

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35187 (SUB-NO. 1)

GRAND ELK RAILROAD, INC.
-- ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

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

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

Dated: August 25, 2016

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

Grand Elk Railroad, Inc. (“GDLK”) hereby petitions the Board for a waiver of the 60-day labor notice requirements of 49 C.F.R. § 1150.42(e), to the extent those requirements are applicable to the assignment of trackage rights transaction addressed in this proceeding. As any potentially affected employees were provided with requisite notice more than 7 years ago and GDLK has been operating the relevant trackage rights since that time, compliance with the notice provisions of Section 1150.42(e) would be repetitive and serve no additional purpose. Moreover, under the circumstances compliance would be confusing to employees, contrary to the intended purpose of the requirement. Waiver is thus appropriate.

GDLK is filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1150.41, et seq., for its acquisition by assignment from Norfolk Southern Railway Company (“NSR”) of approximately 3.3 miles of trackage rights over a CSX Transportation, Inc. (“CSXT”) rail line in Grand Rapids, Michigan (the “CSXT Line”). The trackage rights assignment was incidental to a 2009 lease transaction between GDLK and NSR, but was inadvertently omitted from the notice of exemption for that transaction. Grand Elk Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company, Docket No. FD 35187 (STB served November 17, 2008). Pursuant to a petition to partially revoke also filed

concurrently herewith, GDLK seeks to have the exemption authority sought in this proceeding made effective retroactively to January 30, 2009.

In accordance with Section 1150.42(e), GDLK provided notice to all affected NSR employees and their unions of GDLK's hiring plans at the time of the original lease transaction. See certification dated and filed December 1, 2008 in Docket No. FD 35187. Trackage rights operations on the CSXT Line, previously conducted by NSR employees, have been performed by GDLK employees since 2009. NSR no longer has any employees in the Grand Rapids terminal or the surrounding area to whom notice could be provided.

Because GDLK's annual rail-related revenues exceed \$5 million, 49 C.F.R. § 1150.42(e) would otherwise require GDLK to post and serve advance notice of the trackage rights assignment transaction. Under the circumstances, however, attempting to provide further notice to former NSR employees in the Grand Rapids terminal would be repetitive, and confusing. GDLK would be unsure where it would post notice, were it otherwise so required, in part because there would appear to be no affected NSR employees under the circumstances. NSR employees and their unions previously received the advance notice contemplated by the regulation.

The 60-day notice requirement is intended to ensure that employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 -- Advance Notice, 2 S.T.B. 592 (1997). That purpose would not be thwarted if the waiver requested here is granted. In similar circumstances where a railroad sought after-the-fact authorization for incidental trackage rights assigned in a prior transaction, the Board confirmed that waiver is appropriate. Saginaw Bay Southern Railway Company – Acquisition and Operation Exemption – In Saginaw County,

MI, Docket No. FD 34729 (Sub-No. 1) (STB served Jun. 19, 2006), slip op. at 3 (further advance notice would “serve no additional purpose.”).¹

GDLK requests expedited consideration of this petition, and issuance of the requested waiver to correspond with the issuance of a decision on GDLK’s companion petition to partially revoke the relevant class exemption and grant retroactive effectiveness for GDLK’s exemption authority herein.

WHEREFORE, GDLK respectfully requests that the Board grant this petition expeditiously and waive the advance notice provisions of 49 C.F.R. § 1150.42(e) for the subject transaction.

Respectfully submitted,

By: 
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RAILROAD, INC.**

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¹ Because NSR, rather than CSXT, employees conducted the trackage rights operations that were assigned to GDLK, CSXT employees would not have been adversely affected by the transaction and were not entitled to notice. City of Tacoma, Department of Public Utilities, Beltline Division – Acquisition and Operation Exemption – Lakeview Subdivision, Quadlok-St. Clair, and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA, Docket No. FD 34555 (STB served Sep. 27, 2004), slip op. at 4 n.3.