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SERVICE DATE – DECEMBER 23, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35564 (Sub-No. 1)

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC,
CHESAPEAKE & ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

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

Digest:¹ North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division (NCVR) has notified the Board that it intends to amend a lease between it and Norfolk Southern Railway Company covering 66 miles of railroad. This decision allows NCVR to amend the lease after giving potentially affected employees 30 days' advance notice of the transaction, rather than the full 60 days' advance notice typically required under the Board's regulations, because the record indicates that there will be no change in actual operations under the transaction, no employees will be adversely affected, and the request is unopposed.

Decided: December 22, 2011

On December 1, 2011, North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division (NCVR) 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 NCVR has been, and will continue to be, the exclusive freight operator over the involved line, NCVR seeks a waiver so that the lease amendment it seeks to effectuate by exemption can become effective without NCVR providing the full 60 days' advance notice.

BACKGROUND

Concurrently with the filing of the petition for waiver, NCVR, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to amend a lease with Norfolk Southern Railway Company (NSR). A Lease and Option to Purchase Agreement between these

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).

parties, dated February 28, 1990, as amended (the Original Lease), covers 66 miles of railroad. The line runs between approximately milepost NS-8.0 at Chesapeake, Va., and approximately milepost NS-74.0 at Edenton, N.C., including related branch lines and trackage as defined in the Original Lease (the Line). NCVR has been the exclusive freight operator over the Line since 1990, pursuant to the Original Lease.²

NCVR and NSR have entered into Amendment No. 4 to Lease and Option to Purchase Agreement, dated October 6, 2011, whereby the parties have agreed to extend the terms of the Original Lease and to strike and render null and void all provisions relating to the option to purchase the Line included in the Original Lease.

On December 1, 2011, NCVR certified to the Board that, on November 29, 2011, it posted notice of the transaction at the workplace of the employees on the affected Line, and on November 30, 2011, it served a copy of the notice on the national office of the potentially affected employees' labor union (as required under 49 C.F.R. § 1150.42(e)).

NCVR is seeking waiver of the 60 days' labor notice requirement because, it asserts, requiring the full 60 days' notice would serve no useful purpose. NCVR states that no employees of NCVR or NSR will be affected by this transaction, as NCVR has been the exclusive freight carrier over the Line for a number of years and would continue to be the exclusive carrier after the proposed transaction is consummated. NCVR also notes that no NSR employees have performed freight operations on the Line, and no NSR jobs will be abolished or relocated as a result of the lease amendment. Moreover, NCVR asserts that its employees will not be affected by the lease amendment because NCVR will continue to provide the same service as it has since execution of the Original Lease in 1990. Finally, NCVR states that it does not plan to hire any additional employees as a result of the 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.³ The Board takes seriously the requirements of

² See Chesapeake & Albemarle R.R.—Lease, Acquis., & Operation Exemption—S. Ry., FD No. 31617 (ICC served Apr. 20, 1990). NCVR is the successor by merger to Chesapeake & Albemarle Railroad Company, Inc. See RailTex, Inc., N.C. & Va. R.R., Chesapeake & Albemarle R.R., Dallas, Garland & Ne. R.R., Mid-Michigan R.R., & Ind. S. R.R.—Corporate Family Transaction Exemption, FD No. 33809 (STB served Oct. 29, 1999). NSR is successor in interest to Southern Railway Company.

³ See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

the rule and does not grant such waivers lightly,⁴ but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

The notice requirements are designed to assist employees who, because a line is to be transferred to a new owner or operator, are faced with possible displacement. The record here, however, indicates that no employees will be adversely affected by waiver of the full 60 days' notice period, as the transaction will not effect a change in service. NCVR is currently the exclusive freight operator of the Line, and it will continue to operate as the exclusive freight carrier of the Line upon consummation of the transaction. As previously noted, the parties seek to extend the terms of the Original Lease and to render null and void the provisions relating to the option to purchase the Line. In all other respects, NCVR will continue to operate under the Original Lease as it has since 1990.

NCVR's employees will have had 30 days' notice of the proposed transaction, which is sufficient notice in this case, given that the transaction will not effect a change in service. We will therefore grant the waiver request. The proposed transaction may not be consummated before December 31, 2011, the effective date of the exemption (30 days after the exemption was filed).

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

It is ordered:

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

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

⁴ See, e.g., Piedmont & Atl. R.R. d/b/a Yadkin Valley R.R.—Acquis. & Operation Exemption—Norfolk S. Ry., FD No. 35308 (STB served Nov. 3, 2009); Ga. Sw. R.R.—Acquis. Exemption—CSX Transp., Inc., FD No. 35176 (STB served Oct. 3, 2008).