

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36663]

Yak Rail LLC—Modified Rail Certificate

On January 27, 2023, Yak Rail LLC (Yak Rail),¹ a noncarrier, filed a notice for a modified certificate of public convenience and necessity under 49 C.F.R. part 1150 subpart C—Modified Certificate of Public Convenience and Necessity, to lease and operate a line of railroad owned by Yakima County, originating at BNSF Railway Company (BNSF) milepost 73.6 at Wesley Junction near Toppenish² and extending west 20.56 miles to White Swan (the Line), and an additional 1.63 miles of industrial spur near White Swan, for a total distance of 22.19 miles in Yakima County, Wash.

The Line was authorized for abandonment by the Board's predecessor agency, the Interstate Commerce Commission, in Washington Central Railroad—Abandonment Exemption—in Yakima County, Wash., AB 326X (ICC served Aug. 24, 1992).

Although authorized for abandonment, the Line was subsequently acquired by the State of Washington pursuant to an offer of financial assistance in Washington Central Railroad—Abandonment Exemption—in Yakima County, Wash., AB 326X (ICC served March 18, 1993), and according to Yak Rail, transferred to Yakima County (the County).

¹ Yak Rail is a new entity formed as a limited liability company under the laws of the State of Washington.

² The lease agreement refers to this point as milepost 0.0. (See Verified Notice, Ex. B at 1.)

Previously, the Line was operated by three other carriers under modified rail certificates.³

Pursuant to a lease agreement, Yak Rail and the County have agreed that Yak Rail will commence freight rail operation on or after January 27, 2023, for an initial term of 10 years, which may be extended, upon the occurrence of certain conditions, for an additional five years. Under the agreement, the parties may terminate the lease earlier upon the occurrence of certain events (i.e., a final and non-appealable order by the Board, court, or other administrative agency that terminates Yak Rail's authority or ability to provide rail freight services on the Line). (See Verified Notice, Ex. B at 9.)⁴

This transaction is related to the verified notice of exemption filed in CWW LLC—Continuance in Control Exemption—Yak Rail LLC, Docket No. FD 36664, in which CWW LLC seeks to continue in control of Yak Rail, upon Yak Rail's becoming a Class III rail carrier.

The Line qualifies for a modified certificate of public convenience and necessity. See Common Carrier Status of States, State Agencies & Instrumentalities & Pol. Subdivs., FD 28990F (ICC served July 16, 1981); 49 C.F.R. § 1150.22.

Yak Rail states that no entity is subsidizing Yak Rail's freight operations on the Line and that there are no preconditions for shippers to meet in order to receive rail

³ See Yakima Valley Rail & Steam Museum Ass'n.—Modified Rail Certificate, FD 32487 (ICC served Apr. 28, 1994); Cent. Wash. R.R.—Modified Rail Certificate, FD 34804 (STB served Jan. 4, 2006); YCR Corp.—Modified Rail Certificate—in Yakima Cnty., Wash., FD 35336 (STB served Jan. 15, 2010).

⁴ As operator of the Line, Yak Rail will provide rail freight service over the Line's only interline connection with BNSF at BNSF milepost 73.6, at Toppenish. Yak Rail advises the Board that it intends to enter into an interchange agreement with BNSF, imposing no interchange commitment. Yak Rail states that it will advise the Board in the event that the final interchange agreement differs from what it represented here.

service from Yak Rail. Yak Rail also states that the agreement requires it to obtain liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street, S.W., Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street, N.W., Suite 500, Washington, DC 20001.

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

Decided: February 7, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.