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SERVICE DATE – NOVEMBER 3, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35308

PIEDMONT & ATLANTIC RAILROAD CO., INC., D/B/A
YADKIN VALLEY RAILROAD COMPANY
–ACQUISITION AND OPERATION EXEMPTION–
NORFOLK SOUTHERN RAILWAY COMPANY

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

Decided: October 30, 2009

We are granting the petition filed on October 8, 2009, by Piedmont & Atlantic Railroad Co., Inc., d/b/a/ Yadkin Valley Railroad Company (YVRR), seeking a waiver of the requirement of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking to become effective without YVRR providing the full 60-day advance notice to employees who may be affected by YVRR's planned acquisition and continued operation of a line of railroad and to the national offices of the employees' labor unions.

BACKGROUND

Concurrently with the filing of the petition for waiver, YVRR, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase pursuant to an agreement it anticipated entering into with Norfolk Southern Railway Company (NS) (successor to Southern Railway Company), and to operate approximately 93 miles of rail lines as follows: (1) from milepost K-37-0 at Rural Hall, in Forsyth County, NC, to milepost K-100.2 at North Wilkesboro, in Wilkes County, NC; and (2) from milepost CF-0.0 at Mount Airy, in Surry County, NC, to milepost CF-29.8 at Rural Hall, in Forsyth County, NC.² YVRR has subleased

¹ 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."

² Notice of the filing of the verified notice was served on October 23, 2009, and published in the Federal Register on that same date at 74 FR 54875. Prior to the filing,

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and operated these rail lines since March 1994.³ Also, on October 8, 2009, YVRR filed a certification pursuant to 49 CFR 1150.42(e) that the required labor notice was posted that day.

YVRR is seeking waiver of the 60-day labor notice requirement to enable it to consummate the transaction on or after November 7, 2009, the date on which the exemption otherwise would become effective. In its petition, YVRR states that no purpose would be served by requiring the full 60-day labor notice because no employees of YVRR or NS would be affected by this transaction. YVRR points out that no NS employees have worked on the line since August 20, 2007.⁴ YVRR states that, after purchase of the lines, its rail operations will remain substantially identical to its current operations under the lease. YVRR adds that none of its employees working on the subject lines is represented by a labor organization. No opposition to the petition has been filed with the Board.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements 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.⁵ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

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Laurinburg & Southern Railroad Company was authorized to lease these lines and YVRR was authorized to operate them in Laurinburg and Southern Railroad Company, Et Al.—Lease and Operation Exemption—Southern Railway Company, Finance Docket No. 31526 (ICC served Nov. 7, 1989).

³ See Piedmont & Atlantic Railroad Co., Inc.—Lease and Operation Exemption—L & S Holding Company d/b/a/ Laurinburg & Southern Railroad Co. and Yadkin Valley Railroad Company, Finance Docket No. 32462 (ICC served Mar. 29, 1994). Also, in H. Peter and Linda C. Claussen—Continuance in Control Exemption—Piedmont & Atlantic Railroad Co., Inc., Finance Docket No. 32464, (ICC served Mar. 29, 1994), H. Peter and Linda C. Claussen were authorized to continue in control of Piedmont & Atlantic Railroad Co., Inc., once it became a Class III rail carrier.

⁴ Prior to that time, YVRR explains that NS employees operated over approximately 3 miles of YVRR yard track to facilitate interchange. YVRR states that converting its property interest in the lines from a lease to ownership will not necessitate any operational changes involving interchange activities between NS and YVRR.

⁵ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that no employee of YVRR or NS will be adversely affected by waiver of the requirements here. No employee of NS has worked on the subject lines since August 20, 2007, and thus there is no apparent need for advance notice, which is designed to assist current employees on the line to be sold who are faced with possible displacement. Furthermore, no YVRR employees will be adversely affected by waiver of the requirements because the planned transaction will merely convert operation under lease to a similar operation under YVRR's ownership. YVRR states that it does not anticipate any elimination of jobs as a result of the sale, or any adverse changes in working conditions, rates of pay or benefits. And, as noted, on October 8, 2009, YVRR certified that it posted notices at the workplaces of its employees that day. Because YVRR's employees—the only employees potentially affected by the proposed transaction—will have had approximately 30 days' notice of the proposed transaction by November 7, 2009, we will waive the 60-day requirement under 49 CFR 1150.42(e) to the extent necessary to permit the transaction to be consummated on or after November 7, 2009.

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

It is ordered:

1. YVRR's request for waiver is granted as set forth in this decision.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Anne K. Quinlan
Acting Secretary