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SERVICE DATE – DECEMBER 12, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35777

NEW ORLEANS & GULF COAST RAILWAY COMPANY, INC.—LEASE EXEMPTION  
CONTAINING INTERCHANGE COMMITMENT—UNION PACIFIC RAILROAD  
COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:<sup>1</sup> This decision allows New Orleans & Gulf Coast Railway Company, Inc. (NOGC), a Class III rail carrier, to continue to lease from Union Pacific Railroad Company and operate approximately 11.52 miles of rail line in Louisiana without giving employees the full 60-day advance notice of the transaction because no employees would be adversely affected by the transaction.

Decided: December 9, 2013

On November 12, 2013, New Orleans & Gulf Coast Railway Company, Inc. (NOGC) filed a request for a waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e). The waiver request is related to a verified notice of exemption concurrently filed by NOGC in this docket under 49 C.F.R. § 1150.41 in which NOGC certified that its projected annual revenues as a result of this transaction would exceed \$5 million. Accordingly, at least 60 days before the concurrently filed notice of exemption can become effective, NOGC is required to send notice of the transaction to the national offices of the labor unions with 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. No opposition to this waiver request has been filed.

BACKGROUND

NOGC filed its verified notice of exemption<sup>2</sup> to continue to lease from Union Pacific Railroad Company (UP) and operate an 11.52-mile line of railroad consisting of 7.02 miles of

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<sup>1</sup> 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).

<sup>2</sup> Notice of the exemption was served and published in the Federal Register on November 27, 2013 (78 Fed. Reg. 71,037). But for the labor notice requirements, the exemption would become effective 30 days from its filing date, December 12, 2013.

UP's main line located between milepost 0.98 at Goldsboro, La., and milepost 8.00 near Westwego, La., and the 4.5-mile Hooper Spur extending from Harvey Yard, at Harvey, La., south to the end of the spur at Bayou Street.<sup>3</sup> The verified notice of exemption was filed because NOGC and UP had recently entered into a First Supplement to their 2003 Lease Agreement that would extend the term of the 2003 lease and permit NOGC to construct a new yard on the leased premises and to assess a surcharge on all NOGC traffic in order to undertake capital investments.<sup>4</sup>

Because NOGC has been leasing and operating the line and will continue to do so, NOGC requests a waiver so that the authority it seeks in its exemption notice can become effective without NOGC's providing the full 60-day advance notice. In support, NOGC asserts that: (1) no UP employees will be affected because no UP employees have performed operations or maintenance on the line since 2003; and (2) no NOGC employees will be affected because NOGC will continue to provide the same service and maintenance on the line as it has been providing since the inception of the lease.

#### DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 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. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. NOGC employees would continue to provide the same service and maintenance they have provided since 2003 and UP employees have performed no work on the line since that date. Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, thereby allowing the related exemption authority to lease and operate the line to become effective on December 12, 2013.

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<sup>3</sup> NOGC previously was granted authority to lease and operate the rail line in New Orleans & Gulf Coast Railway—Lease Exemption—Union Pacific Railroad, FD 34411 (STB served Oct. 20, 2003).

<sup>4</sup> NOGC also certified in the notice that the Lease Agreement contains a provision that may limit future interchange at Westwego with a third-party connecting carrier by adjustment in the purchase price or rental (interchange commitment). Pursuant to the Board's new rules established in Information Required in Notices and Petitions Containing Interchange Commitments, EP 714 (STB served Sept. 5, 2013), applicant submitted additional information about the interchange commitment as set forth at 49 C.F.R. § 1150.43(h)(1).

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

It is ordered:

1. NOGC's request for waiver is granted, and the exemption authority to lease and operate the line is effective on December 12, 2013.

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

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.