B.C.D. 08-53 **DEC 18 2008**

EMPLOYER STATUS DETERMINATION
Pacific Sun Railroad, L.L.C.

This is a determination of the Railroad Retirement Board concerning the status of Pacific Sun Railroad, L.L.C. (PSR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA). The status of PSR under the Acts has not previously been considered.

PSR is a subsidiary of Watco Transportation Services, Inc. Mr. Richard B. Webb is the CEO of PSR. PSR began operations and first began compensating employees on October 24, 2008.

In Surface Transportation Board (STB) Finance Docket No. 35173, decided September 16, 2008, PSR filed a verified notice of exemption to operate approximately 21.5 miles of railroad line owned by Burlington Northern Santa Fe (BNSF). The rail line begins approximately at milepost 0.0 at Oceanside Junction, CA and continues to milepost 21.2 at the end of the corridor in Escondido, CA. PSR will also lease the BNSF owned Miramar Spur and rail yard located east of milepost 252.9 on the BNSF San Diego Subdivision. In addition, PSR will be granted a trackage rights license to provide local service over BNSF's reserved rail freight service easement on the San Diego Subdivision between milepost 252.9 near San Diego, CA and milepost 207.41 at the San Diego County and Orange County border including the Stuart Mesa Yard. The STB decision stated that PSR and BNSF intended to consummate the transaction on or about the first day of operations, October 24, 2008. PSR will interchange freight with Burlington Northern and Santa Fe Railroad.

Information regarding PSR was provided by Ms. Rita Mitchell, Payroll Manager of Watco Companies, Inc. According to Ms. Mitchell, Watco Transportation Services Inc. (B. A. No. 9848) is the owner of PSR. Ms. Mitchell stated that PSR began rail operations over its 21.5 miles of rail line on October 24, 2008. PSR hired 5 employees to begin work on or after October 24, 2008. Ms. Mitchell further stated that PSR will provide common carrier freight service and does not expect to handle a volume significant enough to generate sufficient revenue to result in PSR becoming a class II or class I rail carrier. PSR certified that its projected annual revenue will not exceed $5 million.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C.§ 3231).

The evidence of record establishes that PSR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Pacific Sun Railroad, L.L.C. became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective October 24, 2008, the date on which it began operations and as of which its first employee was first compensated. [Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board