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EB

SERVICE DATE - MAY 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33571

WISCONSIN & SOUTHERN RAILROAD CO.--LEASE AND OPERATION EXEMPTION--  
SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY

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

Decided: May 21, 1998

By petition filed May 13, 1998, Wisconsin & Southern Railroad Co. (WSOR) seeks waiver of a portion of section 1150.42(e).<sup>1</sup>

On May 7, 1998, WSOR, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate a line of railroad known as the Waterloo Spur, extending from milepost 132.11 at Watertown, WI, to milepost 164.61 at Madison, WI, a total of 32.5 miles. WSOR proposed to lease the line from the Soo Line Railroad Company, doing business as the Canadian Pacific Railway (herein, CPR). In the notice, in an effort to comply with 49 CFR 1150.42(e), WSOR certified that its annual revenues exceed \$5 million and that it had, as of March 20, 1998, served the national offices of the labor unions representing the employees on the line with a copy of a notice of intent to carry out this transaction. WSOR also certified that it posted this notice at the workplace of the employees on the affected lines on March 23, 1998. WSOR stated in its notice that it expected to consummate the transaction on or after June 1, 1998.

In its petition, WSOR says it scheduled the June 1, 1998 date in the belief that WSOR would be able to consummate the lease 60 days after posting notice to the affected employees of the CPR. WSOR states that it now realizes that the regulation provides that it may only consummate 60 days after certifying to the Board that it posted the notice. Although the notice was posted on March 23, 1998, WSOR did not certify that fact to the Board until May 7, 1998. Thus, absent action by the Board, the transaction may not be consummated until July 6, 1998.

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<sup>1</sup> 49 CFR 1150.42(e), states "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."

WSOR seeks waiver of the 60-day Board notice period and seeks to have the exemption made effective June 1, 1998, so that consummation of the transaction can go forward on that date. WSOR points out that the affected employees and their unions will have had more than 60 days notice by June 1, 1998. WSOR says that the restoration of rail service on the Waterloo Spur will be delayed unless the petition is granted. WSOR also says it has already committed resources to its rehabilitation project for the Waterloo Spur. Petitioner says it has purchased crossties and has committed track maintenance equipment and personnel to move forward on June 1, 1998. If WSOR cannot consummate the lease on that date, petitioner will experience substantial economic loss.

WSOR's waiver request will be granted. 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.<sup>2</sup> WSOR has provided that notice. Therefore, we will accept WSOR's May 7 certification to the Board and will waive the 60-day requirement under 49 CFR 1150.42(e). Thus, the notice of exemption being issued concurrently in this proceeding will be effective June 1, 1998.

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

It is ordered:

1. WSOR'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

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<sup>2</sup> 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).

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