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May 29, 2018

245819

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
May 29, 2018
Part of
Public Record

Re: **Docket No. FD 36196**
Delmarva Central Railroad Company -- Change in
Operators Exemption -- Cassatt Management, LLC
d/b/a Bay Coast Railroad

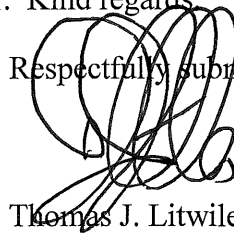
Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are the **Verified Notice of Exemption of Delmarva Central Railroad Company Pursuant to 49 C.F.R. § 1150.41(c)** and the **Emergency Petition for Waiver and for Immediate Effective Date**, both dated May 29, 2018. A check in the amount of \$2,000.00, representing the appropriate fee for the Verified Notice, was delivered to your office on Friday by overnight courier.

Please note that expedited consideration of the Emergency Petition is requested.

If you have any questions regarding these filings, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards,

Respectfully submitted,



Thomas J. Litwiler
Attorney for Delmarva Central
Railroad Company

TJL/tl

Attachments

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36196

DELMARVA CENTRAL RAILROAD COMPANY
-- CHANGE IN OPERATORS EXEMPTION --
CASSATT MANAGEMENT, LLC d/b/a BAY COAST RAILROAD

**EMERGENCY PETITION FOR WAIVER
AND FOR IMMEDIATE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEY FOR DELMARVA CENTRAL
RAILROAD COMPANY**

Dated: May 29, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36196

DELMARVA CENTRAL RAILROAD COMPANY
-- CHANGE IN OPERATORS EXEMPTION --
CASSATT MANAGEMENT, LLC d/b/a BAY COAST RAILROAD

**EMERGENCY PETITION FOR WAIVER
AND FOR IMMEDIATE EFFECTIVE DATE**

Delmarva Central Railroad Company ("DCR") hereby petitions the Board to waive the 30-day effectiveness period specified by 49 C.F.R. § 1150.42(b) and the 60-day notice period specified by 49 C.F.R. § 1150.42(e) to permit DCR's concurrently-filed notice of exemption in this docket to become effective by June 1, 2018. Pursuant to that notice of exemption, DCR seeks to assume operation of an approximately 14.8-mile rail line owned by Canowie Atlantic Co. ("CAC") on behalf of the Accomack-Norhampton Transportation District Commission ("ANTDC") and extending from Pocomoke City, Maryland to Hallwood, Virginia (the "Line"). The previous operator, Cassatt Management, LLC d/b/a Bay Coast Railroad ("BCR"), ceased operations on the Line on May 18, 2018, and there is an urgent need to restore service to the active shippers on the Line immediately. DCR has worked with CAC/ANTDC to address these exigent circumstances as quickly as possible, and consulted with Board staff as to the most effective regulatory process for service restoration. DCR also has provided extensive notice to the four employees of BCR, retirements amongst whom were the precipitating factor in the current service crisis. Waiver is appropriate and urgently necessary in the circumstances, and the Board should move expeditiously to allow DCR's exemption to become effective immediately.

CAC is a subsidiary of ANTDC, a political subdivision of the Commonwealth of Virginia, and is the owner of rail lines extending south from Pocomoke City, Maryland to Cape Charles, Virginia and, via a former connecting car float operation, into the Norfolk area. BCR has been the operator of the CAC lines since 2006. *Cassatt Management, LLC d/b/a Bay Coast Railroad -- Lease and Operation Exemption -- Canonic Atlantic Co. on behalf of Accomack-Norhampton Transportation District Commission*, Docket No. FD 34814 (STB served February 6, 2006). At Pocomoke City, CAC/BCR connect with DCR, which began operations in late 2016 on 162 miles of rail line leased from Norfolk Southern Railway Company on the Delmarva Peninsula in Maryland and Delaware. *Delmarva Central Railroad Company -- Lease and Operation Exemption with Interchange Commitment -- Norfolk Southern Railway Company*, Docket No. FD 36071 (STB served December 2, 2016).

The ability of BCR to continue operation of the CAC-owned lines has recently become uncertain, and imminent personnel departures at BCR caused BCR to terminate its operations on the Delmarva Peninsula on May 18, 2018. DCR and CAC/ANTDC had already commenced discussions regarding DCR's potential assumption of operations over the portion of CAC's rail line between Pocomoke City and Hallwood, Virginia (the "Line"), and the parties have worked diligently to develop and finalize an arrangement that will allow expeditious resumption of rail service on the Line. The remaining staff at BCR has cooperated in the process, and CAC/ANTDC and DCR also have consulted with the Board's Office of Public Assistance, Governmental Affairs, and Compliance ("OPAGAC") about the situation and the best course for restoring service. While DCR considered requesting an emergency service order pursuant to 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146, DCR and CAC/ANTDC have been able to reach agreement on (and will shortly execute) a lease and operating agreement for the Line

that addresses the current service emergency while also providing a longer-term arrangement for the provision of sustainable and adequate rail service.¹ DCR's concurrently-filed notice of exemption seeks "change in operator" authority pursuant to 49 C.F.R. § 1150.41(c) for DCR's lease and operation of the Line.

Under 49 C.F.R. § 1150.42(b), DCR's exemption would ordinarily not become effective until 30 days after the filing of DCR's notice. In this instance, however, there are four active shippers on the Line who last received rail service on May 18th. BCR generally provided service every 7-10 days, and thus any continued cessation of service will soon have a significant impact on rail traffic for those shippers. DCR is prepared to initiate operations on this Line this Friday, which will be two weeks after BCR's last service and is necessary to meet the shipping needs of the Line's customers.

In appropriate and analogous circumstances, the Board has acted to shorten the effective period for a replacement railroad's class exemption in order to accommodate a timely initiation of service and "protect the interests of affected shippers." *Washington State Department of Transportation -- Acquisition Exemption -- Palouse River and Coulee City Railroad, Inc.*, Docket No. FD 35024, *et seq.* (STB served May 30, 2007) at 3. *See also, e.g., Ohio & Pennsylvania Railroad Company -- Lease and Operation Exemption -- P&LE Properties, Inc.*, Docket No. FD 32711 (ICC served June 23, 1995). Waiver of the 30-day effectiveness period in the limited, exigent circumstances present here would limit any further

¹ DCR understands that discussions are ongoing with other parties regarding the continuation of rail service on the CAC/BCR rail lines in the Norfolk area, and the Board is likely to be asked to provide emergency relief in some form with respect to those lines as well. CAC leases (or holds trackage rights over) some of the Norfolk-area lines, presenting an additional complication not present on the CAC-owned Pocomoke City-Hallwood line that DCR will lease and operate. DCR also understands that CAC anticipates seeking discontinuance authority for its rail line between Hallwood and Cape Charles, Virginia, and for its operation of a car float service between Cape Charles and Norfolk, Virginia.

disruption of rail service on the Line and is fully consistent with the Rail Transportation Policy of 49 U.S.C. § 10101. DCR is unaware of any party that has concerns about the proposed transaction or expedited effectiveness, and indeed believes that all interested entities are anxious for DCR to commence operations on the Line as quickly as possible.

Because DCR's annual rail-related revenues exceed \$5 million, 49 C.F.R. § 1150.42(e) also requires DCR to provide notice of the proposed change in operators transaction to employees of BCR 60 days prior to consummation of the transaction.² DCR posted the required notice at the workplace of BCR's employees, and certified to the Board that it had done so, on May 17, 2018, as soon as was reasonably possible given the progression of discussions between the parties. *See* DCR Notice of Exemption, Exhibit D. DCR also went further and mailed the notice to each of DCR's four employees at their home residence.³

Given the unique and exigent circumstances, DCR seeks waiver of the full 60-day notice period to allow DCR's exemption in this docket to become effective immediately and, in turn, allow the prompt restoration of rail service to shippers on the Line. At the time BCR ceased operations on the Delmarva Peninsula, BCR had a total of four employees -- a general manager, assistant general manager, trainmaster/locomotive engineer and conductor. A fifth, part-time employee had left his position the prior month. The imminent retirement of one of the remaining employees precipitated BCR's final service crisis, and DCR understands that two additional employees have retired or will be retiring as well. The bulk of the employees' work took place on the Norfolk-area rail lines, rather than on the Delmarva Peninsula where the Line

² The regulation also requires that notice be provided to labor unions with employees on the affected line. BCR's employees were not represented by any labor union.

³ BCR cooperated in furnishing DCR with employee contact information from BCR's internal records.

is located. And, as indicated in DCR's notice, DCR is not hiring any additional employees in connection with its assumption of operations on the Line.

The purpose of the 60-day notice requirement is 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). In adopting that requirement, the Board explicitly recognized "that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time." 2 S.T.B. at 601. Here, the employee effects of BCR's cessation of operations occurred before and separately from DCR's proposed assumption of operations on the Line. This is not a situation where any employee will need to make a decision about accepting employment with DCR or remaining with BCR. And DCR has sought to reflect the spirit of the notice requirement by disseminating the information contemplated by the Board's regulations to BCR employees as fully, directly, transparently and quickly as possible.

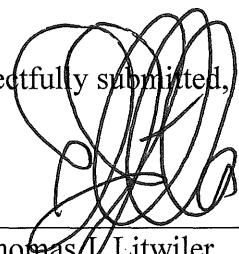
If DCR's requested waiver is granted, BCR employees will nonetheless have received two weeks' notice of the proposed change in operators transaction on the Line. No purpose would be served by denying service to the shippers on the Line for an additional six weeks when a single remaining BCR employee who may be interested in railroad work has no employment opportunities with DCR to consider. This is plainly one of the "exceptional circumstances" that the Board anticipated when it adopted the current notice rule.⁴ Waiver is

⁴ Compare *Wisconsin & Southern Railroad Co. -- Acquisition Exemption -- Iowa, Chicago & Eastern Railroad Corporation*, Docket No. FD 34464 (STB served July 30, 2004) (shortening 60-day notice period where actual notice had been given and very small number of potentially affected employees would not be significantly impacted).

appropriate and necessary in these circumstances, and the Board should move expeditiously to allow DCR's exemption to become effective immediately.

WHEREFORE, DCR respectfully requests that the Board waive the 30-day effectiveness period specified by 49 C.F.R. § 1150.42(b) and the 60-day notice period specified by 49 C.F.R. § 1150.42(e) and permit DCR's concurrently-filed notice of exemption in this docket to become effective by June 1, 2018.

Respectfully submitted,

By: 

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**ATTORNEY FOR DELMARVA CENTRAL
RAILROAD COMPANY**

Dated: May 29, 2018