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SERVICE DATE – APRIL 1, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35911

PORTLAND & WESTERN RAILROAD, INC.—ACQUISITION AND OPERATION
EXEMPTION—PORT OF TILLAMOOK BAY

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

Digest:¹ This decision allows Portland & Western Railroad, Inc., a Class III rail carrier, to acquire and continue to operate approximately 3.5 miles of rail line owned by Port of Tillamook Bay in Oregon without giving employees the advance notice otherwise required under the Board's regulations, because no employees would be adversely affected.

Decided: March 31, 2015

On March 3, 2015, Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and continue to operate approximately 3.5 miles of rail line (the Line) owned by Port of Tillamook Bay (POTB) in Washington County, Or. In its verified notice, PNWR certified that its projected annual revenues as a result of this transaction would exceed \$5 million. Accordingly, PNWR is required 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 at least 60 days before the exemption can become effective. 49 C.F.R. § 1150.42(e). However, in its verified notice, PNWR requested that the Board waive the employee notice requirement and permit the exemption to take effect on April 2, 2015 (30 days after the verified notice was filed). No opposition to this waiver request has been filed.

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).

BACKGROUND

PNWR filed its verified notice of exemption² to acquire and continue to operate approximately 3.5 miles of rail line between milepost 774.0, at Banks, and milepost 770.5, at Schefflin, in Washington County, Or. PNWR is the current operator of the Line, subject to trackage rights retained by POTB, pursuant to a lease agreement dated May 6, 1999.³ Pursuant to a purchase and sale agreement dated January 16, 2015, PNWR would continue to operate the Line, and POTB would discontinue its trackage rights over the Line.

Because PNWR has been leasing and operating the Line and would continue to do so, PNWR requests a waiver so that the authority it seeks in its exemption notice can become effective without PNWR's providing the advance notice to employees otherwise required under 49 C.F.R. § 1150.4(e). In support, PNWR asserts that: (1) no POTB employees would be affected because none have worked on the Line for more than five years; and (2) there would be no operational changes, and no PNWR employees would be affected.

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. The Board takes seriously the requirements of the rule, but the record indicates that no employees would be adversely affected by a waiver of the requirements here.

PNWR employees would continue to provide the same service they have provided since 1999, and no POTB employees have performed any work on the Line for more than five years. Because neither POTB nor PNWR employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, thereby allowing the related exemption authority to acquire and continue to operate the Line to become effective on April 2, 2015.

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

² Notice of the exemption was served and published in the Federal Register on March 19, 2015 (80 Fed. Reg. 14,434). But for the employee notice requirements, the exemption would become effective 30 days from its filing date, April 2, 2015.

³ See Portland & W. R.R.—Lease & Operation Exemption—Port of Tillamook Bay R.R., FD 33734 (STB served May 14, 1999); Port of Tillamook Bay R.R.—Trackage Rights Exemption—Portland & W. R.R., FD 33741 (STB served May 14, 1999). The entity PNWR refers to here as Port of Tillamook Bay is referred to in those cases as Port of Tillamook Bay Railroad, but it appears to be the same entity.

It is ordered:

1. PNWR's request for waiver is granted, and the exemption authority to acquire and continue to operate the Line will be effective on April 2, 2015.

2. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.