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April 9, 2020

300530

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
April 9, 2020
Part of
Public Record

36395

Re: STB Docket No. FD ~~36379~~
Puget Sound & Pacific Railroad
-Lease Amendment and Operation Exemption
Including Interchange Commitment-
Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Puget Sound & Pacific Railroad is a Notice of Exemption being filed under 49 USC 10902 and 49 CFR 1150.41. The filing fee of \$2,100 was paid using Pay.gov.

Please let me know if there are any questions regarding this filing.

Sincerely,



Justin J. Marks
Counsel for Puget Sound & Pacific Railroad

Enclosures

FILED
April 9, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 9, 2020
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD
36395
STB Docket No. FD ~~36379~~

PUGET SOUND & PACIFIC RAILROAD
- LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for Puget Sound & Pacific
Railroad*

Dated: April 9, 2020

Before the
SURFACE TRANSPORTATION BOARD
36395
STB Docket No. FD ~~36379~~

PUGET SOUND & PACIFIC RAILROAD
- LEASE AMENDMENT AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Puget Sound & Pacific Railroad (“PSAP”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation PSAP’s entry into an amendment to a lease agreement (“Amended Lease”) to amend the existing lease (the “Current Lease”) entered into between PSAP and Union Pacific Railroad Company (“UPRR”) on March 3, 2000 and amended May 21, 2002 and December 6, 2010, which covers the following 3.65 miles of rail line (“Rail Lines”): (1) between milepost 53.83 and milepost 54.23 and (2) between milepost 55.28 and milepost 56.70, in Aberdeen and Hoquiam, WA; and (3) between milepost 2.41 at Blakeslee Junction, WA and milepost 4.26 at Raisch, WA. PSAP and UPRR entered into the Amended Lease to further extend the term of the Current Lease and to make other commercial revisions.

Notice

In accordance with 49 C.F.R. §1150.43, PSAP hereby provides the following information:

- (a) The full name and address of Applicant: Puget Sound & Pacific Railroad, 1710 Midway Court, Centralia, WA 98531.
- (b) Applicant’s Representatives:

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2001 Market St.
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(215) 640-8500

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- (c) PSAP is currently the operator of the Rail Lines under the Current Lease. *See Arizona & California Railroad Company Limited Partnership d/b/a Puget Sound & Pacific Railroad Company – Lease and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 33886 (served July 7, 2000); *Puget Sound & Pacific Railroad – Lease and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 34213 (served Dec. 13, 2002). The term of the lease was extended in 2010 in accordance with the terms of the Current Lease. PSAP and UPRR have now entered into the Amended Lease for the Rail Lines dated as of March 4, 2020.
- (d) The current operator of the Rail Lines is PSAP, and PSAP will continue to be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: PSAP is currently operating the Rail Lines under the Current Lease. This proposed transaction extends the lease term and revises other commercial terms, which will allow PSAP to continue operating the Rail Lines for an additional 10 years.
- i. The name and address of the company leasing the Rail Lines is Union

Pacific Railroad Company, 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179.

- ii. The Amended Lease will be effective upon the effective date of this Notice of Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver). PSAP is currently operating the Rail Lines under the terms of the Current Lease and will continue to do so until the Amended Lease becomes effective.
 - iii. The mileposts of the Rail Lines are: (1) between milepost 53.83 and milepost 54.23 and (2) between milepost 55.28 and milepost 56.70, in Aberdeen and Hoquiam, WA; and (3) between milepost 2.41 at Blakeslee Junction, WA and milepost 4.26 at Raisch, WA.
 - iv. The total mileage to be acquired and operated is approximately 3.65 miles.
- (f) Attached as Exhibit A to this Notice of Exemption are maps of the Rail Lines.
- (g) PSAP certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) PSAP certifies that the New Lease contains an interchange commitment that is similar in structure to the interchange commitment that was included in the Original Lease. The following additional information is provided by PNWR with respect to the interchange commitment:
- i. The New Lease (like the Original Lease) contains an interchange commitment that affects interchange with carriers other than UPRR at the interchange point shown on the maps attached as Exhibit A.
 - ii. A confidential complete version of the New Lease is being submitted under

separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).

- iii. A list of the shippers who currently use or who have used the Rail Line in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
- iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.
- v. PSAP hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.
- vi. UPRR and BNSF Railway, Inc. could physically interchange with the Rail Line.
- vii. PSAP does not have the information to estimate the difference between the rent with and without the interchange agreement. Accordingly, PSAP requested an estimate of the difference from UPRR as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the PNWR request and the BNSF response are included in the Confidential Appendix.
- viii. (viii) The caption of this proceeding reflects the existence of the interchange

commitment.

- (i) In addition to the information set forth above, PSAP certifies that its revenues currently exceed \$5,000,000. However, since PSAP will continue to be the operator of the Rail Lines both before and after the transaction, PSAP is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

PSAP is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since PSAP is already the operator of the Rail Lines, there will be no employees adversely affected by the amended lease arrangements.

Environmental and Historic Reports

This is an extension of a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for PSAP to discontinue (or for UPRR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, PSAP's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), PSAP would be required to give sixty days' notice to

employees working on the Rail Lines (and the national offices of their collective bargaining representatives). However, the Board has held: “The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.” *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* (“*Advanced Notice of proposed Transactions*”), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, PSAP should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Lines. PSAP already leases the rail facilities and has been the sole common carrier operator of the Rail Lines since at least 2003. The Amended Lease extends the term of PSAP’s lease and PSAP will continue to be the sole common carrier operator of the Rail Lines. No employees of the transferring carrier, UPRR, have worked on the Rail Lines since at least 2003, and there are no employees of UPRR who will be affected or have to make any career choices as a result of the sale. Posting notices on the Rail Lines would not provide notice to any UPRR employees since none work on the Rail Lines. Further, there will be no operational changes, and no employees of PSAP will be affected.¹ Thus, under the circumstances of this transaction, compliance with the

¹ Notwithstanding that there will be no effect on employees of PSAP, PSAP is providing notice of the Amended Lease to the national office of the union that represents employees working on the Rail Lines by serving it with a copy of this Notice of Exemption.

notice requirements will not further the purposes of the rule and should be waived. Granting PSAP a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

PSAP asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, PSAP requests that the Board issue a notice allowing the Amended Lease to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



Eric M. Hocky
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Suite 2620
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1001 Pennsylvania Ave. N.W.
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(202) 772-0916
jmarks@clarkhill.com

Attorneys for Puget Sound & Pacific Railroad

Dated: April 9, 2020

VERIFICATION

I, Brad Ovitt, President of Puget Sound & Pacific Railroad, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on April 9, 2020

Brad Ovitt
Brad Ovitt

EXHIBIT A

MAP



Puget Sound & Pacific Railroad
1710 Midway Court
Centralia, Washington 98531
360-807-4325

Genesee & Wyoming Railroads

- **PSAP** Puget Sound & Pacific Railroad
- **CSCD** Cascade and Columbia River Railroad Company
- **OYLO** Olympia & Belmore Railroad, Inc.
- **PNWR** Portland & Western Railroad, Inc.

● Port Operations
 Dashed line indicates Trackage Rights; gray line indicates Out of Service.

Location of the Rail Lines Circled

Aberdeen



MP 54.23

MP 53.83

Hoquiam



MP 56.7

MP 55.28

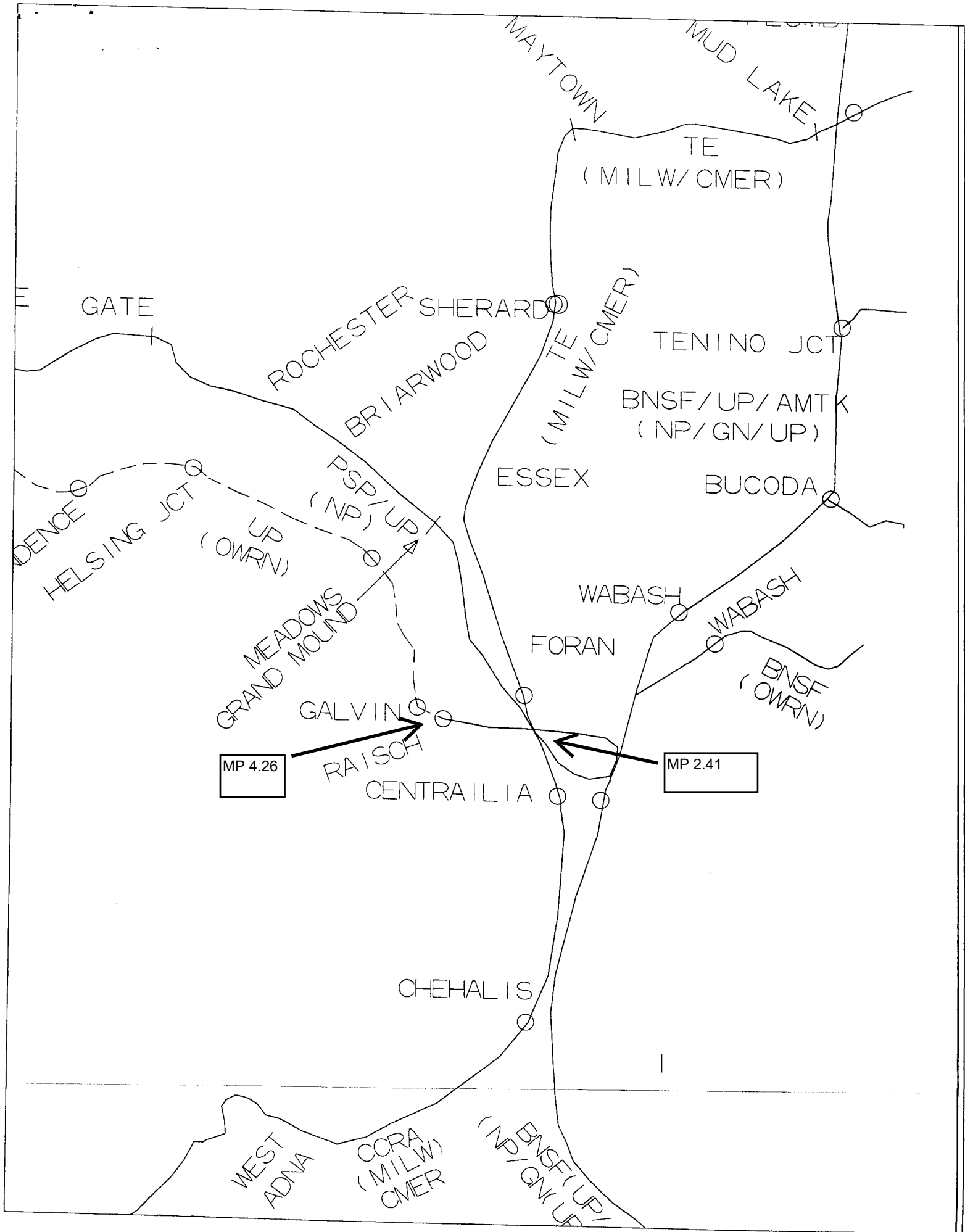


EXHIBIT B

LIST OF SHIPPERS

AG PROCESSING INC W TERMINAL WAY ABERDEEN, WA 98520	NORTHWEST HARDWOODS 3000 GALVIN RD CENTRALIA, WA 98531
ALTA FOREST PRODUCTS LLC 780 W STATE RTE 108 SHELTON, WA 98584	P.L.S. POLE 18146 DALLAS ST SW ROCHESTER, WA 98579
AMERICAN INTERNATIONAL FOREST PRODUCTS 111 S WOODING ST ABERDEEN, WA 98520	PANELTECH 2999 JOHN STEVENS WAY HOQUIAM, WA 98550 4242
ANYTHING FOR A BUCK 1202 SIMPSON AVE HOQUIAM, WA 98550	PASHA STEVEDORING & TERMINALS LP 1620 E TERMINAL WAY ABERDEEN, WA 98520
ASCENSUS SPECIALTIES INC 4800 US-12 ELMA, WA 98541	PLASTICS SERVICES & PRODUCTS 1703 LUM RD CENTRALIA, WA 98531
BELCO FOREST PRODUCTS 1890 E JOHNS PRAIRIE RD SHELTON, WA 98584	PORT OF GRAYS HARBOR 111 WOODING ST ABERDEEN, WA 985204538
BRIARWOOD FARMS 19210 COUNTY LINE RD SW OAKVILLE, WA 98568	PUGET SOUND ENERGY 712 LEGION WAY SE OLYMPIA, WA 98501
CHS INC 5421 CONSTANCE DR. BREMERTON, WA 98312	PUGET SOUND NAVAL SHIPYARD 1400 FARRAGUT AVE BREMERTON, WA 983146001
CHS NW 5421 CONSTANCE DR. BREMERTON, WA 98312	RENEWABLE ENERGY GROUP INC 3122 PORT INDUSTRIAL RD HOQUIAM, WA 98550
CONTANDA TERMINALS LLC 3128 PORT INDUSTRIAL RD HOQUIAM, WA 98550	SIEM SHIPPING 111 WOODING ST ABERDEEN, WA 985204538
DOELMAN DAIRY FARM 7231 JAMES RD. ROCHESTER, WA 98579	SIERRA PACIFIC INDS 301 HAGARA ST ABERDEEN, WA 98520
FERRELL NORTH AMERICA 1961 SEABECK HWY NW BREMERTON, WA 98312	SIERRA PACIFIC INDS 3115 KUPER RD CENTRALIA, WA 98531
HOLCIM (USA) 1720 LUM RD. CENTRALIA, WA 98531 1962	SIERRA PACIFIC INDS 204 E RAILROAD AVE SHELTON, WA 98584
INLAND ENVIRONMENTAL RESOURCES 3609 GALVIN RD. CENTRALIA, WA 98531	UNITED STATES NAVY 1400 FARRAGUT AVE BREMERTON, WA 98314 6001
LOWES FDC INC. 212 ROBERT THOMPSON RD	UNIVERSAL CYLINDER EXCHANGE 2600 COMMERCIAL RD

CENTRALIA, WA 98531	CENTRALIA, WA 98531
MUSKET CORP 3712 NORTH PARK DR CENTRALIA, WA 98531	VERTELLUS SPECIALTIES INC 4800 US-12 ELMA, WA 98541
NGL ENERGY PARTNERS LP 1041 W STATE ROUTE 108 SHELTON, WA 98584	WASTE MANAGEMENT 9380 SW BARNEY WHITE RD BREMERTON, WA 98312

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

36395

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- LEASE AMENDMENT AND OPERATION EXEMPTION
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Comments must be filed with the Board and served on PSAP’s representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8500.

The Notice is filed under 49 C.F.R. §1150.41. 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 transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following national representative of PSAP employees working on the lines:

International Association of Sheet Metal, Air, Rail and Transportation Workers
Transportation Division

J. M. LaPresta
General Chairperson
1603 N State Hwy CC
Nixa, Missouri 65714

and on the shippers shown on the attached list.



Justin J. Marks

Dated: April 9, 2020

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