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BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36407

MISSISSIPPI SOUTHERN RAILROAD, L.L.C.
— OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

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**ATTORNEYS FOR MISSISSIPPI SOUTHERN
RAILROAD, L.L.C.**

Dated: June 19, 2020

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Pursuant to the Notice of Exemption filed in this docket, Mississippi Southern Railroad, L.L.C (“MSR”), an existing Class III railroad carrier, seeks authorization to lease from The Kansas City Southern Railway Company (“KCS”) and operate two lines of railroad – the Louisville Subdivision and the Pearl River Industrial Lead (collectively, the “New Lines”) – and to extend its existing leasehold in the Bay Springs Branch (also owned by KCS) under amended lease terms. As a result of its proposed operation of the New Lines (along with the Bay Springs Branch), MSR expects that its annual revenues would exceed \$5 million. In the interest of accomplishing the above-described transaction by an anticipated July 20, 2020 closing date, MSR certified in this docket on May 20, 2020 that it had posted the requisite notice under Section 1150.42(e) at the workplaces on the Louisville Subdivision and the Pearl River Industrial Lead, and served a copy to the national offices of the relevant labor unions. MSR did not undertake similar advance notices for the Bay Springs Branch for the reasons given below.

MSR hereby petitions the Surface Transportation Board for a waiver of the 60-day advance notice requirements set forth at 49 C.F.R. § 1150.42(e) in connection with the proposed extension of MSR’s lease of the Bay Springs Branch only, which is included among the railroad

lines that is the subject of the above-referenced class exemption proceeding. MSR has been the exclusive operator of the Bay Springs Branch since 2005.¹ Because the Bay Springs Branch lease extension maintains the operational *status quo* in effect since the commencement of MSR operations in place of KCS in 2005, and the lease extension would not affect the employees of either MSR or KCS, a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) is reasonable, warranted, and consistent with past Board-issued waivers. The requested waiver will permit the Bay Springs Branch lease extension and New Lines lease exemption to take effect at one time, permitting closing to occur in each instance on June 20, 2020.

BACKGROUND

The Bay Springs Branch has been operated by MSR since 2005; it extends approximately 26.5 miles from Milepost 159.5 at Newton, Mississippi, to Milepost 133.0 at Bay Springs, Mississippi. MSR and KCS have agreed to extend MSR's leasehold operations until 2034.

ARGUMENT

The Board's rules provide that when the annual revenue of the acquiring Class III carrier exceeds, or as a consequence of the transaction before the Board would exceed, \$5 million, the prospective Class III acquiror seeking to invoke the Board's class exemption procedures at 49 C.F.R. Part 1150, subpart E, must arrange to post advance notice of the transaction (the "Labor Notice") at the workplace of the transferor railroad's employees on the affected lines, and to serve the Labor Notice on the national office of the labor unions representing the transferor carrier's affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver of the advance notice requirement, a notice of exemption involving a transaction qualifying for a class exemption under 49 C.F.R.

¹ *Mississippi Southern Railroad, Inc. – Lease and Operation Exemption – The Kansas City Southern Railway Company*, FD 34684 (STB Served Apr. 21, 2005).

Part 1150, subpart E, will not become effective until 60 days after the Class III acquirer has filed with the Board a certification of compliance with Section 1150.42(e)'s posting and notice requirements. *Id.*

The purpose of the Labor Notice is to permit (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 — Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waiving the notice requirement in appropriate circumstances. *Id.* at 601.

The Board has waived of the 60-day notice requirement where the transaction serves to extend a previously-Board-authorized arrangement, the effect of which would be to continue the operational and rail labor *status quo*. See, e.g., *Dakota, Missouri Valley and Western Railroad, Inc. — Lease and Operation Exemption — Soo Line Railroad Company*, Docket No. FD 34904, at 2 (STB served Jul. 24, 2006) (“*DMV&W*”). The waiver request must be “reasonable.” See *Portland and Western Railroad — Lease and Operation Exemption — Port of Tillamook Bay*, Docket No. FD 33734 (STB served May 10, 2009). In *DMV&W*, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the renewal an existing lease of Soo Line rail lines. There, the Board observed that, “no [Soo Line] employees will be affected because no [Soo Line] employees are currently working on the lines and no [Soo Line] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W* at 2.

Similarly, MSR contemplates no changes to the workforce it currently employs. No MSR employees will be affected—no MSR jobs on the Bay Springs Branch will become available, abolished, or relocated. The notice would serve only to indicate that the *status quo* will

continue for a period longer than originally expected; employees have no decisions to make that they would not otherwise have on any other ordinary day. Were it not for the addition of the New Lines – where MSR has complied with the notice requirement to affected KCS employees – the Bay Springs Branch lease renewal, by itself, would not require a notice, because the applicable \$5 million annual revenue threshold would not have been exceeded to trigger the labor notice requirement. Given that none of the Board’s policy objectives would be served by requiring the notice to be posted for the Bay Springs Branch lease extension, MSR’s request is reasonable.

For all of these reasons, MSR should be granted relief from the requirements of section 1150.42(e) as pertains to the Bay Springs Branch only. Under the circumstances, requiring MSR to comply with the advance labor notice provisions in that limited circumstance would serve no beneficial purpose.

WHEREFORE, MSR respectfully requests that the Board waive application here of the 60-day advance notice period set forth at 49 C.F.R. § 1150.42(e) for the Bay Springs Branch lease extension.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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