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SERVICE DATE - NOVEMBER 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34423

M & B RAILROAD, L.L.C.—ACQUISITION AND OPERATION EXEMPTION—
CSX TRANSPORTATION, INC.

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

Decided: October 31, 2003

By petition filed on October 24, 2003, the M & B Railroad, L.L.C. (MNBR) seeks a waiver of the requirements of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking in this proceeding to become effective without awaiting the expiration of the 60-day notice period, measured from the date of certification to the Board, specified in section 1150.42(e). The waiver request will be granted.

On October 21, 2003, MNBR, a Class III rail carrier, filed a verified notice of exemption (verified notice) under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT) and operate two segments of rail line. The first segment extends 30.22 miles from milepost XXB 189.00 (some mileposts on this segment are not a full mile apart) near Burkeville, AL (also known as Burkville), to milepost XXB 222.00 at the Western Junction station in Dallas County, AL. The second segment extends approximately 63.46 miles from milepost OOR 716.25 at the Western Junction station in Dallas County, AL, to milepost ORS 779.71 near Myrtlewood, AL. The segments being acquired also include CSXT's Selma Yard, at Selma, AL, and the following stations (all in Alabama): Myrtlewood (milepost ORS 781), Linden (milepost ORS 771), Hugo, Thomaston (milepost ORS 760), Central Mills, Orville (milepost ORS 736), Selma (milepost ORS 720), Western Junction (mileposts ORS 717/XXB 222), Alamet (milepost XXB 219), Tyler (milepost XXB 213), Benton (milepost XXB 207), Laneville (milepost XXB 204), Whitehall

¹ "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."

(milepost XXB 200), Latham Spur (milepost XXB 198), Lowndesboro (milepost XXB 194), Robinsons (milepost XXB 190), and Burkeville (milepost XXB 189). The transaction also includes acquisition by MNBR of 14 miles of incidental overhead trackage rights extending from Burkeville to Montgomery Yard in Montgomery, AL. The trackage rights will allow MNBR to interchange traffic with CSXT at CSXT's Montgomery Yard. According to the verified notice, MNBR intends to consummate the transaction on November 16, 2003.²

MNBR states that, on August 22, 2003, as required by 49 CFR 1150.42(e), it posted notice of its intent to undertake the proposed transaction at the workplace of the employees on the rail line and served a copy of the notice of intent on the national offices of the labor unions representing the employees on the line. Because of an oversight, however, MNBR states that it failed to certify to the Board that it had complied with the requirements of 49 CFR 1150.42(e) until the filing of its Notice of Exemption on October 21, 2003, only 24 days prior to the scheduled November 14, 2003 closing date. Consequently, in order to consummate the transaction on the intended consummation date, or as soon thereafter as possible, MNBR seeks waiver of 49 CFR 1150.42(e) insofar as it relates to certifying to the Board that it has complied with the requirements at least 60 days prior to closing.

MNBR states that it gave the required notice to the potentially affected CSXT employees and the labor organizations representing them almost 90 days prior to the scheduled closing date. MNBR contends that its failure to simultaneously make the requisite certification to the Board has not prejudiced any CSXT employees. MNBR, thus, requests that the Board waive the remainder of the 60-day certification requirement of 49 CFR 1150.42(e), accept the certification, that has been given and allow MNBR and CSXT to consummate the transaction on or after November 14, 2003.

DISCUSSION AND CONCLUSIONS

MNBR's waiver request is reasonable and will be granted. 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.³ The responsibility to provide the general notice rested on MNBR. The Board takes seriously the requirements of the rule and cautions MNBR to comply fully with those requirements in the future. Here, however, the record does show that notice was provided to employees working on the rail line and on the national offices of the labor unions representing those employees on

² It appears on this record that the parties intended to effect the operational changes on November 16, 2003, but that they propose to "close" on November 14, 2003.

³ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

August 22, 2003, much more than 60 days prior to the intended consummation date. Thus, under the circumstances, granting the requested waiver would not be inconsistent with the objectives in adopting the 60-day notice requirement. Accordingly, with respect to this transaction, the remainder of the 60-day requirement will be waived, as measured from the certification date to the Board. As a result, the exemption in this proceeding may become effective on November 14, 2003 (which would accommodate the parties' plans to consummate the transaction on or after that date). To ensure that employees are aware of the Board's action in granting the requested waiver, MNBR (with the cooperation of CSXT as necessary) shall, within 5 days after service of this decision, post a copy of this decision at the workplace of the employees on the rail line and serve a copy of the decision on the national offices of the labor unions representing the employees on the line, and certify to the Board that it has done so.

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

It is ordered:

1. MNBR's waiver request is granted.
2. MNBR (with the cooperation of CSXT as necessary) shall, within 5 days after service of this decision, post a copy of this decision at the workplace of the employees on the rail line and serve a copy of the decision on the national offices of the labor unions representing the employees on the line, and certify to the Board that it has done so.
3. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary