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SERVICE DATE - MAY 14, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34199

CFNR OPERATING COMPANY, INC.—  
ACQUISITION AND OPERATION EXEMPTION—  
PARKSIERRA CORP.

[REQUEST FOR WAIVER OF 49 CFR 1150.32(e)]

Decided: May 13, 2002

By request filed on April 22, 2002, CFNR Operating Company, Inc. (CFNR), seeks a waiver of the requirements of 49 CFR 1150.32(e)<sup>1</sup> to permit the exemption it is seeking in this proceeding to become effective without providing the 60-day advance notice to the employees on the affected line and to the national offices of the labor unions of those employees. The request will be granted.

BACKGROUND

On January 8, 2002, RailAmerica, Inc. (RailAmerica), acquired control of ParkSierra Corporation (ParkSierra).<sup>2</sup> ParkSierra has three operating divisions: Arizona & California Railroad Company Limited Partnership; California Northern Railroad Company, L.P.; and Puget Sound & Pacific Railroad. ParkSierra has established local management and workforces at each of these operating divisions and has treated each railroad as a “stand alone” business unit. RailAmerica has determined that the three operating divisions of ParkSierra should be operated as separate corporations, eliminating the need for ParkSierra as a consolidated holding company.

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<sup>1</sup> “If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of 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.”

<sup>2</sup> See RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp., STB Finance Docket No. 34100 (STB served Dec. 20, 2001).

To accomplish this, three separate notices of exemption under 49 CFR 1150.31 were filed on April 23, 2002, one for each of the operating divisions.<sup>3</sup> Also, three separate waiver requests under 49 CFR 1150.32(e) were filed in these dockets on April 22, 2002.<sup>4</sup> In addition, a notice of exemption under 49 CFR 1180.2(d)(3) was filed on April 23, 2002, in STB Finance Docket No. 34197, RailAmerica, Inc., et al.—Corporate Family Reorganization Exemption, wherein ParkSierra will be merged into CFNR, and ARZC, CFNR, and PSAP will become direct railroad subsidiaries of RailAmerica.

In this proceeding, CFNR seeks to acquire and operate approximately 248.5 miles of rail lines in southern California. Specifically, CFNR will: (1) succeed to ParkSierra's lease rights and operate approximately 210 miles of lines owned by Union Pacific Railroad Company (UP); and (2) acquire ParkSierra's right to operate under trackage rights from UP (approximately 28 miles) and from the North Coast Railroad Authority (approximately 10.5 miles).

In its waiver request, CFNR asks us to waive the 60-day notice requirements and permit the transaction to be consummated on or after (1) the date of service of the waiver decision or (2) 7 days after the verified notice of exemption in this proceeding is filed, whichever is later. CFNR indicates that, although the employees of ParkSierra will have a new employer after the completion of the transaction, nothing else will change. The employees will continue to work in the same positions, with the same duties, for the same wages, and at the same location.

## DISCUSSION AND CONCLUSIONS

The purpose of 49 CFR 1150.32(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>5</sup> We take seriously the requirements of the rule and caution CFNR to be alert to compliance with those requirements. While we ordinarily do not grant waivers of the employee notice requirement, the record here reflects that there will be no adverse impact on the personnel of

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<sup>3</sup> The applicants are: ARZC Operating Company, Inc. (ARZC); CFNR; and PSAP Operating Company, Inc. (PSAP).

<sup>4</sup> The related proceedings are: STB Finance Docket No. 34198, ARZC Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp., and STB Finance Docket No. 34200, PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.

<sup>5</sup> See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

ParkSierra.<sup>6</sup> We will grant the waiver request, and waive the 60-day notice requirements under 49 CFR 1150.32(e) with respect to this transaction. Granting the waiver request will have the effect of making the exemption for the acquisition and operation transaction in this proceeding effective on the service date of this decision.

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

It is ordered:

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

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary

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<sup>6</sup> No opposition to the request has been filed at the Board.