



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 34533 (Sub-No. 1)]

Southwestern Railroad, Inc.—Amended Lease and Operation Exemption—BNSF Railway Company

Southwestern Railroad, Inc. (SWRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 227.6 miles of rail line, located in New Mexico, from BNSF Railway Company (BNSF), as follows: (1) the Carlsbad Subdivision between milepost 0.5 at Clovis and milepost 183.0 at Carlsbad; (2) the Carlsbad Yard;<sup>1</sup> (3) the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 near Carlsbad; and (4) the Loving Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 at Loving.

SWRR and BNSF entered into a lease agreement in 2004,<sup>2</sup> and they agreed to a fifth amendment to the lease on June 13, 2016.<sup>3</sup> SWRR states that the current amendment modifies the original agreement to: (1) change the termination date of the existing agreement to January 17, 2017; and (2) confirm that upon termination, BNSF can immediately renew operations on the line notwithstanding that SWRR will not as of that date have obtained discontinuance authority.

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<sup>1</sup> SWRR states that there are no mileposts associated with the approximately 5.1 miles of rail line located in the Carlsbad Yard.

<sup>2</sup> See Sw. R.R.—Lease & Operation Exemption—BNSF Ry., FD 34533 (STB served Oct. 22, 2004).

<sup>3</sup> SWRR states that the lease previously had been amended four times and that notice of the most recent amendment requiring Board approval was published in Southwestern Railroad—Lease & Operation Exemption—BNSF Railway, FD 35855 (STB served Oct. 1, 2014).

SWRR has certified that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. SWRR anticipates that its projected annual revenues will exceed \$5 million. Therefore, SWRR is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected line, to post a copy of the notice at the workplace of the employees on the affected line, and to certify to the Board that it has done so. 49 CFR 1150.42(e). On June 28, 2016, and again in its verified notice of exemption, SWRR certified that on or before June 28, 2016, SWRR complied with the requirements of 49 CFR 1150.42(e) by posting a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected line. SWRR did not serve a copy of the notice of intent on any labor unions because it asserts the line does not have any unionized labor.

SWRR states that this transaction does not include any interchange commitment that prohibits SWRR from interchanging traffic with a third party or limits SWRR's ability to interchange with a third party.

SWRR states that it expects to consummate the transaction on or after August 28, 2016, the effective date of the exemption (30 days after the verified notice was filed).

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 effectiveness

of the exemption. Petitions for stay must be filed no later than August 19, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 34533 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

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“[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: August 9, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tammy Lowery

Clearance Clerk

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