52501
EB

SERVICE DATE – APRIL 8, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36818

CENTRAL OREGON & PACIFIC RAILROAD, INC.—LEASE AND OPERATION EXEMPTION INCLUDING INTERCHANGE COMMITMENT— UNION PACIFIC RAILROAD COMPANY

Digest:[1] This decision denies a request to waive the labor notification requirements under 49 C.F.R. § 1150.42(e), as it pertains to two labor unions. This decision also denies requests to reject the notice of exemption in this proceeding.

Decided: April 8, 2025

On December 10, 2024, Central Oregon & Pacific Railroad, Inc. (CORP), a Class III rail carrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to lease from Union Pacific Railroad Company (UP) and operate (1) the Brooklyn Subdivision from milepost 616 to milepost 660.58; (2) the Springfield and Marcola Industrial Leads from milepost 646.58 to milepost 648.39 in Springfield, Or.; and (3) the Coos Bay Industrial Lead from milepost 648.2 to milepost 652.11 in Eugene, Or., totaling approximately 27.58 miles (the Line). Notice of the exemption was served on December 20, 2024, and published in the Federal Register on December 26, 2024 (89 Fed. Reg. 105,173). The exemption was scheduled to become effective on February 8, 2025.

Comments opposing or raising concerns about the transaction were filed by Oregon state and local representatives (Or. Reps),[2] SMART-Oregon State Legislative Board (SMART-Or.), and other individuals.[3] On February 3, 2025, the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Union (SMART-TD) filed a petition to

---

[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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] A comment was jointly filed by Oregon House Speaker Julie Fahey; Oregon State Representatives Nancy Nathanson, John Lively, and Lisa Fragala; State Senators James Manning Jr., and Floyd Prozanski; Lane County Board Commissioner Pat Farr; and City of Eugene Councilors Lyndsie Leech, Greg Evans, and Randy Groves.

[3] Letters opposing the transaction were submitted by Daniel Bonfield, Dylan De Jaynes, Caleb Fetrow, Edward Henry, Robin Horton, Stetson Horton, Charles Knotts, Pete Petersen, and Lin Woodrich. Various comments were also submitted as part of the environmental record.

reject the notice. On February 4, 2025, CORP filed a reply to the opposing comments and petition.

On February 3, 2025, the Brotherhood of Railroad Signalmen (BRS), whose members, according to BRS, are responsible for all signal systems and highway-rail grade crossings on all Class I railroads, filed comments asserting that it was not served with advance notice of the transaction. (BRS Comment 1.) By decision served February 7, 2025, CORP was ordered to serve a copy of its notice of intent to undertake the proposed transaction on BRS at its national office and certify to the Board that it had done so, as required by 49 C.F.R. § 1150.42(e). Cent. Or. & Pac. R.R.—Lease & Operation Exemption Including Interchange Commitment—Union Pac. R.R. (February 2025 Decision), FD 36818, slip op. at 2 (STB served Feb. 7, 2025). The Board noted that the exemption would not become effective until 60 days after CORP certified to the Board that it had complied with 49 C.F.R. § 1150.42(e) as it pertained to BRS. February 2025 Decision, FD 36818, slip op. at 2.

On February 11, 2025, CORP certified that it had served a copy of its notice of intent on the national office of BRS, as well as the national office of the International Brotherhood of Electrical Workers (IBEW).[4] Accordingly, the exemption is now scheduled to become effective on April 12, 2025.

Also on February 11, 2025, CORP filed a petition seeking partial waiver of 49 C.F.R. § 1150.42(e), "to the extent that CORP should have provided notice to BRS and IBEW" and to allow its notice to become effective immediately. (CORP Pet. 4-5.) BRS filed a response in opposition to CORP's petition on February 13, 2025. Also on that date and twice thereafter, CORP filed letters from customers indicating support for the transaction and asking the Board to act quickly to allow CORP to begin operations.

For the reasons discussed below, the Board will deny CORP's request to partially waive the labor notification requirements under 49 C.F.R. § 1150.42(e) and will deny requests to reject the notice of exemption in this proceeding.

DISCUSSION AND CONCLUSIONS

Petition for Waiver of the Labor Notification Requirements Under 49 C.F.R. § 1150.42(e). 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. See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592, 597 (1997). The Board has granted unopposed waivers of this provision where the transaction did not involve any operational changes. See, e.g., First Coast R.R.—Lease & Operation Exemption—CSX Transp., Inc., FD 36777 (STB served Nov. 22, 2024) (granting an unopposed waiver where petitioner was amending an existing lease that would not result in any changes in operations); N.Y., Susquehanna & W. Ry.—Acquis. & Operation Exemption—Onondaga Cnty. Indus. Dev. Agency, FD 36715 (STB served Sept. 12, 2023) (granting an unopposed waiver

[4] CORP explained that it was recently informed that two IBEW employees also work on the Line.

where petitioner was the current operator on the line through existing trackage rights and would maintain the operational status quo). If a waiver is opposed, the Board will consider "all of the facts surrounding the waiver request," including whether actual notice of at least 60 days was given to employees or whether the petitioner has demonstrated adverse effects of a delay. See City of Tacoma—Acquis. & Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair, & Belmore-Olympia Rail Lines in Pierce & Thurston Cntys., Wash., FD 34555, slip op. at 3-4 (STB served Sept. 27, 2004).

CORP argues that compliance with the notice requirements would not further the purpose of the rule, as BRS was provided "sufficient notice" through publication of the notice in the Federal Register and subsequently engaged in discussions with UP management. (CORP Pet. 4.) CORP further asserts that the transaction would not impact BRS or IBEW employees. (Id. at 4-5, 4 n.1.) CORP requests that the notice become effective "as soon as possible," because "the delay is creating uncertainty for customers to be served by CORP" and it is "incurring expense" from hiring new employees to operate the Line. (Id. at 5.) CORP subsequently filed a series of letters from customers in support of the transaction, requesting that the Board allow the notice of exemption to be effective as soon as possible.[5]

On reply, BRS asserts that, without formal notification, it was "denied . . . an opportunity to proactively assess the impact and advocate for our members." (BRS Reply 1.) BRS asserts that the original notice failed to disclose that ten highway rail grade crossings were included in the transaction, thus preventing BRS from fully understanding the transfer's scope and its potential impact on signal maintenance work. (Id.)

The Board declines to waive the labor notification requirements here. CORP does not explain why it had not included BRS or IBEW in its original notification, other than that it was "not aware" it should have done so. (See CORP Pet. 3 (stating that it was not aware that it should have provided notice to BRS and was only "recently informed" of IBEW employees on the Line).) While CORP asserts that BRS had sufficient notice of the transaction, publication of the notice of exemption in the Federal Register does not satisfy the requirements of 49 C.F.R. § 1150.42(e). See 49 C.F.R. § 1150.42(e) (requiring the labor notice to include, in addition to stating the applicant's intent to undertake the proposed transaction, certain employment-related information not required in the verified notice of exemption). Moreover, there is no evidence that IBEW had any notice of the transaction prior to February 11, 2025. Further, CORP suggests that, because no BRS or IBEW employees would be impacted, "compliance with the notice requirements will not further the purposes of the rule." (CORP Pet. 5.) The purpose of the rule, however, is to provide adequate time for employees to understand the scope of the transaction and to fully assess its potential impact, particularly where, as here, the union opposes the petition for waiver and disputes CORP's claims. See Acquis. of Rail Lines, 2 S.T.B. at 597-98.

Lastly, CORP's general assertions regarding customer uncertainty and incurred labor expenses are insufficient to justify waiving the 60-day employee notice period. As CORP notes, in establishing the notice period, the Board recognized that it may consider waiver requests in

[5] CORP submitted letters from Blue Star Gas, PakTech, M&P Reload & Warehousing, Inc., and Swanson Group MFG on February 13, 2025, from Weyerhaeuser Company on February 25, 2025, and from Lane Forest Products, Inc., on March 3, 2025.

"*exceptional* situations." See Acquis. of Rail Lines, 2 S.T.B. at 601 (emphasis added). As indicated above, the Board has granted waivers where, among other things, operations are unchanged, the transaction formalizes existing arrangements, or there are no workers on the line, but none of those circumstances exist here. See, e.g., San Joaquin Valley R.R.—Lease & Operation Exemption Including Interchange Commitment—BNSF Ry., FD 36765 (STB served June 13, 2024) (granting an unopposed waiver in a lease amendment proceeding that would not result in any changes in operations); Grenada R.R.—Acquis. & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth., FD 36700 (STB served May 25, 2023) (granting an unopposed partial waiver in a proceeding where operations would be unchanged and performed by the existing employees). In other cases, when a waiver request is opposed, the Board has considered whether there are demonstrated benefits to closing the proposed transaction sooner than full compliance with the Board's rules would permit. See, e.g., W. N.Y. & Pa. R.R.—Lease & Operation Exemption—Certain Assets of Norfolk S. Ry., FD 35019, slip op. at 2-3 (STB served June 26, 2007); see also City of Tacoma, FD 34555, slip op. at 3-4 (when considering waiver requests, the Board considers whether actual notice was given to employees in excess of 60 days, demonstrated adverse effects of a delay, and whether the petition for waiver has not been contested). CORP has not made a sufficient showing here. See, e.g., Reading Blue Mountain & N. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 34048 (STB served Aug. 1, 2001) (granting an opposed waiver where petitioner provided actual timely notice to employees, delay would have delayed service to an additional shipper, and the petitioner had arranged for additional power and personnel to be available by the proposed effective date). CORP claims that it is incurring expenses from hiring additional personnel, a factor the Board considered in granting a waiver in Reading Blue Mountain. But in this case, CORP did not provide any notice to IBEW until February 11, 2025. Moreover, neither CORP nor any of the customers supporting a waiver claim that any customer will go without service, or experience a specific service-related or business disruption, until CORP begins operations; instead, they make only generalized statements that the Board should allow the lease to take effect as soon as possible.

For these reasons, CORP's petition for waiver of the labor notification requirements at 49 C.F.R. § 1150.42(e) will be denied.

Petition to Reject and Opposing Comments. A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007); see also 49 C.F.R. § 1150.42(c) ("If the notice contains false or misleading information, the exemption is void ab initio."). Although the Board has rejected exemptions in cases that require additional scrutiny and a more detailed record than is produced through a class exemption process, see, e.g., Macquarie Infrastructure Partners V GP, LLC—Acquis. of Control Exemption—Grenada R.R., FD 36566, slip op. at 4 (STB served Apr. 7, 2022), the party seeking rejection must first provide reasonable, specific concerns to demonstrate that rejection is warranted. Gen. Ry., FD 34867, slip op. at 4 (citing I&M Rail Link LLC—Acquis. & Operation Exemption—Certain Lines of Soo Line R.R., FD 33326 et al., slip op. at 7 (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998)); see also Mohawk, Adirondack & N. R.R.—Aban. Exemption—in Lewis & Jefferson Cntys., N.Y., AB 768X et al., slip op. at 6-7 (STB served Jan. 14, 2025).

SMART-TD and opposing parties[6] express general concern about shifting operations from a Class I railroad to a short line railroad. SMART-TD asserts that, in contrast to Class I railroads, short line railroads are "financially unsustainable without significant government funding." (SMART-TD Pet. 2; see also Or. Reps. Comment 1 ("[S]witching to a railroad with fewer resources raises safety concerns, especially with the shipment of dangerous and hazardous materials."); SMART-Or. Comment 1 (questioning UP's decision to "delegat[e] operations to a railroad with less expertise and fewer resources").)[7] Parties allege that CORP lacks the capability to handle operations on the Line and that its employees lack adequate training and experience, which will adversely impact service. (SMART-TD Pet. 2-3; SMART-Or. Comment 2 (alleging "significant disparity" in safety training and operational expertise between UP and CORP, particularly in handling hazmat traffic); Or. Reps. Comment 1 ("Fewer staff with less working experience could jeopardize the flow of rail traffic, potentially leading to an adverse effect on local, regional, and interstate commerce."); Henry Letter 1, Feb. 5, 2025 (asserting that CORP lacks the expertise and experience of UP employees to handle traffic, including hazardous materials that run through Eugene).) SMART-TD argues that "by introducing a second railroad operator," the transaction will "increase the likelihood of interchange delays and additional costs." (SMART-TD Pet. 3 (transaction will exacerbate existing service issues and increase costs, thus burdening the Oregon economy and workforce); see also SMART-Or. Comment 1-2.)

On reply, CORP asserts that opposing parties provide no evidence or argument that the notice contains false or misleading information, nor do they demonstrate that this proceeding must be regulated to carry out the RTP. (CORP Reply 4.) Rather, CORP argues that proceeding under the exemption process meets the goals of the RTP by reducing the need for government regulation, promoting a safe and efficient transportation system, fostering sound economic conditions, encouraging honest and efficient management of railroads, and reducing regulatory barriers to enter and exit the industry. (Id. at 4-5.) CORP asserts that concerns regarding its safety record are unfounded and notes that its employees are subject to Federal Railroad Administration (FRA) safety regulations and training requirements and have access to the training benefits available to other railroads of its parent company, Genesee & Wyoming Inc. (G&W). (Id. at 3-4 (presenting evidence that CORP's reported injury ratio is less than the Class I average).)[8] CORP asserts that, contrary to opposing parties' arguments, "approximately 46%

[6] CORP asserts that opposing parties and SMART-TD do not seek rejection of the notice; rather they ask the Board to reject the lease, "which is not a valid request under the Board's regulations." (CORP Reply 3.) The Board has treated comments opposing a transaction in a notice of exemption proceeding as petitions to reject the verified notice and will do so here. See, e.g., Mohawk, Adirondack & N. R.R., AB 768X et al., slip op. at 6.

[7] SMART-TD's petition and comments filed by Or. Reps and SMART-Or. do not have page numbers. The page numbers cited in this decision refer to the pdf page numbers of these filings.

[8] CORP also replies to comments of Beyond Toxics, which were raised in a letter submitted as part of the environmental record. (CORP Reply 4.) As previously indicated, this transaction is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c)(1). Cent. Or. & Pac. R.R.—Lease & Operation Exemption Including Interchange Commitment—Union Pac. R.R., FD 36818, slip op. at 3 (STB served Dec. 20, 2024). In any event, Beyond

of all freight carloads moving to and from customers via Eugene Yard are already being handled by CORP in interchange with UP," and thus the transaction "will allow UP to reduce the number of times a rail car is handled." (Id. at 4-5.)

The Board finds that the opposing parties have failed to show that the verified notice is false or misleading, that regulation is necessary to carry out the RTP, or that the proposed transaction requires additional scrutiny such that approval under the class exemption process is inappropriate. As an initial matter, the opposing parties do not challenge CORP's compliance with the regulatory requirements for an exemption. 49 C.F.R. §§ 1150.41-1150.45. Nor do the opposing parties claim that the verified notice contains false or misleading statements.

Rather, the opposing parties raise generalized concerns about shifting operations from a Class I carrier to a Class III carrier and the potential for service delays, arguing, in effect, that regulation is necessary to carry out the RTP. The Board has broadly exempted acquisitions and operations of Class III carriers under 49 U.S.C. § 10902 through the class exemption at 49 C.F.R. §§ 1150.41-1150.45. The exemption is meant to "facilitate the acquisition of rail lines by Class III carriers," including from Class I carriers, in part out of recognition that doing so would "improve service for shippers and decrease the cost of its provision." See Class Exemption for Acquis. or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902, 1 S.T.B. 95, 103 (1996); see also Review of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League, EP 575 et al., slip op. at 2-3 (STB served Oct. 30, 2007) (noting the "substantial" benefits of short lines, including ability and incentive to "give specialized attention to the needs of shippers on their lines" and to lower costs). The opposing parties' generalized assertions about the potential effect of transferring operations from a Class I carrier to a Class III carrier—assertions that are not supported by evidence specific to the parties and circumstances at issue—are insufficient to support rejection of the notice of exemption. See, e.g., TGS Cedar Port R.R.—Operation Exemption—in Chambers Cnty., Tex., FD 36627, slip op. at 10 (STB served Apr. 1, 2024) (recognizing that not all challenges to a transaction render that transaction inappropriate for the exemption process).

Likewise, the opposing parties' generalized concerns regarding the safety of "a smaller carrier with fewer resources" handling traffic on the Line do not provide a basis for rejecting the notice. See Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry.,

---

Toxics and others who submitted environmental comments raise general safety concerns similar to those raised by opposing parties, which are addressed below. They also generally contend that CORP failed to maintain certain yards "and protect the community" in the Coos Bay area, when "it shut down and abandoned its operations there." (Beyond Toxics Letter 1 (Env't Comment EI-33687).) In response, CORP emphasizes its commitment to operate the Line and notes that UP would still hold a common carrier obligation in the event CORP discontinues operations. (CORP Reply 4.) CORP also points out that it discontinued operations at Coos Bay in 2009, several years before CORP came under its current ownership by G&W. (Id.) Based on this record and given that CORP is subject to FRA's comprehensive federal rail safety requirements, the generalized safety concerns and assertions regarding Coos Bay do not support rejecting the notice of exemption, or otherwise justify an environmental review for this proceeding. See 49 C.F.R. § 1105.6(d).

FD 35412, slip op. at 11-12 (STB served Sept. 23, 2011) (finding that a union's "unsupported assertion that rail operations conducted by a small carrier . . . raise safety concerns is not sufficient to carry the burden of proof to show that an exemption that the Board has permitted to be processed under 49 C.F.R. part 1150 should be revoked"). The opposing parties attempt to link their generalized concerns about safety to CORP, alleging that CORP employees lack experience and training to handle operations on the Line. But those allegations appear to be merely speculative and are unsupported by the current record. See, e.g., Watco Cos.—Continuance in Control Exemption—Boise Valley R.R., FD 35260, slip op. at 3-4 (STB served Aug. 27, 2010) (in denying a labor union's petition to revoke, the Board found that "BMWE expresses only general concerns primarily regarding Watco's safety and labor practices").[9] The allegations are also undermined by CORP's observation that its employees, like UP employees, "are subject to the same FRA safety regulations, including the employee training requirements therein," and have access to G&W's dedicated corporate safety and compliance staff. (CORP Reply 4); see also Watco Cos., FD 35260, slip op. at 3 ("Safety issues are primarily within the province of the Federal Railroad Administration."). CORP further notes that all G&W railroads participate in trainings to continually improve safety. (Id. at 3.)

Lastly, while opposing parties allege that the transaction would result in service delays and increased costs, the record suggests that the transaction may increase efficiency and reduce costs. (Id. at 4 (explaining how the transaction would reduce handling events, resulting in safer, more efficient movements).) The unions themselves express frustration with aspects of current service. (SMART-TD Pet. 3 (asserting service delays and other service-related issues, including reduced frequency of service that has led to industries like Sundance Lumber turning to trucking for timely deliveries); SMART-Or. Comment 1 (same)). At the same time, a number of shippers have voiced support for the transaction, citing CORP's "focus on providing outstanding local service." (See, e.g., CORP Comment, Attach., Blue Star Gas Letter, Feb. 13, 2025.) Indeed, authorizing operations by CORP—a smaller, potentially more responsive railroad—may result in better local service as contemplated by the class exemption.

For these reasons, the petition to reject and the requests for additional scrutiny of the verified notice will be denied.

It is ordered:

1. CORP's petition for partial waiver of the requirements under 49 C.F.R. § 1150.42(e) is denied.

2. SMART-TD's petition to reject the verified notice of exemption and the requests for additional scrutiny are denied.

[9] SMART-TD has not asked the Board to impose labor protection here, and 49 U.S.C. § 10902(d) provides that the Board shall not require labor protection for transactions such as this one that involve an acquisition by a Class III carrier.

3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Primus and Schultz. Board Member Primus concurred with a separate expression.

BOARD MEMBER PRIMUS, concurring:

Though I voted to approve today's decision, I did so with conflicting sentiments. On the one hand, I see this as a big win for The Central Oregon and Pacific Railway (CORP) and the more than twenty shippers in the Eugene and Springfield areas served by Union Pacific. CORP, a subsidiary of Genesee and Wyoming (G&W), has developed a solid reputation for its customer-centric service and commitment to safety. Since being acquired by G&W in 2012, CORP has provided consistent and reliable service to customers along its service lines, and I fully expect this to continue once this lease transaction is consummated. As I have publicly stated, our nation's short lines truly are the growth engines of our freight rail network. Their white glove service has enabled many short lines to experience double digit growth, even as growth among Class Is has been relatively flat.

On the other hand, while there are clear winners within this transaction, there is also a clear loser, and I am especially concerned about the negative consequences confronting affected members of the various rail labor unions who, in all likelihood, will either lose their union jobs or see a decreased workload as a result of this transaction. Profit over people, time and again, has proven to be a disastrous formula for the network. I find myself wondering if this is this truly an effort on behalf of UP to provide its customers with better service or yet another cost cutting measure seeking to lower its operating ratio to further satisfy the appetite of short-term investors. Judging by UP's zeal to reduce labor costs over the past couple of years, I'm willing to put my money on the latter having factored into UP's final decision. And, unfortunately, under 49 U.S.C. § 10902(d), the Board may not impose labor protection for transactions such as this one, involving acquisitions by Class III carriers like CORP. My appeal to UP is that they do all that they can to minimize the impact on its union employees.

Finally, this transaction appears to be the beginning of a trend of local divestment for UP, with the recent announcement of a deal with Jaguar Transport Holdings LLC to provide local operations in the Kansas City terminal. If this is indeed the case, then UP should consider empowering its short line partners with greater authority to grow business for UP. Railroading is a service-oriented business that requires a strong local personal touch. Short lines are more engaged in direct, day-to-day relationships with their customers and have become better suited to listen, adapt, and respond to changing customer needs, including the need to grow. Accordingly, UP should allow its short lines partners the ability to sell capacity, chase spot opportunities and ultimately become an additional sales channel for UP, with pricing authority and the ability to cooperate in capital expenditure sharing to make it easier for shippers to make long-term commitments. A collaborative effort structured in this way will not only strengthen the

relationship between UP and its short line partners but establish a strong model for sustainable growth. If UP can do this, then it might really be onto something special.