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SERVICE DATE – LATE RELEASE NOVEMBER 22, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34792

PORTLAND & WESTERN RAILROAD, INC. — ACQUISITION AND OPERATION
EXEMPTION — UNION PACIFIC RAILROAD COMPANY

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

Decided: November 20, 2006

On October 27, 2006, Portland & Western Railroad, Inc. (P&W) filed a request for a waiver of the requirements of 49 CFR 1150.42(e),¹ to permit the exemption it is seeking in this proceeding to become effective without providing the advance notice required by the Board's rules to be given to employees who may be affected by P&W's planned acquisition of and operation over an operating easement and to the national offices of the employees' labor unions. By letter filed on November 2, 2006, P&W certified that, on that date, a notice of the transaction was posted at the workplace of P&W employees and that a copy was served by overnight mail on the national office of the only labor union representing any P&W employees – the Brotherhood of Locomotive Engineers and Trainmen.

Concurrent with this waiver filing, P&W, a Class III rail carrier with annual revenues in excess of \$5 million, filed a verified notice of exemption under 49 CFR 1150.41 to acquire a permanent, exclusive rail freight operating easement from Union Pacific Railroad Company (UP) and to operate pursuant thereto over a 5-mile rail line between milepost 749.95 in Tigard, OR, and milepost 755.43 in Beaverton, OR. According to P&W, the proposed transaction will change its property interest in the rail line from lessee to easement holder under a perpetual freight rail easement. P&W will continue to operate over the line as the only common carrier providing rail freight

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."

service. P&W adds that its lease with UP will be terminated to the extent it applies to the line in question. P&W asserts that there will be no changes in its current operations or service as a result of this transaction.

According to P&W, UP will also transfer other interests in the real estate and other assets to Washington County, OR (County), which intends to transfer these assets to the Tri-County Metropolitan Transportation District of Oregon (Tri-Met). This subsequent transfer will eventually enable Tri-Met to provide commuter rail service on the rail line in question pursuant to a shared use agreement with P&W. Tri-Met and County have initiated a separate proceeding before the Board, seeking to confirm that their acquisition of the physical assets of the rail line in question will not subject them to the Board's jurisdiction, since P&W will remain the sole common carrier and provider of freight rail service.²

P&W asserts that the proposed transaction will have no adverse effects on rail employees of P&W or UP. No jobs will be abolished or relocated. Accordingly, P&W asks that the full 60-day notice requirement be waived so that it may close this transaction by no later than November 27, 2006.³

² See Motion to Dismiss filed on October 25, 2006, in STB Finance Docket No. 34810, Washington County, OR – Acquisition Exemption – Certain Assets of the Union Pacific Railroad Company and STB Finance Docket No. 34791, Tri-County Metropolitan Transportation District of Oregon – Acquisition Exemption – Certain Assets of Washington County, OR.

³ P&W notes that Tri-Met also desires to close certain related transactions by that date.

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 purpose behind the notice requirements will not be contravened if the requested waiver is granted in this proceeding. The record indicates that no employees will be adversely affected by the waiver of requirements here.⁵ P&W already operates as the sole common carrier on the rail line in question, and it will continue to operate as the sole common carrier on the line with the same employees providing the same services. The only difference is that, after the transaction, P&W will operate as an easement holder rather than as a leaseholder.

For these reasons, we will grant the waiver request. Granting the request will make the exemption for the acquisition and operation transaction in this proceeding effective on the date of service of this waiver decision. As a result of P&W's November 2, 2006 certification, employees will have received some advance notice of the transaction in any event.

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

It is ordered:

1. P&W's request for waiver is granted.

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

⁵ No opposition to the request has been filed with the Board. The request for waiver of the 60-day notice requirement is justified under the circumstances presented here. In Advance Notice, at 601, the Board recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision” (Emphasis added). We note that transactions such as these are typically planned months in advance and we see no reason why parties cannot follow our rules and give 60 days' notice in most cases.

2. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary