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SERVICE DATE – OCTOBER 1, 2014

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35855]

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

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

SW and BNSF entered into a lease agreement in 2004. Recently, the parties entered into a third amendment to the agreement which, among other things, extends the term of the lease to December 31, 2023.

¹ SW states that there are no milepost designations associated with the 5.1-mile line of railroad located in the Carlsbad Yard.

² SW was granted authority to lease and operate the rail line in Southwestern R.R. Company, Inc.—Lease and Oper. Exemption—BNSF Railway Co., FD 34533 (STB served Oct. 22, 2004).

SW has certified that its projected annual revenues as a result of this transaction will not result in SW's becoming a Class II or Class I rail carrier, but that its projected annual revenues will exceed \$5 million. Accordingly, SW 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 lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 C.F.R. § 1150.42(e).

SW, concurrently with its notice of exemption, filed a petition for waiver of the 60-day advance labor notice requirement under § 1150.42(e), asserting that: (1) no BNSF employee will be affected because no BNSF employee has performed operations or maintenance on the line since 2004; and (2) no SW employee will be affected because SW will continue to provide the same service and perform the same maintenance as it has since 2004. SW's waiver request will be addressed in a separate decision.

SW states that it intends to consummate the transaction on or shortly after the effective date of this transaction. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

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 October 8, 2014.

An original and 10 copies of all pleadings, referring to Docket No. FD 35855, 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 Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth St., N.W., Washington, DC 20005.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: September 26, 2014.

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