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August 23, 2023

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Red River Valley & Western Railroad Company – Acquisition and Operation
Exemption–Rail Line Of BNSF Railway Company
Finance Docket No. 36719

Dear Ms. Brown:

Red River Valley & Western Railroad Company (“RRVW”) is filing this Petition for Waiver with respect to the labor notice requirements set forth at 49 C.F.R. § 1150.42(e). This Petition for Waiver is related to a concurrently filed Notice of Exemption whereby RRVW is seeking after-the-fact authority to acquire and operate an approximately 0.5-mile rail line, extending from milepost 54.55 to milepost 54.95 (at Casselton, ND) in Cass County, North Dakota. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: wmullins@bakerandmiller.com. If I am unavailable, you may contact Spencer M. Naake, who can be reached at (202) 663-7829, or by e-mail at snaake@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Red River Valley & Western
Railroad Company

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

PETITION FOR WAIVER

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August 23, 2023

**Attorneys for Red River & Western
Railroad Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

Finance Docket No. 36719

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF BNSF RAILWAY COMPANY**

PETITION FOR WAIVER

Petitioner Red River Valley & Western Railroad Company (“RRVW”) hereby requests that the Board waive the requirements of 49 C.F.R. § 1150.42(e) with respect to its Verified Notice of Exemption (“Notice”) concurrently filed in this proceeding. If the projected annual revenues of an acquisition of a rail line pursuant to 49 U.S.C. §10902 will exceed \$5 million, Section 1150.42(e) requires railroads to, 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) and certify to the Board that it has posted the required notice. RRVW is requesting a waiver from the requirement to comply with §1150.42(e).

The basis for the waiver is the fact that RRVW has already been operating the Line since 2006 and the transaction will not impact any RRVW employees or any BNSF Railway Company (“BNSF”) employees. Granting RRVW a waiver from the requirement to comply with 49 C.F.R. § 1150.42(e) is appropriate in this case because the grant of after-the-fact acquisition and operation authority will not change RRVW’s revenues, will not change any of the working

conditions, rates of pay, or benefits applicable to either RRVW or BNSF employees. Granting a waiver will not thwart the purposes the labor notice requirement was intended to serve.

I. Statement of Facts

Pursuant to the Notice, filed contemporaneously with this Petition, RRVW seeks after-the-fact authority from the Surface Transportation Board (the “Board” or “STB”) to acquire and operate a rail line extending from approximately milepost 54.55 to milepost 54.95 in Casselton, ND (the “Line”). As explained in RRVW’s Notice, RRVW acquired the Line from BNSF in 2006 and has operated the Line ever since. RRVW has recently discovered that it did not obtain the requisite STB authority for its acquisition and operation of the Line. RRVW’s failure to obtain STB authority was unintentional. RRVW is now seeking the Board’s authority to correct this oversight through an “after-the-fact” exemption.

The purpose of the acquisition of the Line in 2006 was to allow RRVW to directly connect to a connection track to a customer so as to allow RRVW to serve the customer. The rail line previously acquired by RRVW from BNSF in 1987¹ did not include the Line and did not provide RRVW with a direct connection to the customer. To provide RRVW with direct access to the customer, BNSF agreed to sell the Line to RRVW in 2006 and the parties consummated the transaction that year. RRVW and its employees have been operating the Line ever since the 2006 acquisition. Due to the 2006 acquisition, RRVW was able to directly connect to the shipper’s facility.

¹ RRVW acquired the tracks, physical assets, and common carrier obligation for 656 miles of rail line from BNSF in 1987. This included a rail line from Wahpeton Junction, ND (milepost 1.40) to Casselton, ND (milepost 54.55). See Red River Valley and W. R.R. Co.; Acquisition and Operation Exemption; Certain Lines of Burlington N. R.R. Co., FD 31071 (ICC served July 22, 1987).

Since 2006, rail operations have remained substantially identical to its operations immediately after the acquisition of the Line. The Line has been operated by RRVW's employees since 2006. RRVW attests that the after-the-fact acquisition and operation of the Line will not result in the loss of any current BNSF jobs on the Line or adversely affect any RRVW employees working on the Line. While BNSF's employees working on the Line in 2006 were replaced by RRVW employees, there were no negative impacts because the BNSF employees continued to operate the rest of the BNSF lines in the area under the same working conditions, rates of pay, and benefits then in existence. Accordingly, as a result of the 2006 acquisition, no BNSF jobs were eliminated and there were no adverse changes in BNSF working conditions, rates of pay, or benefits. Likewise, because RRVW employees have been operating the Line since 2006 and those operations will continue unchanged as a result of the transaction, there will be no adverse impacts on any RRVW employees as a result of this after-the-fact transaction. Furthermore, because RRVW employees are also not represented by any labor organization, no purpose would be served by requiring strict compliance with 49 C.F.R. §1150.42(e).

II. Basis for Granting the Petition

The purpose of this notice requirement "is to ensure that rail labor unions and any employees who might be affected by the transfer of a line are given sufficient notice of the transaction before consummation." See Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Rail Line of Union Pacific Railroad Company, FD 34756 (STB served September 15, 2005). As set forth below, the purpose of Section 1150.42(e) would not be thwarted by the granting of this Petition.

This acquisition occurred over seventeen years ago, and no BNSF employees have worked on the Line since 2006. Moreover, given the Line's proximity to BNSF's rail lines not subject to the transaction—namely RRVW's connection with BNSF in Casselton, ND—no BNSF employees were displaced or adversely impacted as a result of the 2006 acquisition nor were they forced to make the type of career choice the Board contemplated when it adopted the labor notice requirements. See Acquisition Rail Lines Under 49 U.S.C. 10901 an 10902 – Advance Notice of Proposed Transactions, Ex Parte No. 562 (STB served September 9, 1997) (“Advance Notice Proceeding”). Likewise, no current BNSF employees will be adversely affected by the grant of this after-the-fact acquisition and operation authority.

Similarly, as noted above, RRVW employees have been working on the Line since 2006 and will continue to do so. As such, there will be no elimination of any RRVW jobs or any adverse changes in working conditions, rates of pay, or benefits of RRVW employees. In addition, RRVW employees on the Line are not represented by any labor organizations, so serving labor organizations with notice of this transaction is unnecessary. See Advance Notice Proceeding, at 6 (“If there are no union employees on the line, no useful purpose would be served by requiring that national unions be notified”).

The Board has previously granted waiver requests under similar circumstances, and it should do so here. See Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company – Acquisition and Operation Exemption – Norfolk Southern Railway Company [Request for Waiver of 49 CFR 1150.429(e)], FD 35308 (STB served October 30, 2009) (granting a Class III rail carrier's petition as neither the buyer or seller's employees would be displaced or adversely affected by the waiver of the requirements); see also Lancaster and Chester Railway Company – Acquisition and Operation Exemption – Norfolk Southern Railway

Company, FD 34334 (STB served April 25, 2003) (granting a Class III rail carrier's petition as no rail employees would be adversely affected by the acquisition). Here, neither RRVW nor BNSF employees were (or will be) displaced or adversely affected, and therefore, as this Petition demonstrates, a waiver of the labor notice requirement in this case will not thwart the intended purpose of the notice requirement.

Conclusion

Granting RRVW's Petition for Waiver will enable the parties to consummate the transaction as soon as it is granted, but no earlier than 30 days' after the concurrently filed notice of exemption and will eliminate the requirement for RRVW to comply with 49 C.F.R. § 1150.42(e). As the transaction does not impact the working conditions, benefits, or rates of pay for any RRVW or BNSF employees, no purpose would be served by requiring compliance with 49 C.F.R. § 1150.42(e). RRVW respectfully requests that the Board grant this Petition for Waiver of the labor notice requirements under 49 C.F.R. § 1150.42(e).

Respectfully submitted,

/s/ ***William A. Mullins***

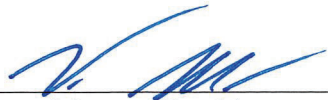
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August 23, 2023

Attorneys for Red River Valley & Western
Railroad Company

VERIFICATION

I, Victor Meyers, President of Red River Valley & Western Railroad Company, certify under penalty of perjury that the foregoing Petition for Waiver is true and correct to the best of my knowledge, information, and belief.



Victor Meyers, President
Red River Valley & Western Railroad
Company

Dated 08/23/2023