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SERVICE DATE – NOVEMBER 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35066

COLUMBIA BASIN RAILROAD COMPANY, INC.
–ACQUISITION AND OPERATION EXEMPTION–
BNSF RAILWAY COMPANY AND BNSF ACQUISITION, INC.

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

Decided: November 29, 2007

We are granting the petition filed on November 1, 2007, by Columbia Basin Railroad Company, Inc. (CBRW), seeking a waiver of the requirement of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking to become effective without CBRW providing the full 60-day advance notice to employees who may be affected by CBRW's planned acquisition and continued operation of a line of railroad and to the national offices of the employees' labor unions.

BACKGROUND

Concurrently with the filing of the petition for waiver, CBRW, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase pursuant to an agreement it anticipated entering into with BNSF Railway Company and BNSF Acquisition, Inc. (collectively, Sellers), and to operate approximately 74 miles of rail lines as follows: (1) from milepost 186.9 at or near Connell to milepost 145.7 at or near Wheeler, WA; (2) from milepost 0.0 at or near Bassett Junction to milepost 12.5 at or near Schrag, WA; (3) from milepost 20.0 at or near Moses Lake to milepost 5.6 at or near Sieler, WA; and (4) from milepost 5.6 at or near Sieler to milepost 0.0 at or near Wheeler. In addition, CBRW intends to acquire incidental trackage rights for local and overhead rail service over approximately 13 miles of rail line from milepost 1987 at or near Othello to the end of the track at milepost 1974 at or near Warden,

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 with employees on the affected line(s), 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."

WA.² CBRW has leased and operated, and performed trackage rights services over, substantially the same lines since December 1996.³ Also, on November 1, 2007, CBRW filed a certification of labor notice compliance pursuant to 49 CFR 1150.42(e).

CBRW is seeking waiver of the 60-day labor notice requirement to enable it to consummate the transaction on or after December 1, 2007. CBRW points out that no purpose would be served by requiring the full 60-day labor notice because no employees of CBRW or Sellers would be affected by this transaction. According to CBRW, Sellers' employees have not worked on the leased lines in over 10 years. CBRW states that, after purchase of the lines, its rail operations will remain substantially identical to its current operations under the lease. CBRW adds that none of its employees working on the subject lines is represented by a labor organization. No opposition to the petition has been filed with the Board.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 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 The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that no employee of Sellers will be adversely affected by waiver of the requirements here. No employee of Sellers has worked on the subject lines for more than 10 years, and thus there is no apparent need for advance notice, which is designed to assist current employees on the line to be sold who are faced with possible displacement. Furthermore, no CBRW employees will be adversely affected by waiver of the requirements because the planned transaction will merely convert operation under lease to a similar operation under CBRW's ownership. CBRW states that it does not anticipate any elimination of jobs as a result of the sale, or any adverse changes in working conditions, rates of pay, or benefits. And, as noted, on November 1, 2007, CBRW has certified that it posted notices at the workplaces of its employees. Because CBRW's employees—the only employees potentially affected by the

² Notice of the filing of the verified notice was served on November 16, 2007, and published in the Federal Register on that same date at 72 FR 13175.

³ See Columbia Basin Railroad Company, Inc.—Exemption to Lease and Operate—Burlington Northern Railroad Co. and BNSF Acquisition, Inc., STB Finance Docket No. 33140 (STB served Dec. 13, 1996).

⁴ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

proposed transaction—will have had approximately 30 days’ notice of the proposed transaction by December 1, 2007, we will waive the 60-day requirement under 49 CFR 1150.42(e) to the extent necessary to permit the transaction to be consummated on or after December 1, 2007.

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

It is ordered:

1. CBRW’s request for waiver is granted as set forth in this decision.
2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary