

SERVICE DATE – MAY 14, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36282

ALLEGHENY VALLEY RAILROAD COMPANY—ACQUISITION EXEMPTION
—LINES OF CSX TRANSPORTATION, INC.

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

Digest:¹ This decision waives, in part, a 60-day advance notice requirement to permit Allegheny Valley Railroad Company to acquire certain rail lines owned by CSX Transportation, Inc., in and around Pittsburgh, Pa., on or after May 15, 2019.

Decided: May 13, 2019

On April 15, 2019, Allegheny Valley Railroad Company (AVR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from CSX Transportation, Inc. (CSXT), approximately 47.5 miles of rail line in and around Pittsburgh, Pa. (the Lines), and to amend and extend certain related incidental trackage rights. Notice of the exemption was served and published in the Federal Register on May 1, 2019 (84 Fed. Reg. 18,629).

Under 49 C.F.R. § 1150.42(e), if the projected annual revenue of rail lines to be acquired, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the carrier must, at least 60 days before the exemption becomes effective, post a notice of the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions representing the employees, and certify to the Board that it has done so. AVR filed its § 1150.29(e) certification on April 11, 2019. Accordingly, unless § 1150.29(e) is waived, AVR's exemption would not take effect until June 10, 2019. However, with its verified notice, AVR filed a petition requesting that the Board waive, in part, the 60-day employee notice requirement and permit the exemption to take effect on May 15, 2019. No opposition to this waiver request has been filed.

BACKGROUND

Pursuant to its verified notice of exemption, AVR seeks to acquire from CSXT the Lines, which consist of: (1) the W&P Sub from milepost BO 5.00 at Glenwood Junction in Pittsburgh,

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

to milepost BO 38.14 in Washington, Pa., a distance of approximately 33.14 miles; (2) the Tylerdale Connecting Track from the connection with the W&P Sub at milepost BOA 0.0 to milepost BOA 0.83 in Washington, a distance of approximately 0.83 miles; (3) the P&W Sub No. 2 Main from milepost BF 322.8 at Glenwood Junction to milepost BF 326.3 at East Schenley in Pittsburgh, a distance of approximately 3.5 miles; (4) the P&W Sub from milepost BG 1.0 at Field in Pittsburgh to milepost BG 10.4 in Glenshaw, Pa., a distance of approximately 9.4 miles; (5) the River Branch from station 6+50 near 41st Street to station 40+94 near 33rd Street in Pittsburgh, including the ramp connection to the P&W Sub at 33rd Street, a distance of approximately 0.65 miles; and (6) portions of CSXT's Glenwood Yard extending generally from Glenwood Junction to Laughlin Junction in Pittsburgh.² (Notice 3-4.)

In its petition for partial waiver, AVR states that the transaction will not result in changes to AVR's existing rail service and operations on the Lines, which AVR has operated pursuant to lease for more than 15 years. (Pet. 1.) AVR argues that, because there are no CSXT employees on the affected Lines and AVR's own employees will not be affected by AVR's change from a lessee to an owner, allowing the proposed transaction to proceed upon 34 days' notice fully satisfies the purpose of 49 C.F.R. § 1150.42(e) in this context. (Id.) AVR therefore requests a waiver so that the authority it seeks in its exemption notice can become effective on May 15, 2019. (Id. at 4.)

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. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested partial waiver is granted in this case.

The record indicates that no employees would be adversely affected by a partial waiver of the requirements here. According to AVR, the proposed acquisition will not change the rail service that AVR currently provides or have any effect on AVR's own employees.³ (Pet. 2.) AVR has leased and provided all rail freight service on the Lines since 2003 (and, with respect to one short segment of trackage, since 2001). (Id.) Allegheny Valley R.R.—Lease, Operation &

² In connection with the proposed acquisition transaction, AVR also will amend, restate, and extend the agreement governing its existing overhead and limited local trackage rights over CSXT's rail line between milepost BF 326.3 at East Schenley and milepost BG 1.0 at Field in Pittsburgh. (Notice 4-5.) The verified notice states that these incidental trackage rights connect the third and fourth line segments listed above and are authorized in conjunction with the underlying acquisition transaction pursuant to 49 C.F.R. § 1150.41(d). (Id. at 5.)

³ AVR states that its employees are not represented by any labor union. (Notice 6 n.3; Pet. 2 n.1.)

Trackage Rights Exemption—Lines of CSX Transp., Inc., FD 34431 (STB served Nov. 26, 2003); Allegheny Valley R.R.—Lease & Operation Exemption—Line of CSX Transp., Inc., FD 34095 (STB served Sept. 27, 2001). Moreover, no CSXT employees would be affected, because CSXT has not provided rail service or conducted maintenance on the Lines for more than 15 years, and no CSXT employees work on the Lines. (Pet. 2.)

Because no employees would be adversely affected by the requested partial waiver of the 60-day notice period, the waiver request will be granted, and the related acquisition exemption will become effective on May 15, 2019, unless stayed. See, e.g., N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—Lease Amendment & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252 (STB served Dec. 14, 2018).

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

It is ordered:

1. AVR's request for waiver is granted, and the exemption authority to acquire the Lines will be effective on May 15, 2019, unless stayed.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.