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SERVICE DATE - OCTOBER 10, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33934

THE CANADIAN AMERICAN RAILROAD COMPANY—  
ACQUISITION AND OPERATION EXEMPTION—  
GREEN MOUNTAIN RAILROAD CORPORATION

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: October 6, 2000

By motion filed September 19, 2000, The Canadian American Railroad Company (CDAC) seeks waiver of the requirements of 49 CFR 1150.42(e), to permit the exemption it is seeking in this proceeding to become effective without awaiting the expiration of the full 60-day notice period measured from the date of certification to the Board as established in section 1150.42(e) (certification).<sup>1</sup> The motion will be granted.

On September 19, 2000, CDAC, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 (notice) to acquire and operate Green Mountain Railroad Company's (GMRC) exclusive freight railroad operations easement (easement) over approximately 40.3 route miles of rail line (line) owned by the State of Vermont (State).<sup>2</sup> The

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<sup>1</sup> Under 49 CFR 1150.42(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

On September 18, 2000, CDAC certified to the Board that, on September 15, 2000, it had posted the notice required by 49 CFR 1150.42(e) but that, because no employees on the affected line are represented by a labor organization, no notice to labor organizations was required.

<sup>2</sup> According to the motion, the State, pursuant to the easement and an operating agreement between the State and GMRC, has the power to cause GMRC to convey the easement to CDAC. CDAC acquired the easement from GMRC pursuant to an agreement between CDAC  
(continued...)

line extends from White River Jct., VT, to Wells River, VT, between milepost 123.2 and milepost 163.5.

In its motion, CDAC requests that the Board waive the 60-day notice period and permit the transaction to be consummated no sooner than 10 days after its certification to the Board, or September 28, 2000. CDAC states that no employees of GMRC who work on the line will be adversely affected by the conveyance of the easement from GMRC to CDAC.<sup>3</sup> CDAC further states that it is not planning to hire any additional employees to operate and maintain the line but that it will use Vermont-based CDAC employees. Thus, CDAC notes that GMRC employees who work on the line will not have the option of working for CDAC on the line but may remain with their current employer who intends to retain them. CDAC has also submitted letters supporting the waiver request from the United Transportation Union, Northern District and New England Lines, and from the Brotherhood of Maintenance of Way Employees, Northeastern System Federation, as representatives of CDAC employees.

As additional support for granting the motion, CDAC indicates that the line is in very poor physical condition and can be operated only as excepted track. CDAC further indicates that it has customers who desire immediate service on the line and that it is essential that CDAC be able to perform some urgently needed maintenance before the onset of cold weather conditions in northern Vermont, which can be expected to occur by mid-November. CDAC argues that the 60-day notice requirement in this transaction simply delays the use of the line by willing and able shippers and delays the commencement of rehabilitation work on the line.

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.<sup>4</sup> While we ordinarily do not grant waivers of the employee notice requirement, the record here reflects that there will be no job loss on GMRC, that notice has been provided to GMRC employees as of September 15, 2000, that there is union support for the waiver, and that

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<sup>2</sup>(...continued)  
and the State signed on September 14, 2000.

<sup>3</sup> Attached to the motion was a letter from the State's Agency of Transportation to CDAC's representative, dated September 14, 2000, supporting CDAC's request to reduce from 60 days to 10 days the notice period required under 49 CFR 1150.42(e), and reiterating CDAC's statement that no GMRC employees who work on the line will be adversely affected. A letter from GMRC's President to CDAC's representative, dated September 14, 2000, confirming that the conveyance of the easement over the line from GMRC to CDAC would not result in loss of employment to any existing GMRC employees on the line, was also attached to the motion.

<sup>4</sup> See Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions, STB Ex Parte No. 562 (STB served Sept. 9, 1997).

waiver would permit needed maintenance to occur before winter.<sup>5</sup> Given these unusual circumstances, we will accept CDAC's September 18 certification to the Board, grant the waiver request, and waive the remainder of the 60-day requirement 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 acquisition and operation transaction in this proceeding effective on the service date of this decision.

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

It is ordered:

1. CDAC's motion is granted to the extent described above.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

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<sup>5</sup> No opposition to the motion has been filed at the Board.