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November 19, 2008

E-File

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

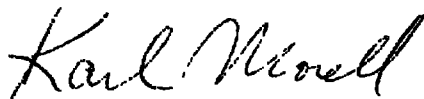
Re: STB Finance Docket No. 35173, Pacific Sun Railroad, LLC –
Lease and Operation Exemption – BNSF Railway Company

Dear Acting Secretary Quinlan:

Attached for E-filing is the Reply of Pacific Sun Railroad, LLC to the
Brotherhood of Railroad Signalmen's letter filed on October 31, 2008.

If you have any questions, please contact me.

Sincerely yours,



Karl Morell

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35173

PACIFIC SUN RAILROAD, L.L.C.
--LEASE AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

STB FINANCE DOCKET NO. 35174

WATCO COMPANIES, INC.
--CONTINUANCE IN CONTROL EXEMPTION--
PACIFIC SUN RAILROAD, L.L.C.

REPLY TO BROTHERHOOD OF RAILROAD SIGNALMEN

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Dated: November 19, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35173

**PACIFIC SUN RAILROAD, L.L.C.
--LEASE AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY**

STB FINANCE DOCKET NO. 35174

**WATCO COMPANIES, INC.
--CONTINUANCE IN CONTROL EXEMPTION--
PACIFIC SUN RAILROAD, L.L.C.**

REPLY TO BROTHERHOOD OF RAILROAD SIGNALMEN

Pacific Sun Railroad, L.L.C. ("PSRR"), and Watco Companies, Inc. ("Watco") hereby reply in opposition to the requested relief sought by the Brotherhood of Railroad Signalmen ("BRS") by letter filed on October 31, 2008 ("BRS Filing").

BRS seeks to have the Surface Transportation Board ("Board") "deny and/or revoke" the exemptions in STB Finance Docket Nos. 35173 and 35174. BRS Filing at 1-2. The effective date of the exemptions in these two proceedings was October 17, 2007. Consequently, BRS's request that the Board deny the exemptions is moot.

The BRS Filing is governed by 49 C.F.R. Part 1121 which, in pertinent part, requires a party seeking to revoke a notice of exemption to "provide all of its supporting information at the

time it files its petition.” 49 C.F.R. § 1121.3(c). The BRS Filing, however, is devoid of any meaningful information addressing the statutory standard for revoking an exemption.

The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of Section 10101. 49 U.S.C. § 10502(d). Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. *Minnesota Comm. Ry., Inc. – Trackage Exempt. – BN RR. Co.*, 8 I.C.C.2d 31, 35-36 (1991); Finance Docket No. 31617, *Chesapeake & Albemarle R. Co. – Lease, Acq. & Oper. Exemp. – Southern Ry. Co.* (not printed), served September 19, 1991; Finance Docket No. 31102, *Wisconsin Central Ltd. – Exemp. Acq. & Oper. – Certain Lines of Soo L.R. Co.* (not printed), served July 28, 1988.

The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. *Id.* Here, BRS has simply come forward with unsupported and unsupportable assertions that the exemptions should be revoked. Because BRS has submitted no evidence in support of its revocation request, it has failed to meet its burden of proof and its requested relief must be denied.

Where, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and, under 49 C.F.R. § 1115.3(b), must state in detail whether revocation is supported by material error, new evidence, or substantially changed circumstances. BRS has failed to address these standards much less introduce any evidence to warrant a finding favorable to BRS under these standards.

Granting BRS’s request in STB Finance Docket No. 35173 would require PSRR to file an individual petition for exemption under Section 10502 or an application for the lease of the rail lines and rail freight service easement under Section 10901. Under Section 10901, the Board

would be required to grant the application unless it finds that the lease is inconsistent with the public convenience and necessity. Transactions initiated under Section 10901 were deemed by Congress to be consistent with the public convenience and necessity unless shown to be otherwise. In any event, BRS fails to explain the manner in which this transaction is inconsistent with the public convenience and necessity. Moreover, the Board may not impose labor protection in a Section 10901 transaction. 49 U.S.C. § 10901(c). Consequently, granting BRS's request would serve no useful purpose. PSRR would be forced to incur the significant expense of filing a petition for exemption or application. In all other respects, however, the parties and the Board would simply come full circle to the same result. It is inconceivable that BRS could demonstrate that this transaction is inconsistent with the public convenience and necessity and the Board is powerless to impose labor protection in a filing under Section 10901.

Similarly, granting BRS's request in STB Finance Docket No. 35174 would require Watco to file an individual petition for exemption under Section 10502 or an application for the control of PSRR. Pursuant to 49 U.S.C. § 11326(c), however, the Board may not impose labor protection when only Class III rail carriers are involved in a control transaction.

In STB Docket No. 35173, PSRR is leasing certain rail lines and a freight rail easement from BNSF Railway Company ("BNSF"), a transaction governed by Section 10901. As previously noted, the Board may not impose labor protection in a Section 10901 transaction. Contrary to BRS's suggestion, BNSF is not a party to the control transaction in STB Docket No. 35174. Because all of Watco's rail carrier subsidiaries are Class III rail carriers, a fact which BRS does not dispute, the Board is precluded from imposing labor protection in this control proceeding pursuant to the provisions of Section 11326(c). Moreover, no employee will be adversely affected as a direct result of Watco controlling PSRR.

The transaction involved in STB Finance Docket No. 35173 is the very type of procompetitive transaction that the Board and its predecessor, the Interstate Commerce Commission ("ICC") have repeatedly endorsed and affirmed. As the ICC noted.

[I]t has been our experience with transactions of this type that the acquiring firm will bring new vitality to the line. Typically, the new operator has closer ties to local communities and will provide better service, often at lower rates, and will work closely with shippers on the line.

Finance Docket No. 31089, *Montana Rail Link, Inc. - Exemption Acquisition and Operation - Certain Lines of Burlington Northern Railroad Company* (not printed), slip op. at 21, served May 26, 1988. As a locally based carrier, PSRR will be able to provide more efficient, economical and attentive service to the customers on the leased lines. To the extent PSRR's services are more efficient and economical, the transaction will lead to improved service at lower rates for existing and potential shippers.

CONCLUSION

PSRR respectfully urges the Board to deny the BRS Filing for failing to meet the revocation standards set forth in 49 U.S.C. § 10502(d). The BRS has presented no facts or arguments that meet the Board's revocation standard or that otherwise warrant the revocation of the exemptions in the involved two proceedings.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karl Morell", is written over a horizontal line.

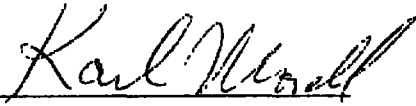
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PACIFIC SUN RAILROAD, L.L.C.
and WATCO COMPANIES, INC.

Dated: November 19, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2008, I have caused a copy of the foregoing Reply to be served on Mr. W. Dan Pickett, International President of the Brotherhood of Railroad Signalmen.



Karl Morell