

SERVICE DATE – JULY 31, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36411

ARKANSAS-OKLAHOMA RAILROAD COMPANY—LEASE AND OPERATION
EXEMPTION INCLUDING INTERCHANGE COMMITMENT—UNION PACIFIC
RAILROAD COMPANY

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

Digest:¹ This decision waives a 60-day advance notice requirement and allows Arkansas-Oklahoma Railroad Company to enter into a lease agreement with Union Pacific Railroad Company and continue to operate approximately 37 miles of rail line in Oklahoma, on or after August 8, 2020.

Decided: July 30, 2020

On July 9, 2020, Arkansas-Oklahoma Railroad Company (AOK), a Class III railroad, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to lease from Union Pacific Railroad Company (UP) and operate a UP rail line known as the Shawnee Branch between milepost 445.0 near Brangus Road and milepost 482.0 near Oklahoma City, Okla., a total distance of approximately 37 miles (the Line). AOK states that it has entered into a lease agreement (New Lease) with UP, dated June 19, 2020, to be effective upon the effective date of the exemption, and that it will supersede and replace two existing leases.² (Verified Notice 2-3.)

In its verified notice, AOK certifies that its revenues currently exceed \$5 million. (*Id.* at 5.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require AOK, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction setting forth certain information 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. However, the verified notice includes a request for waiver of those notice requirements.

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).

² See Ark.-Okla. R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 33897 (STB served July 21, 2000) (between milepost 446.5 and milepost 482.0); Ark.-Okla. R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 35655 (STB served Aug. 22, 2012) (between milepost 445.0 and milepost 446.5).

In its request for waiver of the labor notice requirements, AOK argues that it should not be required to comply with the requirements of § 1150.42(e), because there would be no changes for any employees working on the Line. (Verified Notice 6.) AOK states that it has been the sole common carrier operator of the Line since at least 2000, no employees of UP have worked on the Line since that time, and there are no UP employees who would be affected as a result of the New Lease. (*Id.* at 6-7.) Moreover, according to AOK, there would be no operational changes, and no employees of AOK would be affected. (*Id.* at 7.) Therefore, AOK argues, under the circumstances of this transaction, compliance with the 60-day labor notice requirements would not further the purpose of the regulation and it should be waived. (*Id.*) No opposition to this waiver request has been filed.

Notice of AOK's operation exemption was served and published in the Federal Register on July 24, 2020 (85 Fed. Reg. 44,952). The published notice announced that the Board would establish the effective date of the exemption in a separate 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 notice requirements, but it does not appear that the purpose behind the 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. Specifically, no UP employees would be affected because none have worked on the Line since at least 2000, and no AOK employees would be affected because AOK already leases and operates the Line and AOK states that there would be no operational changes on the Line as a result of the New Lease.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, AOK's lease and operation exemption, unless stayed, will become effective on August 8, 2020, 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.—Lease Amendment & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252, slip op at 2 n.3, 3 (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. AOK's request for waiver is granted.
2. AOK's exemption will be effective on August 8, 2020, unless stayed.
3. This decision is effective on its date of service.

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