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SERVICE DATE - LATE RELEASE OCTOBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33666

BELT LINE DIVISION OF TACOMA PUBLIC UTILITIES—OPERATION EXEMPTION—
IN PIERCE, THURSTON AND LEWIS COUNTIES, WA

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

Decided: October 30, 1998

By petition filed October 23, 1998, Belt Line Division of Tacoma Public Utilities (Belt Line) seeks waiver of a portion of the requirements of section 1150.42(e).¹

On October 23, 1998, Belt Line, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 131.5 miles of rail line (the line) owned by the City of Tacoma, WA (City), in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton. The lines have been operated previously by Tacoma Eastern Railway Company (TE).² In the notice, in an effort to comply with 49 CFR 1150.42(e), Belt Line certified that its annual revenues exceed \$5 million and that it had, as of September 23, 1998, served the national offices of the labor unions representing the employees on the line with a copy of a notice of

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.”

² The Board recently granted the City’s application under 49 U.S.C. 10903 permitting the discontinuance of operations by TE over the line. See Tacoma Eastern Railway Company—Adverse Discontinuance of Operations Application—a Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA, STB Docket No. AB-548 (STB served Oct. 16, 1998).

intent to carry out this transaction.³ Belt Line also certified that it posted this notice at the workplace of the employees on the affected lines on September 23, 1998. Belt Line stated in its notice that it expected to consummate the transaction as soon as possible following the effective date of its verified notice of exemption.

As evidenced by its petition, Belt Line believes that section 1150.42(e) would permit consummation to take place 60 days after September 23, 1998 (the day it served and posted the notice). However, the regulation provides that the exemption only becomes effective 60 days after the certification to the Board. Although the notice was posted on September 23, 1998, Belt Line did not certify that fact to the Board until October 23, 1998. Thus, absent action by the Board, the transaction may not be consummated until December 22, 1998.

Belt Line 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 transaction can go forward on or after October 30, 1998. Belt Line points out that the adverse discontinuance application filed on June 23, 1998, made clear the City's intention to substitute the Belt Line for TE as operator of the line. Belt Line further notes that the filing of the application was well known throughout the local community and to existing employees of TE. Belt Line states that its employees are currently represented by national labor organizations, whereas none of TE's employees are represented by any national rail labor organization.⁴ Belt Line says that the City's concern that responsive and reliable service be introduced on the line at the earliest possible date provides support for granting the waiver request. Belt Line also says that the City is concerned that further deterioration in service or deliberate disruptive action may occur now that the Board has approved the adverse discontinuance of TE's operations over the line.⁵

Belt Line'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.⁶ Belt Line has provided sufficient notice

³ Belt Line notes that, because there are no TE employees who are represented by any national rail labor organization, it was not obligated to serve those organizations but did so voluntarily.

⁴ Belt Line indicates that TE's President, Mr. Berntsen, may be the only employee of TE.

⁵ In a letter filed October 29, 1998, TE states that it opposes the petition for waiver and requests that the Board not act before TE files a reply, due on or before November 12, 1998. The notice requirement is for the benefit of affected employees and their representatives and not for a carrier opposed to the transaction. Thus, we question TE's standing to oppose the waiver and will not delay our decision given the record in this case.

⁶ See Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of
(continued...)

under the circumstances in this case. Therefore, we will accept Belt Line's October 23 certification to the Board and will waive the remainder of the 60-day requirement under 49 CFR 1150.42(e).

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

It is ordered:

1. Belt Line'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

⁶(...continued)
Proposed Transactions, STB Ex Parte No. 562 (STB served Sept. 9, 1997).