

SERVICE DATE – JUNE 24, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36310

KANSAS & OKLAHOMA RAILROAD, LLC—OPERATION EXEMPTION
—COLORADO PACIFIC RAILROAD, LLC

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ This decision waives a 60-day advance notice requirement and allows Kansas & Oklahoma Railroad, LLC, to operate certain rail lines in Pueblo, Crowley, Kiowa, and Otero Counties, Colo., on or after June 29, 2019.

Decided: June 21, 2019

On May 30, 2019, Kansas & Oklahoma Railroad, LLC (K&O), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 for authority to operate approximately 121.9 miles of rail line (the Line) in Pueblo, Crowley, Kiowa, and Otero Counties, Colo., pursuant to an agreement with Colorado Pacific Railroad, LLC (CPR). Also on May 30, 2019, K&O filed a request for a waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e).

In its verified notice, K&O certified that its projected annual revenues will exceed \$5 million. Accordingly, unless waived, § 1150.42(e) would require K&O, at least 60 days before the exemption becomes effective, to 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. No opposition to this waiver request has been filed.

BACKGROUND

On May 30, 2019, K&O, a subsidiary of Watco Holdings, Inc., filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate the Line, which is owned by CPR, a subsidiary

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

of KCVN, LLC.² (Verified Notice 4.) The verified notice states that K&O and CPR have entered into an Operating Agreement. (Id.)

In its request for waiver of the labor notice requirements, K&O states that there have been no operations on the Line since 2012 and that there are no employees or workplaces where notice can be provided. (K&O Mot. 1.) K&O further states that, on April 5, 2019, it posted a notice at 100 N. Main, Scott City, KS 67871, the westernmost duty location currently on K&O's system, which K&O states would become the only duty station for operations over the Line. (Id.) K&O therefore asks the Board to waive, to the extent deemed necessary, any posting requirements other than the posting of the notice at Scott City. (Id.) In addition, according to K&O, there are no labor unions with employees who worked on the Line, and, consequently, K&O is not able to serve a copy of the notice on any labor union. (Id.)

Notice of K&O's operation exemption under § 1150.41 was served and published in the Federal Register on June 14, 2019 (84 Fed. Reg. 27,830). The published notice announced that the Board would establish the effective date of the exemption in the decision on the waiver request.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements here. According to K&O, no employees would be affected because there has not been service on the Line since 2012, no employees work on the Line, and there are no labor unions with employees who work on the Line. (K&O Mot. 1.)

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, the related operation exemption, unless stayed, will become effective on June 29, 2019, the effective date under the Board's rules absent the notice requirement. See, e.g., N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—

² CPR acquired the Line from V and S Railway, LLC, through a feeder line application pursuant to 49 U.S.C. § 10907. See KCVN, LLC—Feeder Line Application—Line of V & S Ry., Located in Crowley, Pueblo, Otero, & Kiowa Ctys., Colo., FD 36005 (STB served Dec. 18, 2017).

Lease Amendment & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252 (STB served Dec. 14, 2018).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. K&O's request for waiver is granted, and the exemption to operate the Line will be effective on June 29, 2019, unless stayed.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.