

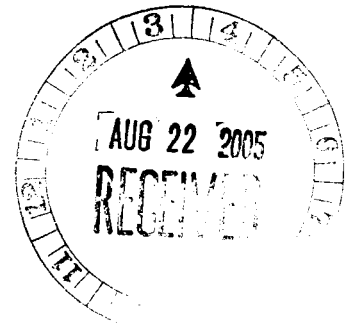
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KARL MORELL

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August 22, 2005

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

21 4573

Re: Finance Docket No. 34746, Kansas & Oklahoma Railroad, Inc. —
Acquisition Exemption — Union Pacific Railroad Company

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Petition For Waiver of the Notice Requirements of 49 C.F.R. § 1150.42(e).

Please time and date stamp the extra copy of the Petition and return it with our messenger.

If you have any questions regarding this matter, please contact me.

Sincerely,

Karl Morell

Enclosures

ENTERED
Office of Proceedings

AUG 22 2005

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

214573

FINANCE DOCKET NO. 34746

KANSAS & OKLAHOMA RAILROAD, INC.
--ACQUISITION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)

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Attorneys for:
KANSAS & OKLAHOMA RAILROAD,
INC.

Dated: August 22, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34746

KANSAS & OKLAHOMA RAILROAD, INC.
--ACQUISITION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)

Kansas & Oklahoma Railroad, Inc. ("K&O"), a Class III rail carrier, hereby petitions the Surface Transportation ("Board") to waive the employee notice requirements of 49 C.F.R. § 1150.42(e).

K&O is concurrently filing with the Board a notice of exemption under 49 C.F.R. § 1150.41 to acquire from Union Pacific Railroad Company ("UP") a 27-mile rail line located between milepost 485.0, at Newton, KS, and milepost 512.0, at McPherson, KS (the "Line"). K&O leased the Line from UP in September 2002 and since that time has been the sole operator over the Line. *See* STB Finance Docket No. 34232, *Kansas & Oklahoma Railroad, Inc. – Lease Exemption – Union Pacific Railroad Company* (not printed), served October 1, 2002. In addition, K&O has performed all of the maintenance on the Line for nearly three years.

K&O's current revenues exceed \$5 million thus invoking the employee notice requirements of Section 1150.42(e). The purpose underlying the notice requirement, however, would not be thwarted by waiver in this proceeding. The purpose of the notice requirement is to ensure that rail labor unions and employees working on a line being transferred are given

adequate notice of the transaction. *See Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592 (1997). In adopting the notice requirement, the Board specifically recognized that “situations may occur necessitating acquirer requests for waiver of the 60-day notice provision....” *Id.* at 601.

Here, labor notice would serve no useful purpose. No UP employ will be affected by the sale because no UP employee has performed operations or maintenance on the Line in nearly three years. Neither will any K&O employee be affected by the sale because K&O will continue to provide the same service and perform the same maintenance as it has for nearly three years. The only difference is that K&O will operate over a rail line that it owns rather than one that it leases. Because the transaction will simply convert operations pursuant to a lease to operations over a K&O-owned line, providing advance labor notice would be a futile act. *See* STB Finance Docket No. 34660, *Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed), served February 28, 2005; STB Finance Docket No. 34531, *The Indiana Rail Road Company – Acquisition Exemption – Line of Monon Rail Preservation Corporation* (not printed), served November 22, 2004.

In summary, K&O respectfully requests that the Board waive the requirements of 49 C.F.R. § 1150.42(e).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

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KANSAS & OKLAHOMA RAILROAD, INC.

Dated: August 22, 2005