

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35930

TEXAS NEW MEXICO RAILWAY, L.L.C.—ACQUISITION AND OPERATION
EXEMPTION—AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC.

Digest:¹ This decision allows Texas New Mexico Railway, L.L.C. to proceed with a notice of exemption to acquire and operate a rail line owned by Austin & Northwestern Railway Company, Inc. after providing employees 50 days' advance notice of the transaction, rather than the full 60-day advance notice that otherwise would be required.

Decided: June 25, 2015

On June 3, 2015, Iowa Pacific Holdings, LLC, and its wholly owned subsidiary, Permian Basin Railways (collectively, IPH), filed a request for partial waiver of the 60-day labor notice requirement of 49 C.F.R. § 1150.32(e) to instead provide 50 days' advance notice. The waiver request relates to a verified notice of exemption filed in this docket by Texas New Mexico Railway, L.L.C. (TNMR),² a noncarrier, in which TNMR seeks under 49 C.F.R. § 1150.31 to acquire a rail line from Austin & Northwestern Railway Company (ANR), an IPH subsidiary railroad, and operate it. For the reasons discussed below, the partial waiver request will be granted.

BACKGROUND

TNMR filed its verified notice of exemption³ to acquire from ANR, and to operate, approximately 104.191 miles of rail line between milepost 0.079 at Monahans, Tex., and milepost 104.27 at Lovington, N.M.⁴ Because TNMR certified in its verified notice that its

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² TNMR is a new, wholly owned, subsidiary of Watco Holdings, Inc. (Watco).

³ Notice of the exemption was served and published in the Federal Register on June 5, 2015 (80 Fed. Reg. 32,203).

⁴ This transaction is related to a concurrently filed verified notice of exemption in Watco Holdings, Inc.—Continuance in Control Exemption—Texas New Mexico Railway, FD 35931

(continued . . .)

projected annual revenues would exceed \$5 million as a result of the transaction, 49 C.F.R. § 1150.32(e) requires TNMR to send notice of the transaction to the national offices of the labor unions representing the employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so at least 60 days before the exemption can become effective. TNMR filed its certification of compliance on May 19, 2015; as a result, § 1150.32(e) would preclude TNMR from consummating the transaction until July 18, 2015.

IPH, however, has requested a partial waiver of the 60-day labor notice requirement so that the exemption could become effective 10 days earlier, on July 8, 2015. IPH states that due diligence work and negotiations for this transaction took longer than the parties expected. IPH asserts that, as a result, it is now under pressure to consummate two other rail line acquisitions more quickly than it had originally anticipated. IPH states that one of the other new acquisitions will require IPH to finance and undertake a substantial amount of track, bridge, and right-of-way rehabilitation in order to provide continued rail service to dependent shippers and that expeditiously granting its waiver request will facilitate preserving rail service on the other two lines. Thus, IPH requests that the Board partially waive the labor notice requirement here to enable this transaction to be consummated on or after July 8, 2015.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 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. See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902— Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997). The Board takes seriously the requirements of the rule. However, because the Board has received no filings opposing IPH's request for partial waiver, and TNMR will provide 50 days of the 60-day notice requirement, it does not appear that the purpose behind the notice requirements would be substantially diminished if the requested partial waiver is granted. Meanwhile, the partial waiver would facilitate continued rail service for shippers on the other lines to be acquired by IPH.

Accordingly, IPH's petition for partial waiver of the 60-day notice period will be granted. By granting this partial waiver request, the earliest date that this transaction may be consummated will be July 8, 2015.

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

(. . . continued)

(STB served June 5, 2015), in which Watco seeks Board approval under 49 C.F.R. § 1180.2(d)(2) to continue in control of TNMR upon TNMR's becoming a Class III rail carrier.

It is ordered:

1. IPH's request that the Board partially waive the 60-day notice period of 49 C.F.R § 1150.32(e) is granted as set forth in this decision.
2. TNMR's exemption is effective July 8, 2015.
3. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.