Yard. CAC, a corporate entity controlled by ANTDC, a political subdivision of the Commonwealth of Virginia, is the owner of the Little Creek Line. BCR received operating rights over the Little Creek Line and the North Beach and Diamond Springs Line, among others, in 2006. Cassatt Management, LLC d/b/a Bay Coast Railroad – Lease and Operation Exemption – Canolie Atlantic Co. on behalf of Accomack-Northampton Transportation District Commission, Docket No. FD 34814 (STB served February 6, 2006).

To ensure no disruption to shippers, BB petitions for partial waiver of the 60-day notice period specified by 49 C.F.R. § 1150.42(e). Because the Labor Notice was posted and certified to the Board on June 13, 2018 (Notice of Exemption, Exhibit D), BB’s exemption authority ordinarily would become effective as of August 12, 2018, pursuant to § 1150.42(e). BB seeks a partial waiver, such that the subject class exemption may become effective on August 1, 2018.

BB and CAC/ANTDC have already commenced discussions regarding BB’s assumption of operations over the Little Creek Line, and the parties have worked diligently to develop and finalize an arrangement that will allow a continuation of rail service on the lines. Similar are underway with NSR regarding the North Beach and Diamond Springs Line. The

remaining management at BCR has cooperated in the process. All of the interested parties—NSR, BCR, CAC, and ANTDC—are agreeable to the proposed transaction, and have consented to the change of operators in the interest of continued common carrier service which BCR is having considerable difficulty providing. Accordingly, BB’s concurrently-filed notice of exemption seeks “change in operators” authority pursuant to 49 C.F.R. § 1150.41(c) for BB’s lease and operation of the lines.

There are six active shippers on the Lines whose service is threatened. BB posted the required notice at the workplace of BCR’s sole-remaining employee, and certified to the Board that it had done so, on June 13, 2018, as soon as was reasonably possible, given the progression of discussions between the parties.² See BB Notice of Exemption, Exhibit D. BB also went further and mailed the notice to each of BCR’s former and current employees at their home residences.³ BB has sought to reflect the spirit of the notice requirement by disseminating the information contemplated by the Board’s regulations to BCR former and current employees as fully, directly, transparently and quickly as possible.

The purpose of the 60-day notice requirement is to ensure that employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997). In adopting that requirement, the Board explicitly recognized “that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time.” 2 S.T.B. at 601.

² The regulation also requires that notice be provided to labor unions with employees on the affected line. BCR’s employees are not represented by a labor union.

³ BCR cooperated in furnishing BB with employee contact information from BCR’s internal records.

Taking into account the June 13, 2018 posting, and the prior labor notification made by Delmarva Central to the same employees, (many of whom have voluntarily retired and through no fault of their own, contributed to the impending necessity for a replacement operator), the effected persons have had ample notice of the potential for a forthcoming change in operators. See Delmarva Central, Docket No. FD 36196 (STB filed May 17, 2018) (certifying the posting of the labor notice with regard to operations on the Delmarva Peninsula).

Moreover, Board precedent supports a modest shortening of the notice period under § 1150.42(e) in order to accommodate a timely initiation of service, eliminate time-gaps, and “protect the interests of affected shippers.” Washington State Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc., Docket No. FD 35024, et al. (STB served May 30, 2007) at 3; see also, e.g., Ohio & Pennsylvania Railroad Company – Lease and Operation Exemption – P&LE Properties, Inc., Docket No. FD 32711 (ICC served June 23, 1995). Partial waiver of the 60-day effectiveness period in the limited, exigent circumstances present here would protect against disruption of rail service on the Lines and is fully consistent with the Rail Transportation Policy of 49 U.S.C. § 10101.

Given the exigent circumstances, and in light of Board precedent permitting waivers in the interest of protecting shippers, BB seeks partial waiver of the 60-day notice period to allow BB’s exemption in this docket to become effective on August 1, 2018. The abrupt and dramatic loss of BCR operating workforce precipitating the crisis is not the fault of the shippers, NSR or BB. There is little value in denying service to the shippers on the Lines for an additional two weeks for the interest of a single employee who, if interested, will receive consideration for employment from Buckingham Branch. This is plainly one of the “exceptional circumstances”

that the Board anticipated when it adopted the current notice rule,⁴ and it is consistent with the recent experience with Delmarva Central. Waiver is appropriate and necessary in these circumstances, and the Board should move expeditiously to allow BB's exemption to become effective on August 1, 2018.

WHEREFORE, BB respectfully requests that the Board waive the 60-day notice period specified by 49 C.F.R. § 1150.42(e) and permit BB's concurrently-filed notice of exemption in this docket to become effective as of August 1, 2018.

Respectfully submitted,

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**ATTORNEYS FOR BUCKINGHAM BRANCH
RAILROAD COMPANY**

Dated: June 28, 2018

⁴ Compare Wisconsin & Southern Railroad Co. – Acquisition Exemption – Iowa, Chicago & Eastern Railroad Corporation, Docket No. FD 34464 (STB served July 30, 2004) (shortening 60-day notice period where actual notice had been given and only a very small number of potentially affected employees would be affected).