

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36022

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240480

FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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STB DOCKET NO. FD 36024

FINGER LAKES RAILWAY CORP.
– SUBLEASE AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)**

(Expedited Consideration Requested)



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Dated: April 12, 2016

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**REQUEST FOR WAIVER OF
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Finger Lakes Railway Corp. (“FGLK”) has filed a joint Notice of Exemption (the “Notice of Exemption”) to acquire and continue to operate in STB Docket No. FD 36022, and to sublease and continue to operate in STB Docket No. 36024, the Rail Lines described in the Notice of Exemption.¹ FGLK is a Class III carrier with annual revenues in excess of \$5,000,000. Accordingly, under the Board’s regulations at 49 C.F.R. §1150.42(e), FGLK would be required to give sixty days’ notice to employees working on the Rail Lines unless the waiver requested herein is granted.²

The Board has held: “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 Division of Tacoma Public Utilities –*

¹ The Notice of Exemption also includes the an exemption request by Seneca County Industrial Development Agency (the “Agency”) in STB Docket No. FD 36023 to lease the Rail Lines from FGLK.

² The regulations also require that notice be given to the national offices of their collective bargaining representatives; however, FGLK’s employees are not organized.

Operation Exemption – In Pierce, Thurston and Lewis Counties, WA, STB Finance Docket No. 33666 (served October 30, 1998) at 2. *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions (“Advanced Notice of Proposed Transactions”)*, 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, FGLK should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Lines. As explained in the Notice of Exemption, FGLK already operates the Rail Lines, and has been the sole common carrier operator of the Rail Lines since 1995. The underlying transactions merely extend the term of the related PILOT program, and make other minor changes in the existing lease, and FGLK will continue to be the sole common carrier operator of the Rail Lines. There is no “transferring carrier” in this transaction.³ Further, there will be no operational changes arising from the transactions, and no employees of FGLK will be affected. Thus, under the circumstances of these transactions, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting FGLK a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements

³ The original transferring carrier to FGLK in 1995 was Consolidated Rail Corporation (“Conrail”), which has since been split, and which no longer operates in the area. No employees of Conrail or its successors have worked on the Rail Lines since before 1995, and there are no employees of Conrail or its successors who will be affected or have to make any career choices as a result of the transactions. Posting notices on the Rail Lines would not provide notice to any employees of Conrail or its successors since none work on the Rail Lines. Moreover, FGLK is reacquiring title to the Rail Lines from the Agency which has held nominal title, is leasing them to the Agency for the purposes of extending the PILOT program, and then subleasing the Rail Lines back from the Agency. The Agency has filed a motion to dismiss requesting that the Board find that it will not be a carrier as a result of the transactions. *See* the motion to dismiss being filed simultaneously in *Seneca County Industrial Development Agency –Lease Acquisition Exemption –Finger Lakes Railway Corp.*, STB Docket No. FD 36023.

when a common carrier has filed to extend a lease it was previously leasing and will remain as the common carrier operator on the line. *See, e.g., Southwestern Railroad, Inc. – Lease and Operations Exemption – BNSF Railway Company*, STB Docket No. FD 35855 (served October 15, 2014); *Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company - Lease Exemption Containing Interchange Commitment - Norfolk Southern Railway Company*, STB Docket No. FD 35841 (served July 11, 2014); *New Orleans & Gulf Coast Railway Company, Inc. - Lease Exemption Containing Interchange Commitment - Union Pacific Railroad Company*, STB Docket No. FD 35777 (served December 12, 2013); *Puget Sound & Pacific Railroad Company - Lease Exemption - The United States of America*, STB Docket No. FD 35714 (served February 22, 2013).

FGLK asks that the waiver of the labor notice requirements be granted expeditiously so that the Notice of Exemption can become effective as scheduled, 30 days after it was filed.

Conclusion

Accordingly, FGLK requests that the Board grant the waiver in time to be effective at the same time as the Notice of Exemption.

Respectfully submitted,


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