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July 9, 2020

300864

VIA E-FILING
49 C.F.R. §1150.42(e) WAIVER REQUESTED

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
July 9, 2020
Part of
Public Record

Re: STB Docket No. FD 36411
Arkansas-Oklahoma Railroad Company
-Lease and Operation Exemption Including Interchange Commitment-
Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Arkansas-Oklahoma Railroad Company ("AOK") is a Notice of Exemption being filed in accordance to 49 CFR 1150.43. Included within this Notice of Exemption is a request for waiver of the notice requirements of 49 C.F.R. §1150.42(e). Further, AOK is also submitting a Confidential Appendix pursuant to 49 CFR 1150.43(h)(1).

The filing fee of \$2,100 was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,

FILED
July 9, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 9, 2020
SURFACE
TRANSPORTATION BOARD



Justin J. Marks
Counsel for Arkansas-Oklahoma
Railroad Company

Enclosures

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36411

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

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for Arkansas-Oklahoma
Railroad Company*

Dated: July 9, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36411

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

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Arkansas-Oklahoma Railroad Company (“AOK”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation AOK’s entry into a new lease agreement (“New Lease”) with Union Pacific Railroad Company (“UPRR”) to govern the lease of a line of railroad known as the Shawnee Branch between milepost 445.0 near Brangus Road and 482.0 near Oklahoma City, Ok (the “Rail Line”). The New Lease will supersede and replace two existing leases (the “Current Leases”).

Notice

In accordance with 49 C.F.R. §1150.43, AOK hereby provides the following information:

- (a) The full name and address of Applicant: Arkansas-Oklahoma Railroad Company,
116 W. Main St., Wilburton, OK 74578.
- (b) Applicant’s Representatives:

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- (c) AOK is the operator of the Rail Line under the Current Leases. *See Arkansas-Oklahoma Railroad Company – Lease and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 33897 (served July 21, 2000) (between milepost 446.5 and milepost 482); *Arkansas-Oklahoma Railroad Company – Lease and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 35655 (served August 22, 2012) (between milepost 445 and milepost 446.5). AOK and UPRR have now entered into the New Lease for the Rail Line commencing June 19, 2020, to be effective upon the effective date of this Notice of Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver).
- (d) The current operator of the Rail Line is AOK, and AOK will continue to be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: AOK is currently operating the Rail Line under the Current Leases. This proposed transaction extends the lease term and revises other commercial terms, which will allow AOK to continue operating the Rail Line for an additional 10 years, with a right to extend the term another ten years.
- i. The name and address of the company leasing the Rail Line is Union Pacific Railroad Company, 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179.
 - ii. The New Lease will be effective upon the effective date of this Notice of

Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver). AOK is operating the Rail Line under the terms of the Current Leases and will continue to do so until the New Lease becomes effective.

- iii. The mileposts of the Rail Line are between milepost 445.0 near Brangus Road and milepost 482.0 near Oklahoma City, Ok.
- iv. The total mileage to be acquired and operated is approximately 37 miles.
- (f) Attached as Exhibit A to this Notice of Exemption are maps of the Rail Line.
- (g) AOK certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) AOK certifies that the New Lease contains an interchange commitment. The following additional information is provided by AOK with respect to the interchange commitment:
 - i. The New Lease contains an interchange commitment that affects interchange with BNSF Railway Inc. at Shawnee.
 - ii. A confidential complete version of the New Lease is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).
 - iii. A list of the shippers who currently use or who have used the Rail Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
 - iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.

- v. AOK hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.
- vi. UPRR and BNSF Railway, Inc. can physically interchange with the Rail Line.
- vii. AOK's estimate of the difference between the rent with and without the interchange agreement is included in the Confidential Appendix.
- viii. The caption of this proceeding reflects the existence of the interchange commitment.
- (i) In addition to the information set forth above, AOK certifies that its revenues currently exceed \$5,000,000. However, since AOK will continue to be the operator of the Rail Line both before and after the transaction, AOK is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

AOK is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since AOK is already the operator of the Rail Line, there will be no employees adversely affected by the New Lease.

Environmental and Historic Reports

This is a new lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further

Board approval is required for AOK to discontinue (or for UPRR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, AOK's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), AOK would be required to give sixty days' notice to employees working on the Rail Line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 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." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, AOK should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Line. AOK already leases the rail facilities and, as between UPRR as the owner and AOK as the lessee, has

been the sole common carrier operator of the Rail Line since at least 2000. The New Lease allows AOK to continue as the lessee and the common carrier operator of the Rail Line. No employees of the transferring carrier, UPRR, have worked on the Rail Line since at least 2000, and there are no employees of UPRR who will be affected or have to make any career choices as a result of the transaction. Posting notices on the Rail Line would not provide notice to any UPRR employees since none work on the Rail Line. Further, there will be no operational changes, and no employees of AOK will be affected. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting AOK a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

AOK asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, AOK requests that the Board issue a notice allowing the New Lease to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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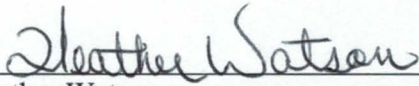
*Attorneys for Arkansas-Oklahoma Railroad
Company*

Dated: July 9, 2020

VERIFICATION

I, Heather Watson, General Manager of Arkansas-Oklahoma Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

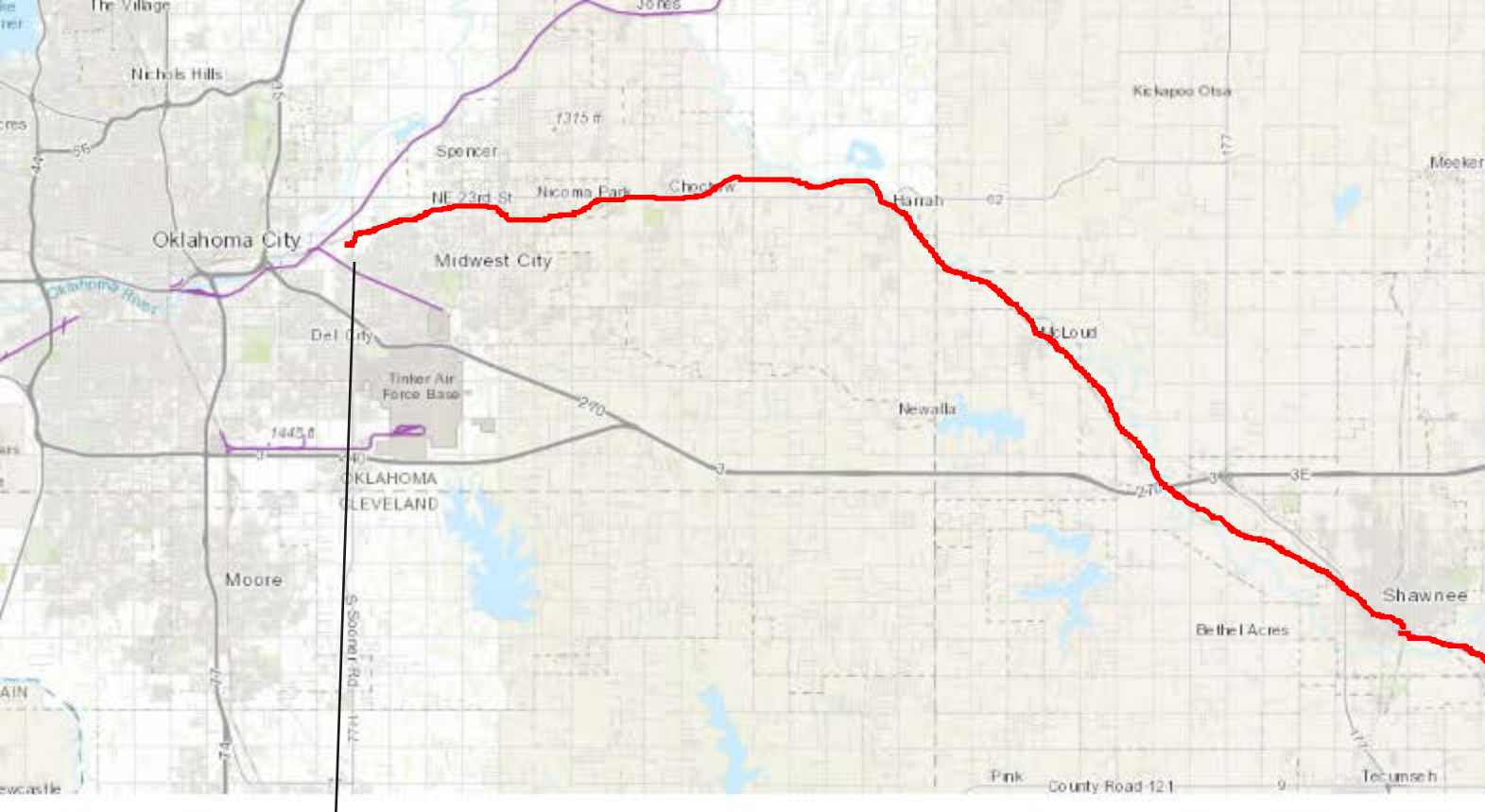
Executed on June 30, 2020



Heather Watson

EXHIBIT A

MAP



MP 482

MP 445

EXHIBIT B

LIST OF SHIPPERS

Hooten Oil
12583 S Highway 99
Seminole, OK 74868

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

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Comments must be filed with the Board and served on AOK’s representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S.
first class mail, postage pre-paid on the following shipper subject to the interchange agreement.

Hooten Oil
12583 S Highway 99
Seminole, OK 74868



Justin J. Marks

Dated: July 9, 2020