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BY HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35456, Austin Western Railroad, L.L.C. –
Lease and Operation Exemption – Capital Metropolitan
Transportation Authority

Dear Ms Brown:

Attached for filing are the original and ten copies of a Petition for Waiver of
49 C.F.R. § 1150.42(c).

Please time and date stamp the extra copy of the Petition and return it
with our messenger.

If you have any questions regarding this matter, please contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Karl Morell".

Karl Morell

Enclosures

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35456

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

PETITION FOR WAIVER OF
49 C.F.R. § 1150.42(e)



EXPEDITED CONSIDERATION REQUESTED

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Attorneys for:
AUSTIN WESTERN RAILROAD, L.L.C.

Dated: March 8, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35456

AUSTIN WESTERN RAILROAD, L.L.C.
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PETITION FOR WAIVER OF
49 C.F.R. § 1150.42(e)

Austin Western Railroad, L.L.C. (“AWRR”), a Class III rail carrier, hereby petitions the Surface Transportation Board (“Board”) to waive the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e). AWRR is concurrently filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 *et. seq.*, to lease and operate certain rail lines owned by Capital Metropolitan Transportation Authority (“CMTA”). AWRR is currently providing rail freight service over these lines pursuant to authority granted by the Board in STB Finance Docket No. 35072, *Austin Western Railroad, Inc. – Operation Exemption – Capital Metropolitan Transportation Authority* (not printed), served September 14, 2007 (“*AWRR Operation Exemption*”).

AWRR’s projected revenues from operating these rail lines exceed \$5 million thus invoking the employee notice requirements of Section 1150.42(e). AWRR is seeking a waiver of the 60-day notice requirement because, as explained below, no useful purpose would be served by imposing that notice requirement in this proceeding.

BACKGROUND

In *AWRR Operation Exemption*, the Board authorized the operation by AWRR over 164.83 miles of rail lines owned by CMTA (the “Lines”). Since 2007, AWRR has been the sole rail freight operator on the Lines and CMTA has been responsible for maintaining the Lines.

CMTA has decided to lease the Lines to AWRR. In addition to the Lines, CMTA is also leasing to AWRR a 1.13-mile segment of rail line located between Milepost -1.13 and Milepost 0.0, at or near Giddings, TX (the “New Segment”). The New Segment has been out of service and will be used by AWRR for operational convenience. The New Segment will not be used to provide direct rail service to any customers. Also, CMTA will continue to be responsible for maintaining the Lines. Consequently the lease of the Lines and the New Segment will not result in any operational or maintenance changes on the Lines or New Segment. The Lines will simply be leased and operated by AWRR and maintained by CMTA as they have since 2007. AWRR does not plan to hire any additional employees as a result of the lease of the Lines and the New Segment. There are no CMTA employees involved in the freight operations over the Lines or New Segment. More importantly, no CMTA jobs will be abolished or relocated as a result of the lease of the Lines and the New Segment. Consequently, no useful purpose would be served by complying with the 60-day notice requirement.

ARGUMENT

The 60-day notice requirement was adopted by the Board in order to provide employees affected by line sale transactions with advance notice so that they can make “adjustments and decisions relating to their livelihoods.” *Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592, 599-600 (1997). In adopting the notice requirement, the Board

recognized that under certain circumstances a waiver of the notice provision would be appropriate. *Id.* at 601.

In circumstances similar to the one in this proceeding, the Board has consistently granted waivers of the notice provision. *See, e.g.*, STB Finance Docket No. 34904, *Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served July 24, 2006 (waiver granted where no lessor employees were affected by the extension and renewal of the preexisting lease arrangement); STB Finance Docket No. 34792, *Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Union Pacific Railroad Company* (not printed), served November 22, 2006 (waiver granted where acquirer of the exclusive rail freight operating easement was already the sole common carrier on the line under a lease arrangement); and STB Finance Docket No. 34660, *Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed), served February 28, 2005, slip op. at 2 (waiver granted where “no CSXT employees will be affected because no CSXT employees have been involved in any operations or maintenance on the line since 1990”).

The situation in this proceeding is similar to the ones cited above. In all these proceedings the incumbent carrier had been the exclusive rail freight carrier for a number of years and would continue to be the exclusive rail freight carrier after the proposed transactions were consummated.

Here, labor notice would serve no useful purpose. No CMTA employee will be affected by the lease because no CMTA employee has performed freight operations on the Lines and the New Segment and CMTA will continue to be responsible for the maintenance of the Lines. Neither will any AWRR employee be affected by the lease because AWRR will continue to

provide the same service as it has since 2007. The only difference is that AWRR will operate over the Lines as the lessee rather than simply the operator. Because the transaction will simply convert operations pursuant to an operating agreement to operations pursuant to a lease agreement, providing advance labor notice would be a futile act.

For the reasons discussed above, AWRR respectfully requests the Board to waive the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e).

Respectfully submitted,



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