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February 4, 2025

VIA E-FILING

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

Re: STB Docket No. FD 36818
Central Oregon & Pacific Railroad, Inc.
-Lease and Operation Exemption Including Interchange Commitment-
Union Pacific Railroad Company

Dear Ms. Brown:

Central Oregon & Pacific Railroad, Inc. ("CORP") files this reply in response to letters in opposition to the CORP Notice of Exemption to lease from Union Pacific Railroad Company ("UP") the rail lines detailed in Finance Docket No. 36818 (the "Rail Lines"). CORP respectfully requests that the Board reject the letters in opposition to the transaction because the letters fail to support the issuance of a stay and do not demonstrate that the lease should be rejected to carry out the rail transportation policy of 49 U.S.C. § 10101.

Background

Railroads under the jurisdiction of the Board are categorized by revenue. A Class III carrier is a railroad with revenues below \$47,277,851.¹ Regardless of a rail carrier's classification, all rail carriers are subject to the safety regulation of the U.S. Federal Railroad Administration ("FRA").²

CORP is a Class III rail carrier currently operating 306 miles of rail line in California and Oregon.³ Genesee & Wyoming Inc. ("G&W") acquired CORP in 2012.⁴ G&W owns over one hundred freight railroads through North America with 4,000 employees serving 2,000 customers over more than 13,000 track miles.

¹ *Indexing the Annual Revenues of Railroads*, STB Docket No. EP 748 (served May 20, 2024).

² 49 C.F.R. Part 209, Appendix A.

³ CORP is a corporation organized under the laws of Delaware.

⁴ *Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al.* STB Finance Docket No. 35654, Decision No. 5, (served Dec. 20, 2012).

On December 10, 2024, CORP filed a Notice of Exemption under the Board's class exemption procedures at 49 C.F.R. § 1150.41 *et seq.* to acquire via a lease from UP approximately 27.58 miles of railroad. Included within the Notice of Exemption, and as required under the Board's regulations, CORP certified that it advertised to potentially impacted UP employees, jobs that will be available with CORP as a result of the lease.

The Board issued a Notice of Exemption on December 20, 2024, establishing January 31, 2025, as the deadline for parties to file a petition for stay. The effective date of the Notice of Exemption is February 8, 2025.

On January 31, 2025, a group of state and local lawmakers (the "Coalition") filed a letter with the Board asking the Board to delay the CORP Notice of Exemption so that it could "appreciate a better understanding" of the transaction.⁵ The Coalition cites as its concerns, "continuity of service and commerce, and the responsibility for adequate planning, operations, and response to adverse events." It claims that CORP is a "smaller railroad with fewer resources" and as a result, "could jeopardize the flow of rail traffic" and "raises safety concerns."

On February 3, 2025, the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division ("SMART-TD") served a petition asking the Board to reject the UP lease to CORP.

The SMART-TD petition does not cite any Board case law for "rejecting a lease." Instead, it proffers a policy rationale by attacking UP and citing out of context congressional testimony to argue that CORP is a "railroad dependent on government funding for sustainability." Further, the SMART-TD petition claims that CORP employees lack "comparable training and experience" to UP employees and asserts that this creates a safety risk and could cause service problems.

On January 31, the organization Beyond Toxins and an individual filed a letter with the Board each asking the Board to deny the UP lease to CORP.⁶ The letters in opposition assert that CORP's status as a Class III carrier compared to UP's status as a Class I carrier will increase the risk of an accident. Beyond Toxins also argues that "CORP has a poor track record" and cites as evidence, CORP's 2009 discontinuance of service in Coos Bay. The letter states, "[i]n Coos Bay, CORP failed to maintain their yards and protect the community when it shut down and abandoned its operations there. We are concerned that it could abandon operations here too."

The Brotherhood of Railroad Signalmen ("BRS") filed a letter with the Board on February 3, 2025, noting that the transaction will not impact its membership, but stating its belief that it should have been notified of the transaction. BRS did not call for the Board to reject the notice of exemption.

Legal Standard

The Board is charged with the regulation of railroad acquisitions under 49 C.F.R. § 10501(b) and its authority preempts state and local remedies. CORP submitted to the Board its transaction

⁵ Letter from Speaker Julie Fahey, Representative, HD 14 Oregon House of Representatives, *et al.* to Chairman Patrick Fuchs (January 31, 2025).

⁶ Letter from Lisa Arkin, Executive Director, Beyond Toxins to the Surface Transportation Board (January 30, 2025). Letter from Lin Woodrich to the Surface Transportation Board (January 21, 2025).

to lease the Rail Lines under the Board's class exemption procedures at 49 C.F.R. § 1150.41 *et seq.*, for acquisitions by Class III railroads under 49 U.S.C. § 10902. As the Board has explained, its "class exemption procedures provide an expedited means of obtaining Board authority in certain classes of transactions involving routine matters."⁷

The Board may stay the effective date of a Notice of Exemption under 49 U.S.C. § 721(b)(4), when necessary to prevent irreparable harm. The Board considers the following factors when ruling on a petition for a stay: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying a stay."⁸

The Board may reject a notice of exemption if a complaining party demonstrates that "the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101."⁹ However, it should be noted that none of the opposing parties have requested that the Board reject the notice of exemption; instead, SMART-TD and Beyond Toxins have requested that the Board reject or deny the UP lease to CORP, which is not a valid request under the Board's regulations.

Argument

The concerns raised by the Coalition, Beyond Toxins and other citizens are based on a misunderstanding of CORP and the FRA's role in regulating all railroads. Neither the letters nor the SMART-TD Petition to Reject support a stay or rejection of the UP lease to CORP.

1. The Coalition's letter does not meet the Board's standard for issuing a stay.

The Coalition's letter does not meet the Board's standards for granting a stay. The Coalition is unlikely to prevail on the merits because it fails to state what the state and local lawmakers want beyond a "better understanding."

The Coalition fails to allege irreparable harm by claiming only that a safe and smooth flow of commerce over the Rail Lines is in jeopardy without citing evidence to support this assertion. Over the last five years (2019-2024), CORP's FRA reported injury ratio is 0.95 per every 200,000 working hours. For context, the Class I average reported injury ratio during the same time period is 1.11 per every 200,000 working hours. CORP, like the other railroads in the G&W corporate family, are proud of their safety record and at the same time, they recognize that safety excellence is never fixed, it is a continuous effort. This is why all G&W railroads build a safety culture under the belief that every accident and injury is preventable and G&W's railroads participate in trainings in order to continually improve safety on their railroads.

⁷ *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, STB Finance Docket No. 35559, slip op. at 5 (served May 14, 2012) (citing *Winamac S. Ry. – Trackage Rights Exemption – A. & R. Line, Inc.*, STB Finance Docket No. 35208, slip op. at 2 (served Jan. 9, 2009)).

⁸ *Jackson County, MO. – Acquisition and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 35982, slip op. at 2 (served Feb. 4, 2016).

⁹ 49 CFR 1150.42(c); 49 U.S.C. 10502(d); *General Railway Corp, d/b/a Iowa Northwestern R.R. – Exemption for Acquisition of Railroad Line – in Osceola and Dickinson Counties, IA*, STB Finance Docket No. 34867, slip op. at 4 (served June 15, 2007).

Further, approximately 46% of all freight carloads moving to and from customers via Eugene Yard are already being handled by CORP in interchange with UP in the Eugene Yard. As a result, CORP's lease of the Rail Lines will allow UP to reduce the number of times a rail car is handled and to create greater efficiencies, which should also increase operational safety.¹⁰

2. SMART-TD and Beyond Toxins have not met the burden to support a Board order rejecting the UP lease to CORP.

The SMART-TD petition and the letter submitted by Beyond Toxins do not to meet the Board's criteria for rejecting a Notice of Exemption. To do so, a party has the burden to demonstrate that the notice contains false or misleading information or that regulation of the transaction is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP").

First, neither the SMART-TD petition nor the Beyond Toxins letter argues that the CORP Notice of Exemption contains false or misleading information. Second, to the extent that SMART-TD offers a substantive argument, it and the Beyond Toxins letter do not support a position that this proceeding should be regulated to carry out the RTP resulting in the Board withholding authority for CORP to operate under the lease.

The SMART-TD petition and the Beyond Toxins letter claim that CORP's operation of the Rail Lines will result in less experienced and minimally trained employees. Nothing is farther from the truth. G&W employees, like UP employees, are subject to the same FRA safety regulations, including the employee training requirements therein. CORP also has access to all of the training benefits enjoyed by other G&W railroads, including the G&W inhouse corporate operations training center and dedicated corporate safety and compliance staff that provide services to all of G&W's affiliated railroads.

The Beyond Toxins letter also argues that the UP lease to CORP should be rejected because CORP abandoned a line of railroad at Coos Bay and could also abandon the operations included in the Notice.¹¹ However, this concern is unfounded. First, CORP is committed to these operations. Second, CORP discontinued its line of railroad in 2009, three years before G&W acquired the railroad. Third, even if CORP discontinued operations here, UP still holds a common carrier obligation to operate the Rail Lines.

The Board should allow the transaction to proceed under the class exemption because it meets the policy goals of the RTP;

- (1) The transaction "minimize[s] the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required" because the CORP lease is a routine transaction between rail carriers. 49 U.S.C. § 10101(2);
- (2) The transaction reduces the number of times a rail car is handled and thus,

¹⁰ Press Release, Union Pacific Transfers Local Service in Eugene, Oregon to Genesee & Wyoming's Central Oregon & Pacific Railroad Dec 10, 2024) available at <https://media.gwrr.com/press-releases/news-details/2024/Union-Pacific-Transfers-Local-Service-in-Eugene-Oregon-to-Genesee--Wyomings-Central-Oregon--Pacific-Railroad--/default.aspx>.

¹¹ *Central Oregon & Pacific R.R., Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, OR*. STB Docket No. AB-515 (Sub-No. 2) (served March 31, 2009).

- a. promotes a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues. 49 U.S.C. § 10101(3);
 - b. fosters sound economic conditions in transportation. 49 U.S.C. § 10101(5); and
 - c. encourages honest and efficient management of railroads. 49 U.S.C. § 10101(9); and
- (3) The transaction reduces regulatory barriers to entry into and exit from the industry by not requiring a full application or petition for exemption for the lease of the Rail Lines 49 U.S.C. § 10101(7).

Conclusion

CORP respectfully requests that the Board deny the Coalition request for a stay and the SMART-TD/Beyond Toxins request to reject the UP lease to CORP.

Respectfully,



Justin J. Marks
Counsel for Central Oregon & Pacific
Railroad, Inc.

cc: Parties of Record