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April 15, 2019

247493

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 15, 2019
Part of
Public Record

Re: **Docket No. FD 36282**
Allegheny Valley Railroad Company -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

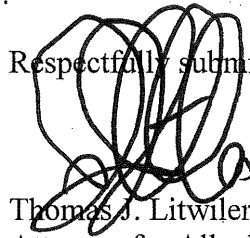
Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Petition for Partial Waiver of Requirements of 49 C.F.R. § 1150.42(e)**, dated April 15, 2019. A check in the amount of \$700.00, representing the appropriate fee for this filing, is being delivered to the Board today under separate cover.

Please note that expedited consideration of the Petition is requested.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Allegheny Valley
Railroad Company

TJL:tl

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36282

ALLEGHENY VALLEY RAILROAD COMPANY
-- ACQUISITION EXEMPTION --
LINES OF CSX TRANSPORTATION, INC.

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

EXPEDITED CONSIDERATION REQUESTED

Thomas J. Litwiler
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**ATTORNEY FOR ALLEGHENY VALLEY
RAILROAD COMPANY**

Dated: April 15, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36282

ALLEGHENY VALLEY RAILROAD COMPANY
-- ACQUISITION EXEMPTION --
LINES OF CSX TRANSPORTATION, INC.

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

Allegheny Valley Railroad Company (“AVR”) hereby petitions the Board for a partial waiver of the 60-day labor notice requirements of 49 C.F.R. § 1150.42(e), to the extent those requirements are applicable to AVR’s proposed acquisition of rail lines from CSX Transportation, Inc. (“CSXT”) in this proceeding. That transaction will result in no operational changes on the subject rail lines, which AVR has operated pursuant to lease for more than 15 years. As there are no CSXT “employees on the affected lines” and AVR’s own employees will not be affected by AVR’s change from a lessee to an owner, allowing the proposed transaction to proceed upon 34 days’ notice to AVR’s own employees fully satisfies any relevant purpose of 49 C.F.R. § 1150.42(e) in this context. The requested waiver is thus reasonable and appropriate.

AVR is filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1150.41, *et seq.* to acquire approximately 47.5 miles of rail line from CSXT in and around Pittsburgh, Pennsylvania (the “Subject Rail Lines”). AVR has leased and provided all rail freight service on the Subject Rail Lines since 2003 (and, with respect to one short segment of trackage, since 2001). *Allegheny Valley Railroad Company -- Lease, Operation and Trackage Rights Exemption -- Lines of CSX Transportation, Inc.*, Docket No. FD 34431 (STB served Nov.

26, 2003); *Allegheny Valley Railroad Company -- Lease and Operation Exemption -- Line of CSX Transportation, Inc.*, Docket No. FD 34095 (STB served Sep. 27, 2001).

Because AVR's annual rail-related revenues exceed \$5 million, 49 C.F.R. § 1150.42(e) would otherwise require AVR to post a notice of its proposed acquisition of the Subject Rail Lines at the workplace of "the employees on the affected line(s)" and serve the notice on labor unions "with employees on the affected line(s)." The purpose of the 60-day notice requirement is to ensure that employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 -- Advance Notice*, 2 S.T.B. 592 (1997). The requirement was clearly focused on providing notice to a *seller's* employees in a line-sale transaction. *Advance Notice*, 2 S.T.B. at 592 ("General notice would be given by the acquiring entity to the seller's employees working on the line at issue. . . ."); 2 S.T.B. at 599 ("The buyer's obligation to the seller's employees is an informational one, and does not go beyond that limited purpose."). Here, however, the seller (CSXT) has not provided rail service or conducted maintenance on the Subject Rail Lines for more than 15 years, and no CSXT employees work on those lines. There are thus simply no employees of the seller "on the affected lines" to whom notice could or logically would need to be given.

Similarly, AVR's proposed acquisition of rail lines that it has leased and operated since 2003 will not change the rail service that AVR currently provides or have any effect on AVR's own employees.¹ Those workers are *already* employed by the buyer; unlike the workers who are the intended recipients of notice under 49 C.F.R. § 1150.42(e), they will not be "forced to make career choices – such as whether they will accept employment on the new carrier or

¹ AVR's employees are not represented by any labor union.

retain whatever rights they have to exercise seniority or later be reemployed on the seller's line" *Advance Notice*, 2 S.T.B. at 597.

Nonetheless, in seeking to keep with the intended spirit of the Board's regulation, AVR on April 11, 2019 posted notice of the proposed transaction at the workplace of AVR's existing employees on the Subject Rail Lines, and certified that action to the Board.

In these circumstances, the Board has previously found that a *complete* waiver of the advance notice requirement is appropriate. *E.g.*, *Reading Blue Mountain and Northern Railroad Company -- Acquisition and Operation Exemption -- Locust Valley Coal Company d/b/a Locust Valley Line*, Docket No. FD 36033 (STB served Jun. 7, 2016) at 2 (waiver granted where "RBMN employees would continue to provide the same service that RBMN has provided since 2006 [and] Locust Valley employees have performed no work on the Line."); *Kansas & Oklahoma Railroad, Inc. -- Acquisition Exemption -- Rail Line of Union Pacific Railroad Company*, Docket No. FD 34746 (STB served Sep. 15, 2005) at 2 ("No UP employee has been involved in any operations or maintenance on the line in nearly 3 years and thus there is no apparent need for advance notice, which is designed to assist current employees with possible displacement. Furthermore, no K&O employees will be adversely affected by waiver of the requirements because the planned transaction will merely convert operation under lease to a similar operation under K&O's ownership.").

As noted, AVR has gone further than this by posting notice of the proposed transaction at the workplace of its own employees on the Subject Rail Lines. In such instances, the Board has alternatively found that a shortening of the notice period is warranted and appropriate. *Portland & Western Railroad, Inc. -- Acquisition and Operation Exemption -- Union Pacific Railroad Company*, Docket No. FD 34792 (STB served Nov. 22, 2006) at 3 (waiver

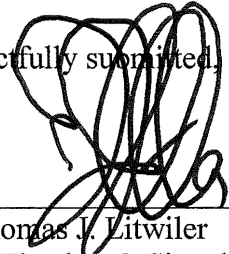
granted to reduce notice period from 60 to 25 days where “P&W already operates as the sole common carrier on the rail line in question, and it will continue to operate as the sole common carrier on the line with the same employees providing the same service. The only difference is that, after the transaction, P&W will operate as an easement holder rather than as a leaseholder.”). Here, AVR seeks a partial waiver of the 60-day notice period so that the proposed transaction can close on May 15, 2019, 34 days after the posting of the notice.

AVR requests expedited consideration of this petition, and issuance of the requested waiver to correspond with the May 15, 2019 effective date of AVR’s acquisition notice of exemption. This is consistent with prior practice, and will allow the parties to proceed with the proposed transaction on the schedule otherwise contemplated by the Board’s regulations. Given the absence of CSXT employees on the Subject Rail Lines or any effect on AVR’s own employees, expedited consideration of this waiver request is warranted.

WHEREFORE, AVR respectfully requests that the Board grant this petition and partially waive the advance notice provisions of 49 C.F.R. § 1150.42(e) for the proposed transaction as discussed herein.

Respectfully submitted,

By: _____


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**ATTORNEY FOR ALLEGHENY VALLEY
RAILROAD COMPANY**

Dated: April 15, 2019