

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35995

SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS D/B/A PALMETTO  
RAILWAYS—ACQUISITION EXEMPTION—HAMPTON & BRANCHVILLE RAILROAD  
COMPANY

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

Digest:<sup>1</sup> This decision allows South Carolina Division of Public Railways d/b/a Palmetto Railways, a Class III rail carrier, to acquire approximately 45.77 miles of rail line owned by Hampton & Branchville Railroad Company, in Colleton and Hampton Counties, S.C. The decision also waives the 60-day advance notice requirement to employees because no employees would be adversely affected.

Decided: June 2, 2016

On May 2, 2016, South Carolina Division of Public Railways d/b/a Palmetto Railways (Palmetto), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire three connecting line segments that constitute the entire rail line of Hampton & Branchville Railroad Company (H&B), a total distance of approximately 45.77 miles in Colleton and Hampton Counties, S.C. (H&B Line). In its verified notice, Palmetto certified that its projected annual revenues as a result of this transaction would exceed \$5 million.<sup>2</sup> Unless waived, 49 C.F.R. § 1150.42(e) would require Palmetto to send notice of the proposed 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. However, in its verified notice, Palmetto requested that the Board waive the employee notice requirement and permit the exemption to take effect on or after August 5, 2016. No opposition to this waiver request has been filed.

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<sup>1</sup> 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).

<sup>2</sup> Applicants with transactions exceeding \$5 million are required to meet the requirements of § 1150.42(e).

## BACKGROUND

Palmetto filed its verified notice of exemption to acquire three connecting line segments that constitute the entire H&B Line: (1) from a connection with CSX Transportation, Inc., at milepost 0.0 in Hampton to milepost 16.8 at H&B Junction, a distance of 16.8 miles; (2) from the end of track at milepost 462.37 in Lodge through H&B Junction and Stokes to the end of track at milepost 443.18 in Walterboro, a distance of 19.19 miles; and (3) from approximately milepost 447 at Stokes to the end of track at milepost 456.78 in Canadys, a distance of 9.78 miles.<sup>3</sup>

Palmetto states that H&B ceased rail operations on December 28, 2012, when H&B's then sole remaining customer, the South Carolina Electric & Gas power plant at Canadys, S.C., announced the closing of its coal-fired generating units. Palmetto states that H&B's rail line has remained out of service since that time and that H&B no longer has any employees other than its president. Palmetto therefore requests a waiver so that the authority it seeks in its exemption notice can become effective without providing notice.

## DISCUSSION AND CONCLUSIONS

The purpose of the 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 it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. No rail service has been provided on the H&B Line since H&B's final customer ceased rail shipments more than three years ago. The stub track between H&B Junction and Lodge has not been in service since 1986, and the stub track between Stokes and Walterboro has not been in service since 1989. Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, allowing the related acquisition exemption to become effective on June 7, 2016.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

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<sup>3</sup> Notice of the exemption was served and published in the Federal Register on May 18, 2016 (81 Fed. Reg. 31,292).

It is ordered:

1. Palmetto's request for waiver is granted, and the exemption authority to acquire the H&B Line will be effective on June 7, 2016.
2. This decision is effective on its date of service.

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