

ORIGINAL

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November 12, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423



RE: Finance Docket No. 34213, *Puget Sound & Pacific Railroad—
Lease and Operation Exemption—Union Pacific Railroad Company*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Petition for Waiver of 49 CFR § 1150.42(e) and three diskettes with the file Petition.doc. Please time and date stamp the extra copy of this letter and the Petition and return them with our messenger.

If you have any questions, please contact me.

Sincerely yours

A handwritten signature in black ink, appearing to read "Louis E. Gitomer".

Louis E. Gitomer
Attorney for Puget Sound & Pacific
Railroad

Enclosures

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Public Record

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34213



PUGET SOUND & PACIFIC RAILROAD—LEASE AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

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

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Attorneys for: Puget Sound & Pacific Railroad

Dated: November 12, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34213



PUGET SOUND & PACIFIC RAILROAD—LEASE AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

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

Puget Sound & Pacific Railroad ("PSPR"), a Class III rail carrier, files this Petition for Waiver of the requirements of 49 C.F.R. § 1150.42(e) that PSPR "at least 60 days before the exemption becomes effective ... certify to the Board that it has done so."

PSPR intends to lease and operate from Union Pacific Railroad Company ("UP") the 1.85-mile railroad line between Blakeslee Junction, WA, milepost 2.41, and Raisch, WA, milepost 4.26, at the end of the line (the "Line").

Section 1150.42(e) applies to the proposed transaction because PSPR projects that it will generate gross revenues slightly in excess of \$5 million in 2002, even though the lease of the Line from UP is projected to add only about \$50,000 annually to PSPR's revenue.

On October 2, 2002, PSPR posted notice of its intent to undertake the proposed transaction at the workplace of the employees on the Line and served a copy of the notice on the national offices of the labor unions with employees on the Line, setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and describing the line to be transferred in accord with 49 C.F.R. § 1150.42(e). However, PSPR failed to certify such compliance to the Board until November 8, 2002. An

internal communication problem at PSPR resulted in the failure of PSPR to make the certification at the same time it posted and served the notices. Hence, PSPR seeks waiver of 49 C.F.R. § 1150.42(e) insofar as it relates to certifying to the board compliance with the requirements of posting and service at least 60 days prior to closing.

In proposing the 60-day notice in 49 CFR § 1150.42(e), the Board stated "These employees are faced at a minimum with having to decide whether to accept a position on the acquiring entity or to exercise seniority on the carrier that is selling, leasing or otherwise transferring the line. In either case employees are faced with significant changes in their work assignments." *Acquisition of Rail Lines under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions*, STB Ex Parte No. 562 (STB served May 1, 1997). When the Board adopted the 60-day notice, it reasoned that "employees on the lines that have been sold are forced to make career choices -- such as whether they will accept employment on the new carrier or retain whatever rights they have to exercise seniority or later be reemployed on the seller's lines -- in a very short period of time." *Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice*, 2 S.T.B. 592, 597 (1997) ("*Advance Notice*"). Another rationale advanced by the Board in adopting the 60-day notice was that "new carriers buying or leasing lines often extend offers of employment to employees working on the lines acquired, and we have no reason to believe that this practice will not continue. Employees affected by those transactions will often have to choose whether or not to accept employment with the new carrier. In addition, employees in section 10901 transactions will, in many instances, have to move to new positions on their present employer or may have to seek new employment altogether. Under the circumstances, to facilitate the implementation of these transactions, we find that 60-days' advance notice involving larger transactions would assist employees who are confronted with

major adjustments and decisions relating to their livelihoods. We believe that, especially since employees are not accorded any statutory protection from the effects of the transaction except where the purchase is by a Class II carrier, 60 days' notice is a reasonable period of time in which directly affected employees may be asked to make decisions or take actions." *Id.*, at 599.

The lease and operation of the Line by PSPR is neither a larger transaction in that it involves a 1.85-mile line generating about \$50,000 per year in revenue, nor are employees being asked to choose whether to accept employment with a new railroad or not.

Here, no interested party, including employees and their unions, would be adversely affected by waiving the 60-day certification rule. Indeed, the notice offered no new jobs on PSPR and stated "it is not anticipated there will be any effect on UP employees." The employees and their unions were notified on October 2, 2002, 60 days prior to the planned closing on December 1, 2002. However, the certification to the Board was not made. In a decision waiving the requirement that posting and service be certified to the Board 60 days in advance of closing, the Board stated "The purpose of 49 CFR 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." *Arkansas and Missouri Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33843 (STB served June 29, 2000), at 3. The Board concluded "Because it appears that A&M has already provided much more than 60 days' actual notice to affected employees and their unions, we will accept A&M's June 8 certification to the Board, grant the waiver request, and waive the remainder of the 60-day requirement, as measured from the certification date to the Board, under 49 CFR 1150.42(e) with respect to this transaction. Granting the waiver request will have the

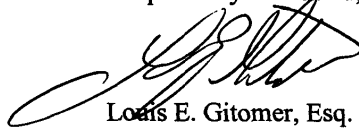
effect of making the exemption for the lease and operation transaction in this proceeding effective on the service date of this decision.” *Id.*

PSPR contends that this is the type of situation the Board contemplated when it said “We recognize 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.” *Advance Notice*, at 601. Indeed, in a very similar proceeding, the Board concluded “The purpose of 49 CFR 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. Belt Line has provided sufficient notice under the circumstances in this case. Therefore, we will accept Belt Line’s October 23 certification to the Board and will waive the remainder of the 60-day requirement under 49 CFR 1150.42(e).” *Belt Line Division of Tacoma Public Utilities--Operation Exemption--in Pierce, Thurston and Lewis Counties, WA [Request for Waiver of 49 CFR 1150.42(e)]*, STB Finance Docket No. 33666 (STB served October 30, 1998). See *Wisconsin & Southern Railroad Co.--Lease and Operation Exemption--Soo Line Railroad Company d/b/a Canadian Pacific Railway [Request for Waiver of 49 CFR 1150.42(e)]*, STB Finance Docket No. 33571 (STB served May 27, 1998); and *The Canadian American Railroad Company--Acquisition and Operation Exemption--Green Mountain Railroad Corporation [Request for Waiver of 49 CFR 1150.42(e)]*, STB Finance Docket No. 33934 (STB served October 10, 2000).

PSPR respectfully requests that the Board waive the 60-day notice requirement of 49 CFR 1150.42(e) and allow it to consummate the lease and operation of the Line on or after (1) the date of service of the waiver decision or (2) December 1, 2002, whichever is later.

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



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