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BEFORE THE
SURFACE TRANSPORTATION BOARD

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Office of Proceedings
August 17, 2020
Part of
Public Record

DOCKET NO. AB 1304X

PACIFIC SUN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE AND TRACKAGE RIGHTS EXEMPTION –
IN SAN DIEGO COUNTY, CAL.

**PETITION FOR EXEMPTION OF
PACIFIC SUN RAILROAD, L.L.C.**

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**ATTORNEYS FOR PACIFIC SUN
RAILROAD, L.L.C.**

Dated: August 17, 2020

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DOCKET NO. AB 1304X

PACIFIC SUN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE AND TRACKAGE RIGHTS EXEMPTION –
IN SAN DIEGO COUNTY, CAL.

**DISCONTINUANCE PETITION FOR EXEMPTION OF
PACIFIC SUN RAILROAD, L.L.C.**

Pursuant to 49 U.S.C. § 10502 and corresponding regulations at 49 C.F.R. part 1121 and § 1152.60, Pacific Sun Railroad, L.L.C. (“PSR”) hereby petitions the Board for an exemption from the formal prior approval requirements of 49 U.S.C. § 10903 to – (1) discontinue common carrier service over approximately 21.5 miles of a railroad line freight easement (the “Leasehold Lines”), over which PSR currently operates pursuant to a lease with BNSF Railway Company (“BNSF”) – the holder of the freight easement; and (2) discontinue local trackage rights over 45.49 miles of railroad (the “Trackage Rights Line”).

The lines of railroad (collectively, the “Lines”) that are the subject of this petition consist of – (1) an approximately 21.2-mile line from milepost 0.0 at Oceanside, California, to milepost 21.2 at Escondido, California (the “Escondido Subdivision”); (2) the approximately 0.3-mile Miramar Spur extending eastward from milepost 252.9 at Miramar, California, on BNSF’s San Diego Subdivision (the Miramar Spur lacks mileposts);¹ and (3) approximately 45.49 miles of local trackage rights on BNSF’s San Diego Subdivision extending between milepost 252.9 at

¹ Together, the Escondido Subdivision and the Miramar Spur comprise the Leasehold Lines.

Miramar to milepost 207.41 at the Orange County/San Diego County border. *Pacific Sun Railroad, L.L.C. — Lease and Operation Exemption — BNSF Railway Company*, Docket No. FD 35173 (STB served Oct. 3, 2008) (hereinafter “*Pac. Sun*”). A map showing the location of the Lines is attached as Exhibit A. A draft *Federal Register* in the form prescribed by 49 C.F.R. § 1152.60(c) is attached as Exhibit B.

PSR provides service on the Lines under an agreement with BNSF, which is due to end as of September 30, 2020. Upon termination of that agreement, BNSF will resume operation of the Lines in place of PSR. The proposed discontinuance, once granted, will allow PSR to end its common carrier obligations over the Lines. No customer on the Lines will be without common carrier service as a consequence of PSR’s proposed discontinuance of service and trackage rights; the discontinuance will merely facilitate an agreed-upon change in rail service providers from PSR back to BNSF. This discontinuance petition plainly satisfies the exemption criteria of 49 U.S.C. § 10502(a), and, accordingly, should be granted.

I. Identification of Petitioner

Petitioner PSR is a Class III railroad common carrier operating over a total of approximately 66.99 miles of railroad in San Diego County, California. *See Pac. Sun*. PSR is a wholly-owned subsidiary of WATCO Companies, which controls numerous rail carrier subsidiaries operating in 27 states. *Watco Holdings — Continuance in Control Exemption — Wisconsin Rapids Railroad, L.L.C.*, Docket No. FD 36340 (STB served Aug. 16, 2019) 2, n.2. None of WATCO’s other rail carrier holdings connect with PSR.

The complete name and address of PSR is:

Pacific Sun Railroad, L.L.C.
315 W. 3rd St.
Pittsburg, Kansas 66762

II. Description of the Lines that are the Subject of this Petition

The Escondido Subdivision and Miramar Spur, collectively, constitute approximately 21.5 miles of railroad. These Leasehold Lines traverse United States Postal Service ZIP Codes 92054, 92056, 92083, 92084, 92069, 92029, 92025 (the Escondido Subdivision) and 92121, 92126, and 92145 (the Miramar Spur). PSR's operations over the "Trackage Rights Line" (over which BNSF currently provides through service) involves approximately 45.5 miles of railroad. The Trackage Rights Line traverses United States Postal Service Zip Codes 92121, 92014, 92075, 92007, 92024, 92011, 92008, 92054, 92055, 92058, and 92672.

Although of dubious relevance in the present context where service will continue under another rail carrier and no abandonment is contemplated, PSR states that, based on information in its possession, it does not believe on the basis of information in its possession that the Lines contain federally-granted rights-of-way. Any documentation in petitioner's possession regarding federally-granted rights-of-way will be made available promptly to those requesting it.

III. Jurisdiction and Statutory Standards

The Board has jurisdiction over the proposed discontinuance of operations pursuant to 49 U.S.C. § 10903. A railroad common carrier such as PSR must obtain authority from the Board under § 10903 before discontinuing service over a Lines of railroad. However, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board

determines that: (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the “RTP”); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power.

A. An exemption would serve the Rail Transportation Policy

The RTP requires the Board to minimize the need for federal regulatory control over the rail transportation system, reduce barriers to exit, and expedite regulatory decisions. 49 U.S.C. §§ 10101(2), (7), and (15). The Board repeatedly has recognized that exempting certain discontinuances of service from the formal requirements of § 10903 serves these three elements of the RTP, thereby satisfying the exemption criterion of 49 U.S.C. § 10502(a)(1). *E.g., Savage, Bingham & Garfield Railroad Company — Discontinuance of Trackage Rights Exemption — In Whiting, Ind.*, Docket No. AB 1271X (STB served Mar. 1, 2019) at 2 (“An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15)”).

The requested discontinuance exemption would: (1) minimize the need for regulatory control over PSR’s proposed cessation of operations over the Lines in accordance with 49 U.S.C. § 10101(2); (2) eliminate a regulatory barrier to PSR’s exit consistent with 49 U.S.C. § 10101(7); and (3) expedite the regulatory processes to facilitate an agreed-upon transition from PSR operations back to those of BNSF – the Lines’ operator prior to October 2008. Granting PSR its requested exemption would relieve PSR of the expensive and time-consuming formal application process under § 10903, and thereby would be consistent with the mandate of Section 10502(a)(1) and the mandate’s incorporation of 49 U.S.C. § 10101.

B. The Transaction Is of Limited Scope

The transaction for which exemption is sought consists solely of the discontinuance of PSR's operations, which would facilitate BNSF's plans to resume common carrier service in place of PSR. BNSF's anticipated resumption of operations in place of PSR will result in operation of the Lines by the chief freight interest holder. Under these circumstances, the proposed discontinuance is clearly of limited scope.

C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse

Since this transaction is of limited scope, PSR need not demonstrate that regulation is unnecessary to protect shippers from market power abuse. 49 U.S.C. § 10502(a)(2). Even so, this transaction will not and cannot subject shippers to market power abuse. The Lines and the customers on it have been served by a single carrier and line-haul service has consistently been available through BNSF (first as the direct service provider, and then, later, with PSR serving as a handling line carrier for BNSF). Nevertheless, PSR will arrange separately to provide active shippers on the Lines with a copy of this petition as a courtesy.

V. Labor Protection

The Board has stated that it will not impose labor protection where a discontinuance of service would result in the cessation of service on a carrier's "entire system," and the carrier will have no residual interest in railroad assets or any other regulated operations. *Manufacturers Railway Company — Discontinuance Exemption — In St. Louis County, Missouri*, Docket No. AB 1075X (STB served Feb. 5, 2013), 6 ("*Manufacturers Rwy.*"). This is precisely the circumstance here. The Lines on which PSR seeks discontinuance authority represent the entire scope of PSR's operations. PSR has no proprietary interest in any rail assets other than its easement leasehold and trackage rights, which interests PSR must relinquish at

BNSF's behest. Accordingly, because PSR, as a result of the proposed discontinuance, will have no residual interest in railroad assets or any other regulated operations, PSR is entitled to relief from otherwise-applicable labor protection conditions pursuant to *Manufacturers Rwy.*

VI. Environmental Impact Review, Interim Trails Use and Public Use Conditions

As a general rule, the Board does not require a carrier seeking only to discontinue service over a rail line (rather than to abandon it) to prepare and submit for review a combined environmental and historic report under 49 C.F.R. §§ 1105.6(c) and 1105.8(b).² That general rule applies to this discontinuance proceeding, and so PSR has dispensed with the preparation of a combined environmental and historic report. PSR does not intend to undertake salvage activity or to alter or destroy any historic structures that may exist along the Lines upon receipt of discontinuance authority, and it has no legal authority to do so anyway, as a leasehold and trackage rights operator. Moreover, BNSF will resume operations over the Lines as of October 1, 2020, so no rail Lines salvage will occur, and no rail-to-truck diversions would result to trigger potential air quality (emissions) impacts. PSR has, however, arranged for publication of notice of the proposed discontinuance of service in a newspaper of general circulation in San Diego County pursuant to 49 C.F.R. § 1105.12. See Exhibit C.

In addition, because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate.

² See, e.g., *Norfolk Southern Railway Company — Discontinuance of Service Exemption — In Isle of Wight, Southampton, Greensville, and Brunswick Counties, Va.*, Docket No. AB 290 (Sub-No. 359X) (STB served Dec. 16, 2013) at 2 (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required”); *Columbus and Greenville Railway Company — Discontinuance of Service Exemption — In Greenwood, MS*, Docket No. AB 297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2 (same); *Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—In Livingston, Linn, and Chariton Counties, MO*, STB Docket No. AB 1001X (STB served Feb 23, 2007) at 2 n.3 (same).

WHEREFORE, PSR respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance by PSR of common carrier service pursuant over the approximately 21.5 miles of the Leasehold Lines and over the approximately 45.49 miles of the Trackage Rights Lines.

Respectfully submitted,

By: /s/ *Robert A. Wimbish*

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1500

**ATTORNEYS FOR PACIFIC SUN RAILROAD,
L.L.C.**

Dated: August 17, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1304X
PACIFIC SUN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE AND TRACKAGE RIGHTS EXEMPTION –
IN SAN DIEGO COUNTY, CAL.

EXHIBIT A

MAP

AB 1304X

Pacific Sun Railroad, L.L.C. -

Discontinuance of Service and Trackage Rights
Exemption - In San Diego, Cal.



BEFORE THE
SURFACE TRANSPORTATION BOARD

AB 1304X
PACIFIC SUN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE AND TRACKAGE RIGHTS EXEMPTION –
IN SAN DIEGO COUNTY, CAL.

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB 1304X

Notice of Petition for Exemption To Discontinue Service

On August 17, 2020 Pacific Sun Railroad, L.L.C. (PSR) filed with the Surface Transportation Board 20423, a petition for exemption for authorization to discontinue common carrier service over – (1) a line of railroad extending from milepost 0.0 at Oceanside, California, to milepost 21.2 at Escondido, California (the “Escondido Subdivision”); and (2) the 0.3-mile Miramar Spur extending eastward from milepost 252.9 at Miramar, California, on BNSF Railway Company’s (“BNSF”) San Diego Subdivision (the Miramar Spur lacks mileposts); and to discontinue local trackage rights operations over approximately 45.49 miles of railroad (on BNSF’s San Diego Subdivision) extending between milepost 252.9 at Miramar to milepost 207.41 at the Orange County/San Diego County border (the “San Diego Subdivision”), all within San Diego County, California (collectively, “the Lines”).

To the best of PSR’s knowledge as a limited interest holder, the Lines do not contain federally granted rights-of-way. Any documentation in the railroad’s possession regarding federally-granted rights-of-way, if any, will be made available promptly to those requesting it.

Labor protective conditions are subject to *Manufacturers Railway Company — Discontinuance Exemption — In St. Louis County, Missouri*, Docket No. AB 1075X (STB served Feb. 5, 2013), and will be addressed by the Board at a later date.

Any offer of financial assistance to subsidize continued PSR service (if applicable) will be due no later than 10 days after service of a decision granting the petition for exemption.

Because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b).

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

All filings in response to this notice must refer to Docket No. AB 1034X and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-2832. Replies to the petition are due on or before _____, 2020.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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

Decided: _____, 2020.

By the Board, _____, Office of Proceedings.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1034X
PACIFIC SUN RAILROAD, L.L.C.
– DISCONTINUANCE OF SERVICE AND TRackage RIGHTS EXEMPTION –
IN SAN DIEGO COUNTY, CAL.

EXHIBIT C

**CERTIFICATES OF SERVICE
AND PUBLICATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, in accordance with the requirements of 49 C.F.R. § 1152.60(d) (to the extent applicable here), a copy of the foregoing Petition for Exemption was served via electronic mail upon the following parties:

California Department of Transportation
Freight Railroad Liaison
1120 N Street
Sacramento, CA 95814
hq.drmt@dot.ca.gov

Barbara Rice
Program Manager
Recreation Resources Assistance Division
National Park Service
1849 C Street NW
Washington, DC 20240-0001
Pwr_rtca@nps.gov

Military Surface Deployment & Distribution
Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-50067
Usarmy.scott.sddc.mbx.tea@mail.mil

Ms. Vicki Christiansen
Chief, Forest Service
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250-1111
vcchristiansen@fs.fed.us

CERTIFICATE OF NEWSPAPER PUBLICATION

I certify that a “Notice of Petition to Discontinue Rail Service” was published in the form prescribed by the Surface Transportation Board for a petition for exemption (49 C.F.R. § 1105.12). The notice was published one time on August 15, 2020 in the *San Diego Union-Tribune*, a newspaper of general circulation in San Diego County, California, where the subject railroad lines are located.

August 17, 2020



Bradon J. Smith
Attorney for Pacific Sun Railroad, L.L.C.

**PROOF OF PUBLICATION
(2010 & 2011 C.C.P.)**

**STATE OF CALIFORNIA
County of San Diego**

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of

The San Diego Union Tribune

Formerly known as the North County Times and UT North County and which newspaper has been adjudicated as a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, for the City of Oceanside and the City of Escondido, Court Decree numbers 171349 & 172171, for the County of San Diego, that the notice of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

August 15th, 2020

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at **TEMECULA, California** this
17th, day August, 2020


Jane Allshouse

The San Diego Union Tribune Legal Advertising

**NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE
STB DOCKET NO. AB 1304X**

Pacific Sun Railroad, L.L.C. ("PSR") gives notice that on August 17, 2020, it intends to file with the Surface Transportation Board, Washington, DC ("STB") a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S. 10903, et seq., to discontinue common carrier service over: an approximately 21.2-mile line from milepost 0.0 at Oceanside, California, to milepost 21.2 at Escondido, California; an approximately 0.3-mile line extending eastward from milepost 252.9 at Miramar, California; and to discontinue trackage rights over an approximately 45.49-mile line extending between milepost 252.9 at Miramar to milepost 207.41 at the Orange County/San Diego County border. BNSF Railway Company expects as of October 1, 2020 to resume common carrier operations over the Line in place of PSR. PSR's invocation of the STB's discontinuance procedures is in furtherance of a transition of operations from PSR to BNSF. The proceeding will be docketed as STB Docket No. AB 1304X.

The proposed action entails the discontinuance of rail common carrier service and trackage rights over the involved lines, but not abandonment. Accordingly, no Environmental Assessment will be prepared as part of this proceeding.

Appropriate offers of financial assistance to subsidize PSR rail service (if appropriate under the circumstances) can be filed with the STB. Environmental conditions, public use conditions and rail banking/trails are not applicable in proceedings involving only a discontinuance of service and not an abandonment. Any pleading pertaining to offers of financial assistance or responding generally to the proposed discontinuance of service must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423, and must be served on PSR's representative in accordance with the STB's rules for filings and service as set forth at 49 C.F.R. §§ 1104.1, 1104.3, and 1104.12. Questions regarding offers of financial assistance or the STB's discontinuance procedures may be directed to the STB's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on PSR's representative: Bradon J. Smith, FLETCHER & SIPPEL LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606 (phone: 312-252-1516; fax: 312-252-2400).