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February 11, 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:

Enclosed for filing in the above referenced docket is a petition submitted on behalf of Central Oregon & Pacific Railroad, Inc. ("CORP") for a partial waiver from the labor requirements of 49 C.F.R. §1150.42(e). CORP is providing a copy of this petition to the Brotherhood of Railroad Signalmen and to the International Brotherhood of Electrical Workers as well as all parties of record.

CORP respectfully requests that the Board review this petition with expedited consideration.

Respectfully,



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

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36818

CENTRAL OREGON & PACIFIC RAILROAD, INC.
– LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

PETITION FOR A PARTIAL WAIVER FROM THE LABOR NOTICE
REQUIREMENTS OF 49 C.F.R. §1150.42(e)

Expedited Consideration Requested

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*Attorneys for Central Oregon & Pacific
Railroad, Inc.*

Dated: February 11, 2025

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36818

CENTRAL OREGON & PACIFIC RAILROAD, INC.
– LEASE AND OPERATION EXEMPTION
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PETITION FOR A PARTIAL WAIVER FROM THE LABOR NOTICE
REQUIREMENTS OF 49 C.F.R. §1150.42(e)

Central Oregon & Pacific Railroad, Inc. (“CORP”) respectfully requests that the Board grant CORP a partial waiver from the labor requirements of 49 C.F.R. §1150.42(e) for CORP to enter into a lease of certain Union Pacific Railroad Company (“UP”) rail lines in Eugene, OR as detailed in CORP’s Notice of Exemption, filed on December 10, 2024. Unless otherwise defined in this Petition, the defined terms used in this Petition have the same meaning as those used in CORP’s Notice of Exemption.

Background

In CORP’s Notice of Exemption, CORP certified that its revenues currently exceed \$5,000,000. Therefore, in accordance with the requirements of 49 C.F.R. 1150.42(e), CORP posted a notice to the employees of UPRR at, among other locations on the Rail Lines, the UP Eugene Yard Office, Maintenance of Way Building, and Switchmen Shanty, at 1035 Bethel Dr., Eugene, OR 97404 and at the national office of the labor unions to include: SMART-TD, Brotherhood of Local Engineers and Trainmen, Brotherhood of Railway Carmen, Transportation Communications Union, Brotherhood of Maintenance of Way Employees, and the International

Association of Machinists. However, CORP was not aware that it was also to provide notice to the Brotherhood of Railroad Signalmen (“BRS”).

On February 3, 2025, BRS submitted a letter to the Board stating that it was not provided advance notice as had been provided to the other labor unions and its belief that it should have received prior notice. In its letter, BRS notes that, under this transaction, “the current arrangement of maintenance and testing may not directly harm our membership.” BRS did not make a request to the Board to stay the proceeding nor did BRS ask the Board to reject the Notice of Exemption.

On February 7, 2025, the Board issued a stay of the effective date instructing CORP to provide BRS notice to its national offices and to certify that it had done so.

On February 11, 2025, CORP provided a certification to the Board that it has provided notice of this transaction to the national office of BRS. In addition, CORP certified that it also provided notice of this transaction to the national office of the International Brotherhood of Electrical Workers (“IBEW”) because CORP was recently informed that two IBEW employees also work on the Rail Lines. These employees, like the BRS employees, will not be impacted by the transaction.

Legal Standard

Under the Board’s regulations at 49 C.F.R. §1150.42(e), a rail carrier with projected annual revenue exceeding \$5 million is required to provide notice of the “applicant’s intent to undertake the proposed transaction at least 60 days before the exemption is to become effective at the workplace of the employees on the effected line(s) and serve a copy of the notice of the national office of the labor unions with employees on the affected line(s).”

However, the Board has held: “[t]he 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.” *See 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); *City of Tacoma—Acquisition and Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair, and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA*, STB Finance Docket No. 34555, slip op. 4 n.3 (served Sept. 27, 2004) (“Because the record indicates that no UP employees could potentially be adversely affected by this transaction, we agree with TMBL that those employees are not entitled to notice in the circumstances.”). *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.

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

CORP respectfully requests that the Board waive the notice requirements on 49 C.F.R. § 1150.42(e) to the extent that CORP should have provided notice to BRS and IBEW in addition to the notice provided to the other six unions. In this instance, the Board should grant this partial waiver because, as BRS acknowledges, there will be no changes for the BRS employees working on the Rail Lines.¹ Providing a notice to BRS at this time would not provide the notice as intended by the regulation since BRS has already been informed of the transaction through the publication of the Notice of Exemption in the Federal Register on December 26, 2024. As BRS also acknowledges, the Federal Register publication provided it with sufficient notice of the transaction to engage in discussions with UP management prior to the transaction’s effective date. As BRS

¹ There will also be no changes for the two IBEW employees as a result of the transaction.

learned in those discussions, the transaction will result in transfer of signal maintenance work involving certain highway-rail grade crossings, but that transfer would have no impact on BRS personnel. BRS does not dispute that the transaction will not adversely impact BRS or its members. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived.

Further, a waiver is appropriate because BRS is not advocating for a stay in this proceeding nor for the Board to reject the Notice of Exemption. BRS wrote to state its belief that it should have been included in the notification process. BRS's statement is noted and, in the future, if similar circumstances arise, CORP will include BRS and IBEW on the list of unions that is to be notified. CORP is providing a copy of this petition to BRS and to IBEW.

Finally, CORP asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as soon as possible because the delay is creating uncertainty for customers to be served by CORP since they had anticipated CORP commencing service to them on or after February 8, 2025. In addition, CORP is incurring expense from its hiring of new employees to operate on the Rail Lines.

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Conclusion

Accordingly, CORP requests that the Board grant the partial waiver of 49 C.F.R. § 1150.42(e) and issue a notice allowing the Lease Agreement of the Rail Lines to become effective as soon as possible.

Respectfully submitted,



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*Attorneys for Central Oregon & Pacific
Railroad, Inc.*

Dated: February 11, 2025

CERTIFICATE OF SERVICE

I certify that on this 11th day of February 2025, I served a copy of the foregoing on all parties of record in STB Finance Docket No. 36818 via email or first-class mail:

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