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SERVICE DATE – LATE RELEASE JULY 24, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34904

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

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

Decided: July 24, 2006

We are granting the petition of Dakota, Missouri Valley and Western Railroad, Inc. (DMVW) for waiver of the requirement of 49 CFR 1150.42(e)<sup>1</sup> that 60 days' notice be given to employees who may be affected by DMVW's planned lease and operation of approximately 386 miles of rail line currently owned by Soo Line Railroad Company, d/b/a Canadian Pacific Railway Company (CPR), in North Dakota and Montana. DMVW currently leases and operates the subject lines pursuant to a lease agreement with CPR that was originally executed in 1990<sup>2</sup> and supplemented in 1996 and 1999.<sup>3</sup> Pursuant to a Renewed Lease Lines 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

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<sup>1</sup> Under 49 CFR 1150.42(e), "If the projected annual revenue of the rail lines to 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."

<sup>2</sup> 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).

<sup>3</sup> See Dakota, Missouri Valley and Western Railroad, Inc.—Lease an 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).

arrangement will be amended and supplemented primarily as a result of planned capital improvements by DMVW to a portion of the subject lines.

On June 29, 2006, DMVW, a Class III rail carrier, simultaneously filed a verified notice of exemption under 49 CFR 1150.41 to extend, renew and supplement the arrangement governing its lease and operation of the subject lines.

DMVW requests waiver of our requirement at 49 CFR 1150.42(e) to permit the exemption it is seeking in this proceeding to become effective without providing the 60-day advance notice to employees on the affected rail lines and to the national offices of labor unions of those employees. In support of its request, petitioner argues that the renewed lease agreement will not result in any significant operational changes, that the subject lines will continue to be leased and operated by it, and that it does not plan to hire any additional employees as a result of the planned renewal and amendment of the lease arrangement. DMVW adds that there are no CPR employees that currently work on the subject lines, that it is not expanding the geographic scope of its lease under the proposed transaction, and that no CPR employees will be affected as no CPR jobs will be created, abolished or relocated as a result of the proposed extension and renewal of the lease arrangement. Therefore, DMVW maintains that no purpose would be served by requiring it to comply with the 60-day notice requirement.

There is no opposition to this petition.

The purpose of our notice requirement at 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> The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirement will be thwarted by the requested waiver in this situation. Here, no CPR employees will be affected because no CPR employees are currently working on the lines and no CPR jobs will become available, abolished or relocated as a result of the proposed transaction. While we ordinarily do not grant waivers of the employee notice requirement, the record here reflects that there will be no adverse impact on the personnel of CPR. Accordingly, we will grant the waiver request, and waive the 60-day notice requirements under 49 CFR 1150.42(e) with respect to this transaction. As a result, the exemption in this proceeding will become effective upon service of this decision granting the waiver request.

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

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<sup>4</sup> See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

It is ordered:

1. DMVW's request for waiver is granted.
2. This decision is effective on its service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary