

SURFACE TRANSPORTATION BOARD**[Docket No. AB 1100X]****Pacific Harbor Line, Inc.—
Discontinuance of Service
Exemption—in Los Angeles County,
CA**

Pacific Harbor Line, Inc. (PHL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 3.6-mile rail line in the Port of Los Angeles, between approximately milepost 4.00, north of Front Street and east of Gaffey Street Lead, and south to the end of the Line in Los Angeles County, CA (the Line). The Line traverses United States Postal Service Zip Code 90731.

PHL has certified that: (1) No local traffic has moved over the Line for at least two years; (2) overhead traffic on the Line, if any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on September 13, 2016 (50 days after the filing of the exemption), unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) ¹

¹ Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

must be filed by August 22, 2016.² Petitions to reopen must be filed by September 1, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to PHL's representative: Rose-Michele Nardi, 1701 Pennsylvania Ave. NW., Suite 300, Washington, DC 20006.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: August 5, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

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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; ¹ (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 2004,² and they agreed to a fifth amendment to the lease on June 13, 2016.³ SWRR states that the current amendment modifies the original

² Because PHL is seeking to discontinue service, not to abandon the Line, trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during abandonment, this discontinuance does not require an environmental review.

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

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

³ 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).

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.

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 SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.