



BEFORE THE

238303

SURFACE TRANSPORTATION BOARD

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May 1, 2015
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Public Record

STB DOCKET NO. FD 35772

**SAN JOAQUIN VALLEY RAILROAD CO.
- LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT-
BNSF RAILWAY COMPANY**

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

**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)
(Expedited Consideration Requested)**

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: April 30, 2015

Attorneys for
San Joaquin Valley Railroad Co.

FEE RECEIVED
May 1, 2015
SURFACE
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FILED
May 1, 2015
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– LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING EXISTING INTERCHANGE COMMITMENT–
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
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**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)
(Expedited Consideration Requested)**

San Joaquin Valley Railroad Co. (“SJVR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, SJVR’s entry into a lease amendment to extend the term of, and to make other minor changes to, its lease of the Landco spur line between the Porterville Subdivision, MP 111 + 4029 feet, near Oil Junction, California, and milepost 113 + 3717 feet at or near Bakersfield, California, a distance of approximately 2.0 +/- miles (the “Leased Line”), as shown on the map attached as Exhibit A. The original lease (the “Original Lease”) was part of a broader agreement entered into between the predecessor of SJVR, Tulare Valley Railroad Company (“Tulare Valley”), and the predecessor of BNSF Railway Company (“BNSF”), The Atchison, Topeka and Santa Fe Railway Company (“ATSF”) dated as of November 24, 1992.

Notice

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

(a) The full name and address of Applicant are: San Joaquin Valley Railroad Co., 3220 State Street, Suite 200, Salem, OR 97301.

(b) The name, address and telephone number of the representative of SJVR who should receive correspondence are: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(c) SJVR and BNSF are entering into a Sixth Amendment which would extend the term of the lease for an additional 10 years from December 31, 2012, through December 31, 2022, and make other minor changes to the lease.

(d) The current operator of the Leased Line is SJVR, and SJVR will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction:

In 1992, Tulare Valley entered into an agreement with ATSF under which it acquired various branch and spur lines of railroad, and as relevant here, leased the Leased Line pursuant to the Original Lease. *Tulare Valley Railroad Co. – Acquisition and Operation Exemption – the Atchison, Topeka & Santa Fe Railway Co.*, ICC Finance Docket No. 32215 (served January 13, 1993) [58 FR 4184]. The lease was for a period of five years, and was renewable for consecutive five-year terms. BNSF succeeded to the rights of ATSF as a result of the merger of Burlington Northern Railroad Company and ATSF in 1995. *See generally Burlington Northern Inc. and Burlington Northern Railroad Company – Control and Merger – Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, ICC Finance Docket No. 32549, Decision 38 (served August 23, 1995). SJVR acquired the leasehold rights of Tulare Valley in 1999. *San Joaquin Valley Railroad Company – Acquisition and Operation Exemption – Tulare*

Valley Railroad Company, STB Finance Docket No. 33723 (served March 30, 1999; corrected as to other line segments served May 12, 1999).

The lease continued to renew for five year terms through December 31, 2007, when the parties entered into a Fifth Amendment in which the interchange commitment was amended and the term was extended until December 31, 2012 without any further automatic renewals. Thus, the term of the lease was scheduled to expire at the same time as control of SJVR and its parent RailAmerica were being acquired by Genesee & Wyoming Inc. *Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al*, STB Docket No. FD 35654, Decision No. 5 (served December 20, 2012). SJVR and BNSF agreed to continue operating under the expiring lease until new management and BNSF could negotiate an appropriate extension. SJVR and BNSF have now reached agreement on a Sixth Amendment which would extend the term of the lease for an additional 10 years from the scheduled December 31, 2012 expiration date, through December 31, 2022, and to make other minor changes to the Lease. The Sixth Amendment does not affect or change the terms of the existing interchange commitment in the Original Lease.

(1) The name and address of the railroad transferring the Leased Line: BNSF Railway Company, 2650 Lou Menk Drive, Fort Worth, TX 76131-2830.

(2) The lease extension will be effective upon the effective date of this Notice of Exemption, thirty days after filing. SJVR is currently operating the Leased Line and will continue to do so.

(3) The mileposts of the Leased Line are between the Porterville Subdivision, MP 111 + 4029 feet, near Oil Junction, California, and milepost 113 + 3717 feet at or near Bakersfield, California Milepost. The Leased Line is located in Kern County, California.

(4) The total route miles to be leased and operated is approximately 2.0 +/- miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Leased Line.

(g) SJVR certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

(h) SJVR certifies that the lease which is being amended includes an existing interchange commitment. In this transaction, the Original Lease contained an interchange commitment that potentially affects interchange with carriers other than ATSF (now BNSF). The interchange commitment was amended in 2007 by the Fifth Amendment. The following additional information is provided by SJVR with respect to the interchange commitment:

(i) As noted above, the Original Lease contains an interchange commitment that affects interchange with carriers other than ATSF (now BNSF) at the indirect interchange points shown on the map attached as Exhibit A. The interchange commitment was amended in 2007 by the Fifth Amendment.

(ii) A confidential complete version of the Original Lease, the Fifth Amendment¹ and the current Sixth Amendment, are 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 Leased Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.

¹ The Fifth Amendment revoked the First through Fourth Amendments, and accordingly, those amendments are not being produced.

(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) SJVR hereby certifies, as set forth in the certificate of service, that it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Verified Notice of Exemption on the shippers identified in subparagraph (iii) above.

(vi) Union Pacific Railroad Company could physically interchange with the Leased Line.

(vii) SJVR does not have the information to estimate the difference between the rent with and without the interchange agreement. Moreover, in connection with the current amendment and extension of the lease there was no discussion or negotiation of the lease with and without the commitment. Accordingly, SJVR requested an estimate of the difference from BNSF as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. A copy of the BNSF response is included in the Confidential Appendix.

(viii) The caption of this proceeding reflects the existence of the existing interchange commitment.

In addition to the information set forth above, SJVR certifies that its total annual revenues after the transaction will exceed \$5,000,000. However, since SJVR will continue to be the operator of the Leased Line both before and after the transaction, SJVR 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

SJVR 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 SJVR is already the operator of the Leased Line, there will be no employees adversely affected by the new lease arrangements.

Environmental and Historic Reports

This is an amendment and extension of a 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 SJVR to discontinue or 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)

SJVR is a Class III carrier with annual revenues in excess of \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), SJVR would be required to give sixty days' notice to employees working on the Leased 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." *Belt Line Division of Tacoma Public*

Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA, STB Finance Docket No. 33666 (served October 30, 1998) at 2. *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 SJVR 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 Leased Line. SJVR already leases the rail facilities and has been the sole common carrier operator of the Leased Line since 1999. It is merely extending the term of the lease and making other minor changes, and SJVR will continue to be the sole common carrier operator of the Leased Line. No employees of the transferring carrier, BNSF or its predecessor, have worked on the line since 1992, and there are no employees of BNSF who will be affected or have to make any career choices as a result of the sale. Posting notices on the Leased Line would not provide notice to any BNSF employees since none work on the Leased Line. Further, there will be no operational changes and no employees of SJVR 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 SJVR 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 a lease it was previously leasing and will remain as the common carrier operator on the line. *Southwestern Railroad, Inc. – Lease and Operations Exemption – BNSF Railway Company*, STB Docket No. FD 35855 (served October 15, 2014); *Piedmont & Atlantic*

Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company - Lease Exemption Containing Interchange Commitment - Norfolk Southern Railway Company, STB Docket No. FD 35841 (served July 11, 2014); New Orleans & Gulf Coast Railway Company, Inc. - Lease Exemption Containing Interchange Commitment - Union Pacific Railroad Company, STB Docket No. FD 35777 (served December 12, 2013); Puget Sound & Pacific Railroad Company - Lease Exemption - The United States of America, STB Docket No. FD 35714 (served February 22, 2013).

SJVR is providing notice of this request for waiver by serving a copy of this Verified Notice of Exemption on the national offices of the unions representing SJVR employees who work on the Leased Line. See certificate of service attached hereto.

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

Conclusion

Accordingly, SJVR requests that the Board grant the waiver and permit the transaction to close at any time after 30 days from the filing of this notice of exemption.

Respectfully submitted,


ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

Attorneys for
San Joaquin Valley Railroad Co.

Dated: April 30, 2015

VERIFICATION

I hereby verify on behalf of San Joaquin Valley Railroad Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on April 29, 2015.



Joel Haka, President

EXHIBIT A

MAP

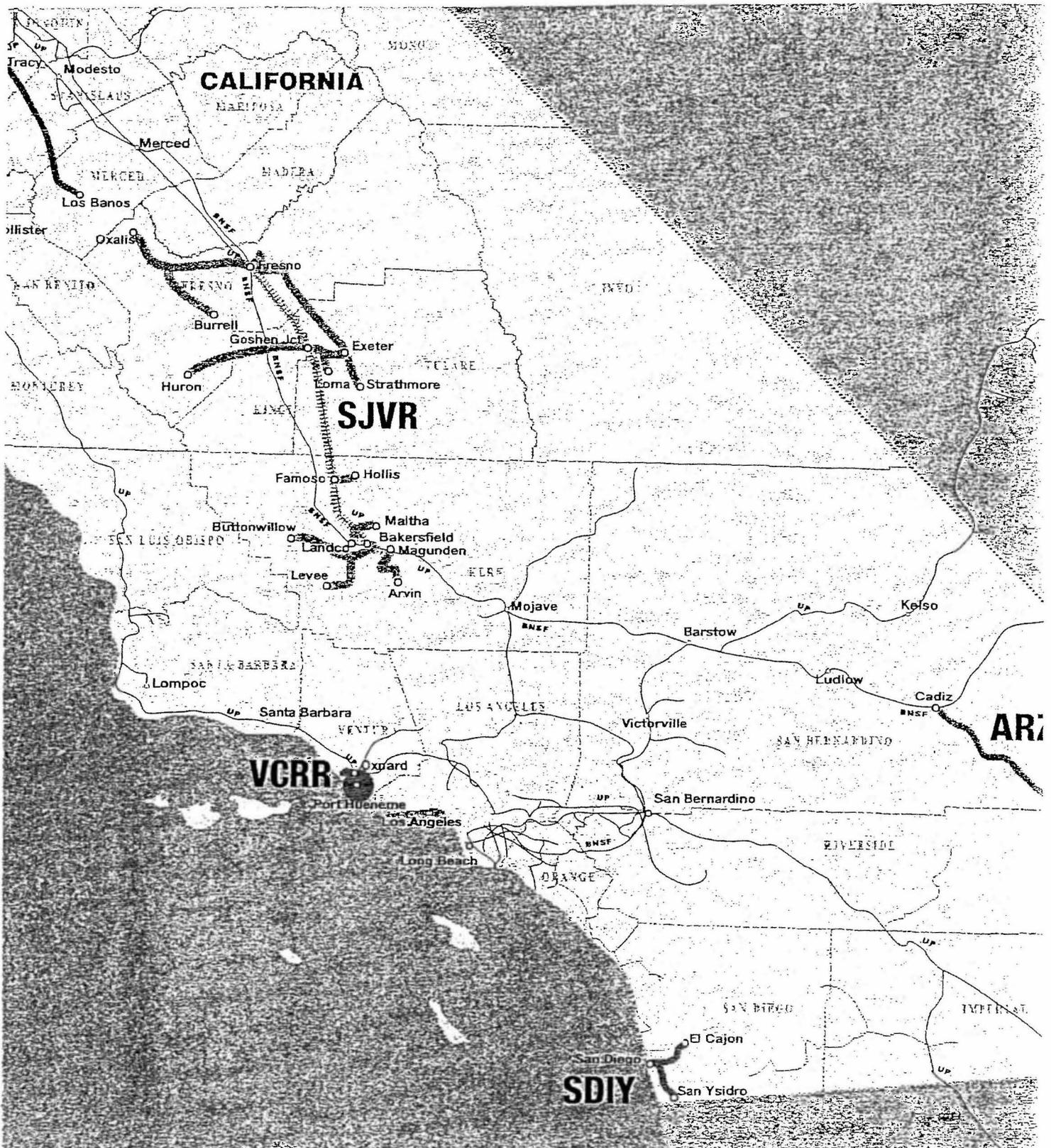


EXHIBIT B

LIST OF SHIPPERS

Asbury Transportation
2144 Parker Lane
Bakersfield, CA 93308

EPCO, Inc.
4937 Standard Street
Bakersfield, CA 93308

San Joaquin Refining Co.
3129 Standard Street
Bakersfield, CA 93308

Baker Petrolite – Landco
5135 Boylan Street
Bakersfield, CA 93308

Amber Chemical
5201 Boylan Street
Bakersfield, CA 93308

EXHIBIT C
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35772

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Comments must be filed with the Board and served on SJVR’s representative, Eric M. Hocky, Esquire, Clark Hill. PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

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.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid on the following shippers and national representatives of labor:

Asbury Transportation
2144 Parker Lane
Bakersfield, CA 93308

EPCO, Inc.
4937 Standard Street
Bakersfield, CA 93308

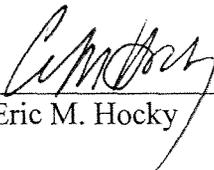
San Joaquin Refining Co.
3129 Standard Street
Bakersfield, CA 93308

Baker Petrolite – Landco
5135 Boylan Street
Bakersfield, CA 93308

Amber Chemical
5201 Boylan Street
Bakersfield, CA 93308

The International Association of Machinists
and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

United Transportation Union/
International Association of Sheet Metal, Air, Rail and
Transportation Workers (“SMART”) – Transportation Division
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070-5333


Eric M. Hocky

Dated: April 30, 2015