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Office of Proceedings
March 7, 2017
Part of
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March 7, 2017

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Southwestern Railroad, Inc. – Discontinuance of Service Exemption – In Curry, Roosevelt, Chaves, and Eddy, Counties, New Mexico, AB-1251X

Dear Ms. Brown:

On January 17, Southwestern Railroad, Inc. (“SWRR”) filed an individual petition for exemption (“Petition”) seeking authority to discontinue its common carrier obligation over an approximately 227.6 mile rail line known as the Carlsbad Division in Curry, Roosevelt, Chaves, and Eddy, Counties, New Mexico. On February 6, 2017, the Surface Transportation Board (“STB” or “Board”) published notice of the Petition (“Notice”). The Board’s Notice set May 5, 2017 as the date for a final decision. To date, no comments have been filed in response to the Notice.

In its Petition, and as noted by the Board in its Notice, SWRR requested that the Board not impose the standard Oregon Short Line¹ labor protective conditions that are normally imposed in abandonment and discontinuance proceedings. The request was based upon the good faith belief that at the time SWRR consummated its discontinuance authority, its operations over the Carlsbad would be the only remaining SWRR operations. In situations where a carriers’ entire operations are being abandoned or discontinued, the Board does not normally impose labor protection. See Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter & Tioga Ctys., Pa., 354 I.C.C. 744 (1978)(“Wellsville”); and Northampton & Bath R.R.—Aban. near Northampton & Bath Junction in Northampton Cty., Pa., 354 I.C.C. 784 (1978)(“Northampton”).

¹ Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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As counsel for SWRR, I am writing to inform the Board that the basis for application of the Wellsville/Northhampton precedent is no longer accurate. At the time the Petition was filed, SWRR, its parent and sister companies, were undertaking a series of transactions that would have resulted in SWRR's Carlsbad operations being the only remaining operations at the time of the discontinuance.² Those transactions, however, are no longer expected to occur. As a result, at the time the discontinuance Petition is decided on May 5, 2017, SWRR's operations will include its Whitewater Division. Accordingly, SWRR can no longer make the factual assertion that consummation of the discontinuance of its Carlsbad Division will result in SWRR having no other common carrier obligations.

Respectfully submitted,



William A. Mullins

cc: Parties of Record
Bruce Carswell
Stuart Fredman
John Heffner

² SWRR's operations also consists of a series of lines known as the Whitewater Division, which does not connect with the Carlsbad Division. At the time of the filing of the Petition, the Whitewater Division was being sold. See N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R. Whitewater Div., FD 36085 (STB served Feb. 2, 2017). The parties involved in FD 36085 have failed to reach a final agreement and the transaction has been terminated.