

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35718

GRAINBELT CORPORATION—ACQUISITION AND OPERATION EXEMPTION—
BNSF RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ Grainbelt Corporation (GNBC) currently owns and operates a 178.7-mile line of railroad, and leases the underlying real property from the BNSF Railway Company (BNSF), between milepost 588.3 near Enid, and milepost 767.0 near Frederick, in Garfield, Tillman, Major, Blaine, Dewey, Custer, Washita, and Kiowa, Counties, Okla. In this docket, GNBC has notified the Board that it intends to acquire from BNSF the underlying real property that consists of the 178.7-mile line. This decision allows the railroad to do so without giving employees the full 60-day advance notice of the transaction that ordinarily would be required under the Board's regulations because there are no employees who would be adversely affected by the transaction.

Decided: March 26, 2013

On February 27, 2013, GNBC filed a request for a waiver of the requirements of 49 C.F.R. § 1150.42(e), which requires that, in certain railroad acquisition or operation proceedings, the applicant must give 60 days advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees' labor unions. Because GNBC has been, and will continue to be, the owner and exclusive freight rail operator over the 178.7-mile line of railroad, GNBC seeks a waiver so that the acquisition it seeks to effectuate by exemption can become effective without GNBC's providing the full 60-day advance notice.

BACKGROUND

Concurrently with the filing of the petition for waiver, GNBC, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from BNSF, the underlying real property of a 178.7-mile line of railroad between 588.3 near Enid, and milepost

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

767.0 near Frederick, in Garfield, Tillman, Major, Blaine, Dewey, Custer, Washita, and Kiowa, Counties, Okla. (the Line).

GNBC states that it currently owns and operates the facilities that comprise the Line,² but leases the underlying real property from BNSF. GNBC and BNSF are entering into an agreement in which GNBC will acquire the underlying property of the Line and terminate the lease. GNBC will continue to be the owner of the Line and will continue to provide the same common carrier service prior to this transaction. GNBC states that it has been the exclusive owner and freight operator over the Line since 1987.

GNBC is seeking waiver of the 60-day labor notice requirement because, it asserts, requiring the full 60-day notice would serve no useful purpose. GNBC states that no employees of GNBC will be affected by this transaction,³ as GNBC has been the exclusive owner and freight operator over the Line since 1987 and would continue to be the exclusive owner and freight operator after the proposed transaction is consummated. GNBC points out that it is merely acquiring the land component of the Line it is currently leasing. GNBC will continue to provide the same common carrier service it currently provides. According to GNBC, posting notices on the Line would not provide notice to BNSF employees because no BNSF employees are working or have worked on the Line since 1987, therefore, no BNSF employees will be affected as a result of the sale. GNBC states that there will be no operational changes in this transaction. No opposition to the petition has been filed.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 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.⁴ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

² See Grainbelt Corp.—Exemption Acquis. and Operation of Certain Lines of Burlington N. R.R., FD 31094 (ICC served Sept. 18, 1987). Originally, GNBC acquired 186.4 miles of rail line from BNSF in the September 1987 proceeding, but GNBC abandoned a 7.7-mile portion of the Line between milepost 767.0 near Frederick and milepost 774.7 at Davison, in Tillman County, Okla. See Grainbelt Corp.—Abandonment Exemption—in Tillman Cnty., Okla., AB 424 (Sub-No. 1X) (ICC served Oct. 14, 1994).

³ According to GNBC, GNBC employees are not unionized.

⁴ See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997).

The record indicates that no employees would be adversely affected by a waiver of the requirements here. GNBC is currently the owner and the exclusive freight operator of the Line, and it will continue to be the owner and will operate as the exclusive freight carrier of the Line upon consummation of the transaction. In addition, no BNSF employees have worked on the Line since 1987. Because no employees will be adversely affected by the waiver of the 60-day notice period and GNBC is merely acquiring the underlying real property of a rail line that it already owns, we will grant the waiver request. Granting the request will make the exemption for the acquisition transaction in this proceeding effective on March 31, 2013.

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

It is ordered:

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

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