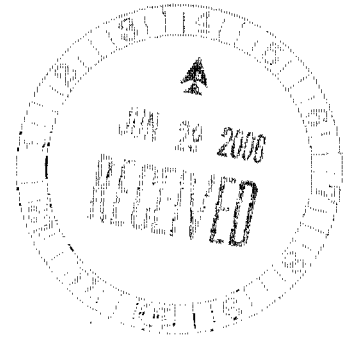


EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD



216890

FINANCE DOCKET NO. 34904

DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.
-- LEASE AND OPERATION EXEMPTION --
SOO LINE RAILROAD COMPANY

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

ENTERED
Office of Proceedings

JUN 29 2006

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Public Record

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**ATTORNEYS FOR DAKOTA, MISSOURI
VALLEY & WESTERN RAILROAD, INC.**

Dated: June 29, 2006

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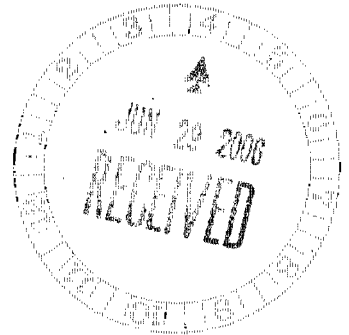
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DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.
-- LEASE AND OPERATION EXEMPTION --
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**PETITION FOR WAIVER
OF
49 C.F.R. § 1150.42(E)**

Dakota, Missouri Valley and Western Railroad, Inc. ("DMVW"), a class III rail carrier, hereby files this Petition for Waiver of the 60-day notice period set forth in 49 C.F.R. § 1150.42(e). DMVW is filing concurrently herewith a Verified Notice of Exemption under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 *et. seq.* to lease and operate certain lines of railroad currently owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway Company ("CPR") and operated by DMVW pursuant to an existing lease arrangement that will be supplemented and extended by a renewed lease arrangement between CPR and DMVW.¹ DMVW's annual revenues from operating the Subject Lines and its other properties exceed \$5 million. However, for the reasons set forth below, DMVW seeks waiver of the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e) because no purpose will be served by imposing that notice requirement on DMVW in connection with the transaction in this proceeding.

¹ Those lines of railroad extend generally as follows: (1) the line of railroad between Hankinson and Moffit, North Dakota; (2) the line of railroad between Bismarck and Max, North Dakota; and (3) the line of railroad between Flaxton, North Dakota and Whitetail, Montana (collectively, and as further described in the Verified Notice of Exemption filed by DMVW in this proceeding, the "Subject Lines").



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Background

DMVW currently leases and operates the Subject Lines pursuant to a Lease Agreement with CPR that was originally executed in 1990² and supplemented in 1996 and 1999.³ Pursuant to a Renewed Lease Lines Agreement (“Renewed Lease Agreement”) to be entered into shortly between DMVW and CPR, the lease and operation of the Subject Lines by DMVW will be extended through June 30, 2026 and certain other terms and conditions of the lease arrangement will be amended and supplemented primarily as a result of planned capital improvements by DMVW to a portion of the Subject Lines.

The Renewed Lease Agreement will not result in any significant operational changes on the Subject Lines. The Subject Lines will continue to be leased and operated by DMVW, and DMVW does not plan to hire any additional employees as a result of the planned renewal and amendment of the lease arrangement. In addition, there are no CPR employees that currently work on the Subject Lines, DMVW is not expanding the geographic scope of its lease under the proposed transaction, and no CPR jobs will be created, abolished or relocated as a result of the proposed extension and renewal of the lease arrangement. Therefore, DMVW believes that no purpose would be served by requiring it to comply with the 60-day notice requirement.

Argument

The 60-day notice requirement set forth at 49 C.F.R. § 1150.42(e) was adopted by the Board in 1997 in order to provide affected employees of the selling rail carrier in a proposed transaction under 49 U.S.C. § 10902 (and the national offices of their collective bargaining representatives) with advance notice of a proposed acquisition by the Class III rail carrier in

² See Dakota, Missouri Valley and Western Railroad, Inc.--Lease and Operation Exemption--Soo Line Railroad Company, Finance Docket No. 31720 (ICC served Sept. 19, 1990).

³ See Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company, Finance Docket No. 32825 (STB served Mar. 27, 1996); Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Canadian Pacific Railway, Finance Docket No. 33742 (STB served May 26, 1999).

EXPEDITED CONSIDERATION REQUESTED

order to make “adjustments and decisions relating to their livelihoods.” Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served Sept. 9, 1997)(“Ex Parte 562”).

The Board has indicated that it will entertain requests for waiver of the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e) and the similar requirement under 49 C.F.R. § 1150.32(e) under the appropriate circumstances. See, e.g., Lake Michigan & Indiana Railroad Company LLC – Acquisition and Operation Exemption – Keystone Railroad, Inc., Finance Docket No. 34140 (STB served Dec. 27, 2001) (granting waiver of 60-day notice requirement where record reflected no adverse effect on personnel of rail carrier that was acquired by applicant); see also Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc., Finance Docket No. 34660 (STB served Feb. 28, 2005); Lancaster and Chester Railway Company—Acquisition and Operation Exemption – Norfolk Southern Railway Company, Finance Docket No. 34334 (STB served April 28, 2003).

DMVW respectfully submits that the waiver of the 60-day notice period sought herein is justified under the circumstances because the waiver will not have any adverse effect on CPR employees. DMVW will continue to be the lessee and operator of the Subject Lines, no jobs will be created, abolished or relocated as a result of the proposed transaction, and therefore no purpose would be served by the posting of the 60-day labor notice. Moreover, DMVW does not believe that it is possible to comply with the posting requirement because no CPR employees currently work on the Subject Lines. Thus, there is no workplace to post any notice and no labor unions to be notified. Therefore, DMVW believes that waiver of the notice requirement is justified in this proceeding and seeks expedited consideration of this waiver request for the reasons set forth herein.

EXPEDITED CONSIDERATION REQUESTED

A. **The Waiver Sought Herein Will Not Have Any Adverse Effect on CPR Employees**

The waiver sought herein by DMVW will not have any adverse effect on CPR employees because none of those employees work on the Subject Lines. Moreover, no CPR employees will be affected by the proposed transaction, as no jobs will become available, abolished or relocated as a result of the proposed transaction. Furthermore, there is no reason to provide CPR employees or the local communities with an additional 60 days notice of the proposed transaction because DMVW has leased and operated the Subject Lines since the 1990's under existing lease arrangements that were the subject of the exemption proceedings in ICC Finance Docket No. 31720, STB Finance Docket No. 32825 and STB Finance Docket No. 33742.

The Board has granted waivers of comparable 60-day notice requirements for similar reasons. See, e.g., Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA, Finance Docket No. 33666 (STB served Oct. 30, 1998)(granting waiver request where petitioner argued, *inter alia*, that the proposed transaction was well known throughout the local community and to existing employees).

The primary purpose of 49 C.F.R. § 1150.42(e) is “to ensure that rail labor unions and employees who would be affected (especially through job loss) by the transfer of a line are given sufficient notice of the transaction before consummation.” Puget Sound & Pacific Railroad – Lease and Operation Exemption – Union Pacific Railroad Company, Finance Docket No. 34213 (STB served Dec. 6, 2002). The instant proceeding does not involve the transfer of a line from one carrier to another that may result in job losses by the employees of the incumbent carrier. Instead, the instant proceeding involves DMVW's continued lease and operation of lines owned by CPR that DMVW has been leasing and operating since the 1990's pursuant to ICC and STB

EXPEDITED CONSIDERATION REQUESTED

authority. The Renewed Lease Agreement does not expand the geographic scope of the lines that DMVW will continue to lease and operate.

As a result, there are no affected CPR employees in this case that might be evaluating a choice between remaining with their current employer or seeking employment with DMVW, a decision which otherwise might require the 60-day notice period. See Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions, Ex Parte 562 (STB served May 1, 1997)(in explaining rationale for the proposed 60-day rule, the STB specifically noted that “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.”) As previously stated, no new jobs will be created, abolished or relocated by the proposed transaction. Therefore, no purpose would be served by imposing the 60-day notice requirement on DMVW.

B. The Waiver Sought Herein Will Promote the Public Interest and Is Not Inconsistent With The Purpose of the 60-Day Notice Requirement

DMVW respectfully submits that the granting of the requested waiver of the 60-day notice period would be in the public interest. The delay occasioned by the 60-day notice period would simply prolong the effective date of the lease and operation of the Subject Lines under the terms of the Renewed Lease Agreement, without providing any benefit to any CPR employees. DMVW and CPR are actively negotiating and expect to finalize the Renewed Lease Agreement in the very near future. The parties would like to implement its terms and conditions as soon as possible so that DMVW can obtain financing for its planned capital improvements.

The Renewed Lease Agreement will promote the public interest by enhancing DMVW's ability to obtain financing for the significant capital improvements that it plans to make on the portion of the Subject Lines between Fullerton and Moffit, North Dakota and between Bismarck

EXPEDITED CONSIDERATION REQUESTED

and Coal Creek, North Dakota, a cumulative distance of over 150 miles. This is a lightly used segment of track that will be upgraded to handle additional traffic, including the anticipated shipment of significant volumes of corn by DMVW to the Blue Flint Ethanol Plant at Coal Creek on the Subject Lines. The lease arrangement between DMVW and CPR is being renewed and certain other terms and conditions are being amended and supplemented primarily to account for DMVW's planned capital expenditures.

In other contexts, the Board has granted waivers of comparable 60-day notice requirements for similar reasons. See, e.g., Minnesota Commercial Railway Company -- Lease and Operation Exemption – Canadian Pacific Railway Company, Finance Docket No. 33675 (STB served Oct. 20, 1998)(granting partial waiver of 60-day notice requirement where delay in transaction would create traffic delays and congestion and petitioner could not afford to carry employee training costs and capital investments for the acquisition without creating a major cash flow crisis). DMVW believes that the circumstances here similarly warrant a waiver of the 60-day notice requirement, particularly since no jobs will be made available to CPR employees as a result of the proposed transaction that is the subject of this proceeding. See Reading Blue Mountain and Northern Railroad Company – Operation Exemption – Locust Valley Line, Finance Docket No. 34785 (STB served Jan. 10, 2006)(granting waiver where no employees would be affected by the transaction).

It is in the interest of both DMVW and CPR, their employees and the shipping public to put the Renewed Lease Agreement into place as soon as possible so that DMVW can secure its financing commitments and begin making the planned capital improvements to the Subject Lines. DMVW's ability to secure bank financing for those capital improvements is dependent on the extension of the lease arrangement with CPR through 2026. In addition, DMVW's

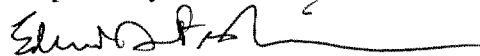
EXPEDITED CONSIDERATION REQUESTED

ability to secure customer commitments to use the track that it plans to upgrade is dependent on finalizing its renewed and supplement lease terms with CPR. Therefore, DMVW respectfully requests expedited consideration of this waiver request so that the benefits of the extended, renewed and supplemented lease arrangement between DMVW and CPR can be realized as quickly as possible.

Conclusion

For the foregoing reasons, DMVW respectfully seeks a waiver from the 60-day notice period set forth in 49 C.F.R. § 1150.42(e) in order to consummate its lease and operation of the Subject Lines seven (7) days after filing its Verified Notice of Exemption or as soon thereafter as possible. DMVW seeks expedited consideration of this request so that the benefits of the Renewed Lease Agreement can be realized by the parties and the shipping public once DMVW's Notice of Exemption in this proceeding becomes effective.

Respectfully submitted,



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June 29, 2006