

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36028 (Sub-No. 1)]

Kanawha River Railroad, L.L.C.—Lease Renewal and Operation Exemption with
Interchange Commitment—Norfolk Southern Railway Company

Kanawha River Railroad, L.L.C. (KRR), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to amend its lease with Norfolk Southern Railway Company (NSR) of, and continue to operate, nine rail line segments totaling 309.45 miles in West Virginia and Ohio.¹ These line segments extend between (1) milepost V 381.8 at Maben, W. Va., and milepost V 435.0 at DB (Deepwater Bridge), W. Va.; (2) milepost RR 7.0 at Refugee, Ohio, and milepost RR 116.5 at Hobson Yard, Ohio; (3) milepost WV 125.6 at Conco, Ohio, and milepost WV 253.4 at Cornelia, W. Va.; (4) milepost 0.0 VC at Vaco Junction, W. Va., and milepost 0.84 VC at Deepwater, W. Va.; (5) Hitop RT at milepost TP 0.0 at Charleston, W. Va., and the end

¹ According to KRR, it mistakenly understated the total mileage by 0.6 miles and misidentified the mileposts on segments (1) and (7) in its verified notice leading to the exemption in Kanawha River Railroad—Lease Exemption Containing Interchange Commitment—Norfolk Southern Railway, FD 36028 (STB served July 15, 2016), corrected FD 36028 (STB served Aug. 1, 2016), clarified FD 36028 (STB served Aug. 5, 2016). KRR now identifies the total mileage as 309.45 miles, not 308.85 miles; the correct Maben milepost in segment (1) to be V 381.8, not V 382; and the correct Bolt milepost in segment (7) to be VG 12.5, not VG 12.1. KRR verifies that no shipper is affected by these corrections because it has operated consistent with the correct mileposts as identified in the lease agreement. KRR will receive authority to operate on the previously unidentified portions of line if the exemption in this notice becomes effective. See Dall., Garland & Ne. R.R.—Lease & Operation Exemption Including Interchange Commitment—Union Pac. R.R., FD 36545, slip op. at 3 (STB served Dec. 2, 2021).

of the track at milepost TP 1.0; (6) Jones IT at milepost JT 0.0 at Jones, W. Va., and the end of the track at milepost JT 1.3; (7) milepost VG 0.0 at Virwest, W. Va., and milepost VG 12.5 at Bolt, W. Va.; (8) milepost MY 0.0 at Milam, W. Va., and the end of the track at milepost MY 1.01; and (9) milepost PE 0.0 at Putt, W. Va., and milepost PE 2.3 at Putt End Branch, W. Va.

According to the verified notice, KRR has leased and operated the lines since 2016. See Kanawha River R.R.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry., FD 36028 (STB served July 15, 2016), corrected FD 36028 (STB served Aug. 1, 2016), clarified FD 36028 (STB served Aug. 5, 2016). KRR will continue leasing and operating the lines under its amended lease agreement.

KRR certifies that its projected revenues resulting from this transaction will not result in the creation of a Class II or Class I rail carrier but that its current annual revenue does exceed \$5 million. Pursuant to 40 C.F.R. § 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption is to become effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. KRR, however, has petitioned for waiver of the 60-day advance labor notice. KRR's waiver request will be addressed in a separate decision in which the Board will also establish the effective date of the exemption.

KRR further certifies that its amended lease agreement with NSR will include an interchange commitment provision regarding interchange with third-party carriers. KRR verifies that the provision was present in the original lease filed in Kanawha River

Railroad, FD 36028, and remains in effect. KRR has provided additional information regarding the interchange commitment, as required by 49 C.F.R. § 1150.43(h).²

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 11, 2023.

All pleadings, referring to Docket No. FD 36028 (Sub-No. 1), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on KRR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to KRR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: December 28, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² KRR submitted a copy of the lease with the interchange commitment under seal. See 49 C.F.R. § 1150.43(h)(1).