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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35777]

New Orleans & Gulf Coast Railway Company, Inc.—Lease Exemption Containing
Interchange Commitment—Union Pacific Railroad Company

New Orleans & Gulf Coast Railway Company, Inc. (NOGC), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to continue to lease from Union Pacific Railroad Company (UP) and operate approximately 11.52 miles of rail line. The line consists of 7.02 miles of UP's main line located between milepost 0.98 at Goldsboro, La., and milepost 8.00 near Westwego, La., and the 4.5-mile Hooper Spur extending from Harvey Yard, at Harvey, La., south to the end of the spur at Bayou Street.¹

NOGC and UP have recently entered into a First Supplement to their 2003 Lease Agreement that adds the following new provisions: (1) the lease term is extended from September 24, 2013, to September 23, 2023 (Section 1); (2) NOGC is permitted to construct a new yard on the leased premises (Section 2); and (3) NOGC is permitted to assess a surcharge on all NOGC traffic in order to undertake capital investments (Section 3).

¹ NOGC was granted authority to lease and operate the rail line in New Orleans & Gulf Coast Railway—Lease Exemption—Union Pacific Railroad, FD 34411 (STB served Oct. 20, 2003).

NOGC has certified that the Lease Agreement contains a provision that may limit future interchange at Westwego with a third-party connecting carrier by adjustment in the purchase price or rental (interchange commitment). Consequently, the Board's new rules established in Information Required in Notices and Petitions Containing Interchange Commitments, EP 714 (STB served Sept. 5, 2013), require applicant to submit the additional information set forth at 49 C.F.R. § 1150.43(h)(1). Applicant has provided that information.²

NOGC has certified that its projected annual revenues as a result of this transaction will not result in NOGC's becoming a Class II or Class I rail carrier, but that its projected annual revenues will exceed \$5 million. Accordingly, NOGC is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 C.F.R. § 1150.42(e).

NOGC, concurrently with its notice of exemption, filed a petition for waiver of the 60-day advance labor notice requirement under § 1150.42(e), asserting that: (1) no UP employees will be affected because no UP employees have performed operations or maintenance on the line since 2003; and (2) no NOGC employees will be affected

² Regarding § 1150.43(h)(1)(vi), NOGC states that, although there is no direct connection to a third-party railroad, BNSF Railway Company and the New Orleans Public Belt are located in very close proximity to the leased lines.

because NOGC will continue to provide the same service and maintenance on the line as it has been providing since the inception of the lease. NOGC's waiver request will be addressed in a separate decision.

NOGC states that it intends to consummate the transaction on or shortly after the effective date of this transaction. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 5, 2013.

An original and 10 copies of all pleadings, referring to Docket No. FD 35777, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth St., N.W., Washington, DC 20005.

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Decided: November 21, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.