

ENTERED
Office of Proceedings
April 4, 2023
Part of
Public Record

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

ROBERT A. WIMBISH

(312) 252-1504
rwimbish@fletcher-sippel.com

April 4, 2023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **FD 36692**
Rainier Rail LLC and WRL LLC — Intra-Corporate Family
Transaction Exemption

Dear Ms. Brown:

Attached for filing is a **Verified Notice of Exemption of an Intra-Corporate Family Transaction** under 49 C.F.R. Part 1180.2(d)(3). The filing fee was paid via Pay.gov.

Please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504 if you have questions. Thank you for your assistance.

Yours truly,

R.A. Wimbish

Robert A. Wimbish
Attorney for Rainier Rail LLC and WRL LLC

FILED
April 4, 2023
SURFACE
TRANSPORTATION BOARD

Attachment

FEE RECEIVED
April 4, 2023
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36692

RAINIER RAIL LLC AND WRL LLC
— INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

**VERIFIED NOTICE OF EXEMPTION OF RAINIER RAIL LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com
bsmith@fletcher-sippel.com

**ATTORNEYS FOR RAINIER RAIL LLC AND
WRL LLC**

Dated: April 4, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36692
RAINIER RAIL LLC AND WRL LLC
— INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

**VERIFIED NOTICE OF EXEMPTION OF
RAINIER RAIL LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Rainier Rail LLC (“Rainier”) and WRL LLC (“WRL”) – collectively, “Rainier/WRL” – hereby seek authority pursuant to 49 C.F.R. § 1180.2(d)(3) to engage in an intra-corporate family transaction in which Rainier and WRL will merge, with Rainier emerging as the surviving carrier. Rainier (currently a non-carrier) and WRL (a carrier) are corporate siblings under the common control of an individual, Paul Didelius (“Didelius”).¹ Rainier and WRL have agreed that on or after the date that Rainier becomes a common carrier holding of Didelius pursuant to two related, and pending, proceedings (specifically, *Rainier Rail LLC—Acquisition and Change Of Operators Exemption—City Of Tacoma, Washington, Department Of Public Works D/B/A Tacoma Rail Mountain Division*, FD 36658, and *Didelius—Control*), WRL will be merged into Rainier.² As reflected in the *Didelius—Control* petition for exemption filed on March 8, 2023, common control, and by extension, the proposed merger within a corporate family that is the subject of the present proceeding will not result in adverse changes in service

¹ *Paul Didelius — Continuance in Control Exemption — Rainier Rail LLC*, FD 36659 (Didelius filing of Mar. 8, 2023), 3 (“*Didelius—Control*”).

² *Didelius — Control* at 4-5 at n. 3.

levels,³ significant operational changes,⁴ or a change in the competitive balance with carriers outside the corporate family.

Per the requirements of 49 C.F.R. § 1180.4(g), Rainier/WRL submit the following information:

Description of Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

Didelius is directing Rainier, a prospective Class III carrier, and WRL, an existing Class III carrier, to merge (on or after the date that Rainier becomes a common carrier) under a “Plan of Merger” that is not yet finalized. Under the plan of merger, Rainier will emerge as the surviving carrier entity.

The full names and address of Rainier and WRL are:

Rainier Rail LLC
WRL LLC
709 10th Ave.
Walla Walla, Wash. 99362

Questions should be sent to the Applicants’ representative:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Ill. 60606-3208
(312) 252-1500
bsmith@fletcher-sippel.com

³ *Id.* at 10.

⁴ *Id.* at 11.

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Rainier/WRL intend to complete the merger on or after the date upon which, in keeping with pending Board authority, Rainier Rail becomes a common carrier within the Didelius' family of railroads.

Purpose: 49 C.F.R. § 1180.6(a)(1)(iii)

Merger will allow the Didelius-controlled, connecting carriers Rainier and WRL to eliminate needless operational and corporate management inefficiencies of interconnected operation in favor of the efficiencies of single-system operation.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

Rainier — Washington
WRL — Washington

Maps - Exhibits A: 49 C.F.R. § 1180.6(a)(6)

Exhibit A is a system map showing the location of the Didelius-controlled rail carriers and the prospective location of the lines of Rainier.

Agreement— Exhibit B: 49 C.F.R. § 1180.6(a)(7)(ii)

Exhibit B is a working draft Plan of Merger.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and

11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III carriers.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed intra-corporate family transaction is exempt from environmental reporting requirements. The merger will not result in changes that exceed the 49 C.F.R. § 1105.7(e)(4) or (5) thresholds.

Also under 49 C.F.R. § 1105.8(b)(3), the merger is exempt from historic preservation reporting requirements. The merger will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The Plan of Merger to govern the proposed transaction contains no interchange commitment triggering the additional reporting requirements of Section 1180.4(g)(4).

Respectfully submitted,

R.A. Wimbish

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR RAINIER RAIL LLC AND
WRL LLC**

Dated: April 4, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

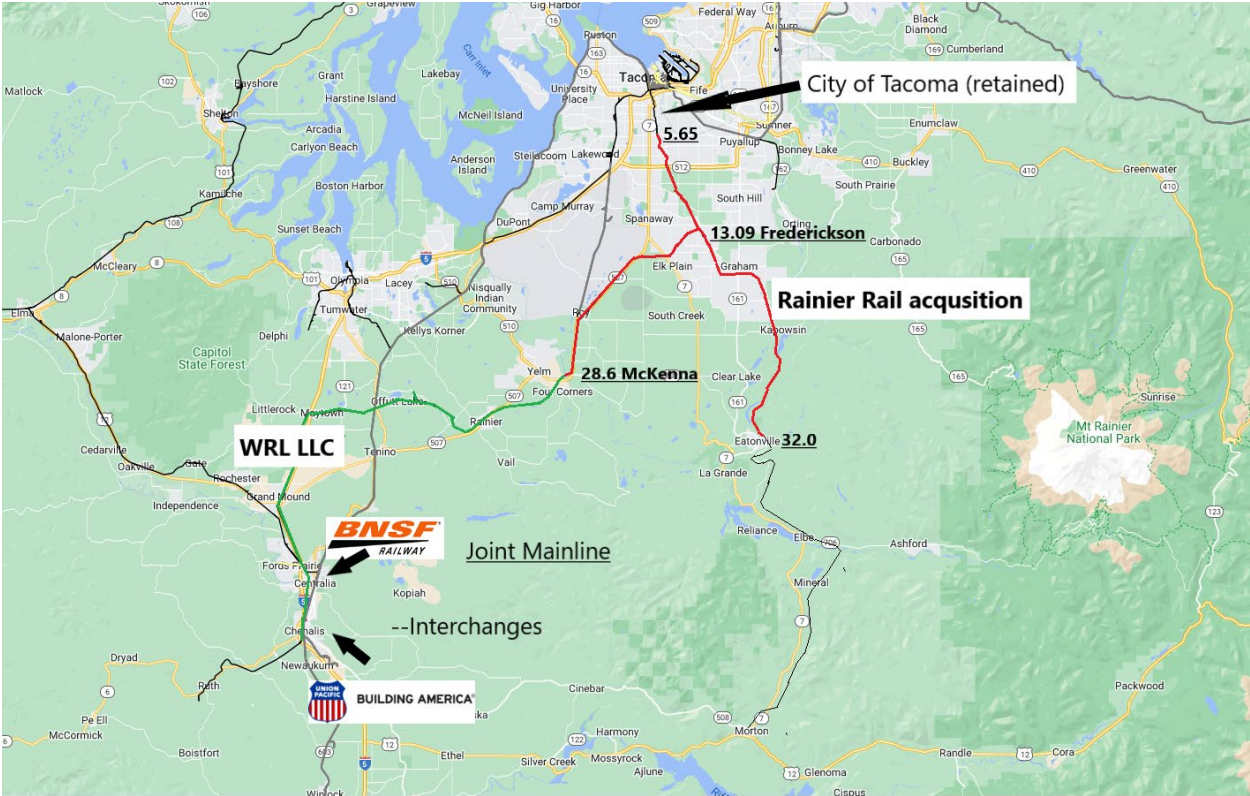
FD 36692

**RAINIER RAIL LLC AND WRL LLC
— INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

EXHIBIT A

**RAINIER RAIL AND WRL SYSTEM
MAPS**

WRL MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36692

**RAINIER RAIL LLC AND WRL LLC
— INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

EXHIBIT B

PLAN OF MERGER

PLAN OF MERGER OF

WRL LLC

with and into

RAINIER RAIL LLC

This is a Plan of Merger between **WRL LLC**, a Washington limited liability company (“**WRL**”) and **RAINIER RAIL LLC**, a Washington limited liability company (“**Rainier**”).

ARTICLE 1 PLAN OF REORGANIZATION

Plan Adopted

1.01. A plan of merger of WRL and Rainier under the provisions of the Revised Code of Wash. (“RCWA”) 25.15.416 and Section 368(a)(1)(A) of the Internal Revenue Code, is adopted (the “Plan”) as follows:

- (a) **WRL (Merging Company)** shall merge into Rainier to exist and be governed by the laws of the State of Washington;
- (b) The **Surviving Company** shall be Rainier Rail LLC;
- (c) When this Plan becomes effective (1) upon the authorization of the Surface Transportation Board and (2) with the articles of merger discussed below, the separate existence of the Merging Company shall cease, and the Surviving Company shall succeed to the Merging Company consistent with RCWA 25.15.431;
- (d) The Surviving Company will carry on business with the assets of WRL and Rainier;
- (e) The **WRL Members** (as RCWA 25.15.006 defines) will surrender their limited liability company interests in WRL under RCWA 25.15.116 (“**WRL Equity**”) in the manner hereinafter set forth;
- (f) In exchange for the WRL Equity the WRL Members surrender, the Surviving Company will issue and transfer to the WRL Members limited liability company interests in Surviving Company under RCWA 25.15.116 (“**Rainier Equity**”) on a 1:1 basis; and
- (g) The members of Rainier will retain their Rainier Equity in the Surviving Company;

Effective Date

1.02. The Effective Date of the merger shall on or after April __, 2023.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF CONSTITUENT COMPANIES

Non-survivor

2.01. As a material inducement to the Surviving Company to execute this Agreement and perform its obligations under this Agreement, WRL represents and warrants to Surviving Company as follows:

(a) WRL is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Washington, with corporate power and authority to own property and carry on its business as it is now being conducted;

(b) WRL has furnished Surviving Company with the necessary financial statements and Surviving Company is satisfied with the financial statements provided for purposes of this merger and organization.

(c) All required Federal, state, and local tax returns of WRL have been accurately prepared and duly and timely filed, and all Federal, state, and local taxes required to be paid with respect to the periods covered by the returns have been paid. WRL has not been delinquent in the payment of any tax or assessment.

Survivor

2.02. As a material inducement to WRL to execute this Agreement and perform its obligations under this Agreement, Rainier represents and warrants to WRL that Rainier is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Washington, with corporate power and authority to own property and carry on its business as it is now being conducted.

ARTICLE 3
COVENANTS, ACTIONS, AND OBLIGATIONS PRIOR TO THE EFFECTIVE DATE

Interim Conduct of Business; Limitations

3.01. Pending consummation of the merger, each of the limited liability companies will carry on its business in substantially the same manner as before and will use its best efforts to maintain its business organization intact, to retain its present

employees, and to maintain its relationships with suppliers and other business contacts.

Submission to Shareholders and Filing

3.02. This Plan shall be submitted for approval to the members of the constituent limited liability companies in a manner consistent with the laws of the State of Washington.

ARTICLE 4 MANNER OF EQUITY INTEREST CONVERSION

Manner

4.01. WRL and Rainier shall execute articles of merger under RCWA 25.15.426 consistent with this Plan. After the merger, the respective membership interests in Rainier shall remain 70% Paul Didelius and 30% Robert Didelius.

ARTICLES 5 MANAGERS

Managers of Survivor

5.01. The present **Managers** (as RCWA 25.15.006 defines) of Rainier shall continue to serve as the Managers of Surviving Company until the next annual meeting or until their successors have been elected and qualified.

ARTICLE 6 ORGANIZATIONAL DOCUMENTS

Organizational Documents

6.01. The organizational documents (articles of incorporation, bylaws, resolutions, and other agreements providing corporate governance) (“Organizational Documents”) of **Rainier** as existing on the effective date of the merger, shall continue in full force for the Surviving Company until altered, amended, or repealed.

ARTICLE 7 TERMINATION

Circumstances

7.01. This Plan may be terminated, and the merger may be abandoned, at any time prior to the Effective Date by mutual consent of the Managers of the constituent companies.

ARTICLE 8
INTERPRETATION AND ENFORCEMENT

Notices

8.01. Any notice or other communications required or permitted under this Plan shall be properly given when deposited in the United States Postal Service for transmittal by certified or registered mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

(a) In the case of WRL, to:

WRL LLC
709 N. 10th Ave.
Walla Walla, WA 99362

(b) In the case of Rainier, to:

Rainier Rail LLC
709 N. 10th Ave.
Walla Walla, WA 99362

Entire Agreements; Counterparts

8.02. This instrument and the exhibits to this Plan contain the entire agreement between the parties with respect to the contemplated transaction. This Plan may be executed in any number of counterparts, all of which taken together shall be deemed on original.

Controlling Law

8.03. The validity, interpretation, and performance of this Plan shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

SIGNATURE PAGE TO FOLLOW

Adopted as of _____, 2023, by the undersigned, constituting all of the members.

PAUL DIDEIUS, Member

ROBERT DIDEIUS, Member

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36692

**RAINIER RAIL LLC AND WRL LLC
— INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

VERIFICATION

VERIFICATION

I, Paul Didelius, a Governor (Member and Manager) of Rainier Rail LLC and WRL LLC, verify under penalty of perjury that the foregoing intra-corporate family transaction notice of exemption is true and correct to the best of my knowledge.

Dated: April 4, 2023



Paul Didelius