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SERVICE DATE - LATE RELEASE OCTOBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33675

MINNESOTA COMMERCIAL RAILWAY COMPANY—LEASE AND OPERATION
EXEMPTION—CANADIAN PACIFIC RAILWAY COMPANY (SOO LINE DISTRICT)

STB Finance Docket No. 33676

MINNESOTA COMMERCIAL RAILWAY COMPANY—LEASE AND OPERATION
EXEMPTION—UNION PACIFIC RAILROAD COMPANY

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

Decided: October 30, 1998

By letter (petition) filed October 28, 1998, as supplemented on October 29, 1998, to correct an error, Minnesota Commercial Railway Company (MC) seeks waiver of a portion of the requirements of section 1150.42(e).¹

On October 22, 1998, MC, a Class III rail carrier, filed two verified notices of exemption under 49 CFR 1150.41. In the first transaction, STB Finance Docket No. 33675, Minnesota Commercial Railway Company—Lease And Operation Exemption—Canadian Pacific Railway Company (Soo Line District) (CP case), MC seeks to acquire by long-term lease from the Canadian Pacific Railway Company (Soo Line District) (CP) and operate (1) approximately 22 miles of trackage in an area known as the South Minneapolis Switching District from approximately milepost 416 +/- to the end of track maintenance, at about 48th Street, South, Minneapolis, MN (no milepost); and (2) one mile of incidental trackage over CP's trackage east of Merriam Park. In the second transaction, STB Finance Docket No. 33676, Minnesota Commercial Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company (UP case), MC seeks to acquire by long-term lease from the Union Pacific Railroad Company (UP) and operate

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 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."

approximately 2.95 miles +/- of industrial trackage in an area known as the Southeast Minneapolis Switching District.²

In both notices, in an effort to comply with 49 CFR 1150.42(e), MC certified that it had provided a 60-day prenotification to the national offices of the labor representatives of CP and UP employees on the affected lines. MC stated in its notice in the CP case that it expected to consummate the transaction on or about October 1, 1998 and in its notice in the UP case that it expected to consummate the transaction on or about November 1, 1998.³

As evidenced by its petition, MC believed that it had given timely notice under section 1150.42(e) and that the exemptions would become effective 7 days after the notices were filed. Thus, MC states it understood that, by filing the verified notices of exemption on October 22, 1998, and by giving timely notice to the labor unions, it would be authorized to consummate the acquisitions and commence operations on the involved lines on November 1, 1998. However, the regulation provides that the exemption only becomes effective 60 days after the certification to the Board as well. Although the notice was posted on July 31, 1998, in the CP case and on August 31, 1998, in the UP case, MC did not certify that fact to the Board until October 22, 1998. Thus, absent action by the Board, the transactions may not be consummated until December 21, 1998.

MC seeks waiver of the 60-day Board notice period and seeks to have the balance of the 60-day notice requirement waived, so that consummation of the transactions can go forward on or after November 1, 1998. MC states that delaying the consummation of these acquisitions would create traffic delays and congestion in the Twin Cities area, problems that would affect not only the shippers and carriers directly involved but also the four other major line haul carriers and other connecting carriers that serve the area. MC further states that MC and its employees will suffer great and irreparable harm by any delay. MC notes that it cannot maintain the 15 additional employees it hired in preparation of the new operations it planned to commence on November 1 for an additional 2 months. Also, MC notes that its cost for employee training and capital investments for the acquisitions exceeds its total after-tax 1997 income and that carrying these costs with no prospect of returns for the rest of the year would create a major cash-flow crisis for MC. MC asserts that no parties will be harmed by the waiver sought and that no unions or employees have expressed any opposition to the acquisition transactions.

² MC notes that the trackage is all yard limit industrial switching territory and that no mileposts are assigned this area by UP.

³ The petition notes that, in both the CP case and the UP case, the parties agreed to consummate the acquisitions on November 1, 1998. Further, the petition, as supplemented, clarifies that the 60-day advance notices of the acquisitions were given in the CP case on July 31, 1998, and in the UP case on August 31, 1998.

MC's waiver request will be granted. While we admonish all parties to comply fully and in a timely manner with our notice regulations, 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.⁴ MC has provided that notice. Therefore, we will accept MC's October 22 certification to the Board and will waive the remainder of the 60-day requirement under 49 CFR 1150.42(e) with respect to both transactions.

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

It is ordered:

1. MC's petition is granted to the extent described above.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A Williams
Secretary

⁴ See Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions, STB Ex Parte No. 562 (STB served Sept. 9, 1997).