

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35456

AUSTIN WESTERN RAILROAD, L.L.C.—LEASE AND OPERATION EXEMPTION—
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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

Digest:¹ Austin Western Railroad, L.L.C., has notified the Board that it intends to lease and operate a portion of rail owned by Capital Metropolitan Transportation Authority. This decision allows AWRR to do so without giving potentially affected employees the full 60-day advance notice of the transaction that ordinarily would be required under the Board's regulations.

Decided: April 4, 2011

On March 8, 2011, Austin Western Railroad, L.L.C. (AWRR), filed a request for a waiver of the requirements of 49 C.F.R. § 1150.42(e), which requires that, in certain railroad acquisition or operation proceedings, the applicant must give 60 days' advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees' labor unions. Because AWRR has been, and will continue to be, the exclusive freight operator over the involved lines, AWRR seeks a waiver so that the lease and operation it seeks to effectuate by exemption can become effective without AWRR providing the full 60-day advance notice.

BACKGROUND

Concurrently with the filing of the petition for waiver, AWRR, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41, to lease and operate approximately 165.93 miles of rail lines owned by Capital Metropolitan Transportation Authority (CMTA). The lines are located: (1) between milepost -1.13, at or near Giddings, Tex., and milepost 154.1, near Llano, Tex.; and (2) between milepost 0.0, near Fairland, Tex., and milepost 6.5, near Marble Falls, Tex. AWRR will also lease and operate over the Scobee Spur (3.3 miles) and the Burnett Spur (0.93 miles). Except for the 1.13-mile segment between milepost -1.13 and milepost 0.0 (the new segment), AWRR has been the exclusive freight

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).

operator over the lines to be leased since 2007, pursuant to an operating agreement. See Austin W. R.R.—Operation Exemption—Capital Metro. Transp. Auth., FD 35072 (STB served Sept. 14, 2007). On March 8, 2011, AWRR certified to the Board that, on March 4, 2011, it posted notice of the transaction at the workplace of the employees on the affected lines, and on March 7, 2011, it served a copy of the notice on the national office of the potentially affected employees' labor union (as required under 49 C.F.R. § 1150.42(e)), as well as on the union's local office.

AWRR is seeking waiver of the 60-day labor notice requirement because, it asserts, requiring the full 60-day notice would serve no useful purpose. AWRR states that no employees of AWRR or CMTA will be affected by this transaction, as AWRR has been the exclusive freight carrier over the lines for a number of years and would continue to be the exclusive carrier after the proposed transaction is consummated. AWRR notes that no CMTA employees have performed freight operations on the lines; no CMTA jobs will be abolished or relocated as a result of the lease of the lines; and CMTA will continue to be responsible for the maintenance of the lines, including the new segment. Nor will AWRR employees be affected by the lease, according to AWRR, because AWRR would continue to provide the same service as it has since 2007. It will do so as a lessee rather than simply the operator. AWRR also states that it does not plan to hire any additional employees as a result of the transaction. No opposition to the petition has been filed.

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.² The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

The record indicates that no employees will be adversely affected by the waiver requirements here. Except for the new segment, which has been out of service and will not be used to provide direct rail service to any customers, AWRR is currently the exclusive freight operator of the involved lines, and it will continue to operate as the exclusive freight carrier of all the lines upon consummation of the transaction. Therefore, no employees will be adversely affected by the waiving the 60-day notice period because the transaction will merely convert services provided pursuant to an operating agreement to services provided pursuant to a lease agreement.

² See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997).

For these reasons, we will grant the waiver request. Granting the request will make the exemption for the lease and operation transaction in this proceeding effective on the date of service of this waiver decision. Further, as indicated in AWRR's March 8, 2011 certification, employees will have received more than 30 days' advance notice of the transaction.

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

It is ordered:

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

By the Board, Chairman Elliott and Commissioner Mulvey.