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SERVICE DATE - DECEMBER 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34285

WISCONSIN & SOUTHERN RAILROAD CO.–ACQUISITION EXEMPTION–SOO LINE
RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY

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

Decided: December 19, 2002

By petition filed November 26, 2002, Wisconsin & Southern Railroad Co. (WSOR) seeks waiver of the requirements of section 1150.42(e).¹

In its November 26 petition, WSOR states that it anticipated filing a verified notice of exemption in STB Finance Docket No. 34285 on or about December 15, 2002, to purchase the subject rail line.² As part of that filing, WSOR indicated that it would state that it is an existing Class III rail carrier with annual revenues in excess of \$5 million, and that it has leased and operated over the subject line since June 1, 1998.

While WSOR indicated that it would acknowledge that the employee notification requirements set forth at 49 CFR 1150.42(e) apply to the subject transaction, it does not anticipate that this

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.”

² In 1998, WSOR was granted authority to lease and operate approximately 32.5 miles of rail line currently owned by Soo Line Railroad Company d/b/a/ Canadian Pacific Railway (CPR). See Wisconsin & Southern Railroad Co.–Lease and Operation Exemption–Soo Line Railroad Company D/B/A Canadian Pacific Railway, STB Finance Docket No. 33571 (STB served May 27, 1998). Petitioner notes that it was granted similar waiver relief in that proceeding.

transaction will have any impact on affected railroad employees. According to petitioner, the same WSOR employees who operate trains over the line today will continue to do so after consummation of the purchase. WSOR asserts that there will be no changes in working conditions, work rules, rates of pay, or benefits resulting from this transaction. WSOR adds that, although CPR will retain the right to perform certain operations over the subject line post-consummation as it does today, this transaction will not in any way affect CPR employees. WSOR states that the sole purpose of this transaction is to allow WSOR to purchase and own the track and right-of-way it presently leases.

WSOR requests a waiver of the Board's notice requirements at 49 CFR 1150.42(e). WSOR states that it has been providing service on the line for over 4 years and that the sole impact of this transaction will merely be to convert its leasehold interest into an ownership interest, with no adverse effects on railroad employees. WSOR further states that it needs to consummate this acquisition by no later than December 31, 2002, because the institution funding the acquisition must close the transaction by the end of the 2002 calendar year. Petitioner seeks waiver of the certification requirements of that portion of section 1150.42(e) that would otherwise prevent it from consummating the transaction by that date.³

WSOR's waiver request will be granted. The purpose of 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 WSOR has certified that the notice was given on November 26, 2002. Because WSOR indicates that employees will not be adversely affected by the transaction and employees and their representatives will have had approximately 30 days' notice of the proposed transaction by December 31, 2002, we will waive the 60-day requirement under 49 CFR 1150.42(e) to the extent necessary to permit the transaction to be consummated on December 31, 2002, as long as the notice of exemption for the acquisition is filed on or before December 24, 2002.

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

³ By certifications filed with the Board on November 26, 2002, and by facsimile on December 13, 2002, WSOR states that it mailed copies of such notice to the national offices of the affected labor unions and posted notice of the transaction at employee workplaces, respectively, on November 26, 2002.

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

It is ordered:

1. WSOR's petition is granted to the extent described above.
2. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams
Secretary