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SERVICE DATE - MAY 10, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33734

PORTLAND & WESTERN RAILROAD, INC.—LEASE AND OPERATION
EXEMPTION—PORT OF TILLAMOOK BAY RAILROAD

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

Decided: May 6, 1999

By petition filed March 30, 1999, as supplemented on April 16, 1999, Portland & Western Railroad, Inc. (PNWR or petitioner) seeks waiver of the requirements of section 1150.42(e) to permit the exemption it is seeking in this proceeding to become effective without awaiting the expiration of the full 60-day notice period established in 49 CFR 1150.42(e).¹

On March 30, 1999, PNWR, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41, in this proceeding, to lease and operate approximately 3.5 miles of rail line (rail line) currently owned and operated by Port of Tillamook Bay Railroad (POTB) between milepost 774.0, at Banks, and milepost 770.5, at Schefflin, in Washington County, OR. PNWR currently operates over the line pursuant to trackage rights. As part of the transaction, PNWR will grant back trackage rights to POTB so that POTB will retain trackage rights over the rail line sufficient to enable it to serve all of its present and future customers. The grant back of trackage rights to POTB is the subject of a notice of exemption filed under 49 CFR 1180.2(d)(7) in Port of Tillamook Bay Railroad—Trackage Rights Exemption—Portland & Western Railroad Inc., STB Finance Docket No. 33741, filed May 3, 1999, which will become effective on May 10, 1999.

Petitioner states that, as a result of the lease and grant back of trackage rights to POTB, POTB will continue to serve all of its present and future customers, POTB does not expect to eliminate any positions, and none of its employees will be affected. Petitioner further states that

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.”

PNWR will not create any jobs as a result of the transaction. In its verified notice, PNWR notes that, subject to notice to labor or a waiver from the notice requirement, it expected to consummate the transaction on or about April 19, 1998. On April 16, 1999, petitioner supplemented the record by certifying to the Board that oral and written notice was provided to the employees of POTB on April 2, 1999.²

PNWR requests that the 60-day notice period be waived or modified. PNWR explains that, under the lease arrangement, it will upgrade the rail line to meet Federal Railroad Administration Class 2 standards, a project involving tie and surfacing work and rail welding and installation. PNWR estimates that the project will take approximately four months and will cost over \$460,000. PNWR notes that the rehabilitation project cannot commence until the lease transaction is consummated. Granting the waiver would allow PNWR to immediately begin the rehabilitation program and allow PNWR to take advantage of the prime summer construction season.

PNWR's waiver request is reasonable and will be granted. The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected (especially through job loss) by the transfer of a line are given sufficient notice of the transaction before consummation.³ While we ordinarily do not grant waivers to the employee notice requirement, the record here reflects that there will be no job loss on POTB, that notice has been provided to POTB employees as of April 2, 1999, and that the waiver is needed to ensure completion of the rehabilitation of the line during the summer construction season. In these circumstances, granting the requested waiver would not, in our view, be inconsistent with the Board's objectives in adopting the 60-day notice requirement. Accordingly, we will accept PNWR's April 16 certification to the Board and will waive the remainder of the 60-day requirement under 49 CFR 1150.42(e) with respect to this transaction.

Granting the waiver request has the effect of making the exemption for the lease transaction in this proceeding effective on the effective date of this decision. To ensure that POTB employees have the benefit of the grant back of trackage rights in place when the lease becomes effective, we will make our waiver decision effective as of the effective date for the trackage rights notice of exemption filed in STB Finance Docket No. 33741, which will be on May 10, 1999.

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

² According to petitioner, POTB's workforce is not organized, and that service of a copy of the notice on the national offices of labor unions therefore is not required.

³ 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).

It is ordered:

1. PNWR's petition is granted to the extent described above.
2. This decision is effective on May 10, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary