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April 4, 2025

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

Re: Willamette & Pacific Railroad, Inc.
– Lease and Operation Exemption –
Including Interchange Commitment –
Union Pacific Railroad Company
Surface Transportation Board Finance Docket 36827

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Notice of Exemption under 49 U.S.C. § 10902 for Willamette & Pacific Railroad, Inc. ("WPRR"), to continue operating on rail lines owned by the Union Pacific Railroad Company.

Included within this notice of exemption is a request to waive the notice requirements of 49 CFR § 1150.42(e).

The filing fee has been paid via pay.gov. If you have any questions related to this filing, please let me know.

Sincerely,

Justin J. Marks
Counsel to for Willamette & Pacific Railroad, Inc.

Enclosure

FILED
April 4, 2025
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 4, 2025
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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36827

WILLAMETTE & PACIFIC RAILROAD, INC.
- LEASE 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 Willamette & Pacific
Railroad, Inc.*

Dated: April 4, 2025

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36827

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

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

Willamette & Pacific Railroad, Inc. (“WPRR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, WPRR’s entry into a lease amendment to extend the term of, and to make other changes to, its lease originally entered into with a predecessor to Union Pacific Railroad Company (“UP”), Southern Pacific Transportation Company (“SP”) (the “Original Lease”). The lines of railroad subject to the lease amendment (the “Amendment”) include the following segments of rail line totaling approximately 160.95 miles (together referred to herein as the “Leased Lines”): (1) the Toledo Branch between milepost 691.61 near Albany and milepost 766.70 at the end of the track, near Toledo; (2) that portion of the Newberg Branch between milepost 738.00 near St. Joseph and milepost 749.67 near Newberg; (3) that portion of the West Side Branch between milepost 738.00 near St. Joseph and milepost 687.6 near Corvallis; (4) the Dallas Branch between milepost 729.01 near Gerlinger and milepost 733.80 at the end of the track, near Dallas; and (5) the Willamina Branch between milepost 730.46 near Whiteson and milepost 749.46 at the end of the track, near Willamina.¹ The Leased Lines are

¹ Together with the Original Lease, and SP also granted WPRR incidental overhead trackage rights to operate over 41.2 miles of rail line between milepost 690.9 near Albany and milepost 649.7 near Eugene Yard, a distance of 41.2 miles. The incidental overhead trackage rights remain in effect.

shown on the map attached as Exhibit A. The Amendment will extend the term of the lease and will revise other commercial provisions.

Notice

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

- (a) The full name and address of Applicant: Willamette & Pacific Railroad, Inc., 1200 Howard Drive SE, Albany, OR 97321.

- (b) Applicant's Representatives:

Eric M. Hocky
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Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
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Suite 1300 South
Washington, DC 20004
(202) 772-0916

- (c) WPRR and UP are entering into a ninth amendment to the Original Lease in order to extend the term of the lease and to make other commercial revisions.
- (d) The current operator of the Leased Lines is WPRR, and WPRR will continue to be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: In 1992, WPRR entered into an agreement with SP (as a predecessor to UP) to lease and operate the Leased Lines pursuant to the Original Lease. *Willamette & Pacific Railroad, Inc. – Lease and Operation Exemption – Southern Pacific Transportation Company*, ICC Finance Docket No. 32245,

1993 WL 48293 (served Feb. 26, 1993). The Original Lease was for a period of ten years and automatically renewed thereafter. UP succeeded to the rights of SP as a result of the UP/SP merger. *See generally Union Pacific Corp., et al. – Control and Merger – Southern Pac. Rail Corp. et al*, ICC Finance Docket No. 32760, Decision 44, 1996 WL 46736 (served August 6, 1996).

WPRR and UP have now agreed to amend the lease to further extend the term and make other commercial changes.

- i. The name and address of the company leasing the Leased Lines is Union Pacific Railroad Company, 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179.
- ii. The Amendment 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). WPRR is currently operating the Leased Lines under the terms of the Original Lease as amended and will continue to do so until the Amendment becomes effective.
- iii. The current mileposts of the Leased Lines are: (1) the Toledo Branch between milepost 691.61 near Albany and milepost 766.70 at the end of the track, near Toledo; (2) that portion of the Newberg Branch between milepost 738.00 near St. Joseph and milepost 749.67 near Newberg; (3) that portion of the West Side Branch between milepost 738.00 near St. Joseph and milepost 687.6 near Corvalis; (4) the Dallas Branch between milepost 729.01 near Gerlinger and milepost 733.80 at the end of the track, near Dallas; and (5) the Willamina Branch between milepost 730.46 near Whiteson and milepost 749.46 at the end of the track, near Willamina.²

² The Leased Lines have been modified since WPRR obtained lease and operating authority to

- iv. The total route miles to be leased and operated is approximately 160.95 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Leased Lines.
- (g) WPRR 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) WPRR certifies that the Original Lease which is being amended includes an interchange commitment. In this transaction, the Original Lease contained an interchange commitment that potentially affects interchange with carriers other than SP (now UP). The interchange commitment was amended by a sixth amendment to lease agreement dated as of August 1, 2003 (the “Sixth Amendment”). The following additional information is provided by WPRR with respect to the interchange commitment:
 - i. As noted above, the Original Lease contains an interchange commitment that affects interchange with carriers other than SP (now UP) at the interchange points shown on the map attached as Exhibit A. The interchange commitment was amended in 2003 by the Sixth Amendment.
 - ii. A confidential version of the Original Lease, the Sixth Amendment and the Amendment are 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 Leased Lines in the

remove certain segments of the original lease. *See Union Pacific R.R. Co. – Abandonment and Discontinuance of Trackage Rights Exemptions – in Benton County, OR.* STB Docket No. AB 33 (Sub-No. 257X); *Willamette & Pacific Railroad, Inc. – Discontinuance of Service and Discontinuance of Trackage Rights Exemptions – in Benton County, OR.* STB Docket No. AB 986 (Sub-No. 1X) (served June 10, 2011); *Albany & Eastern R.R. Co – Acquisition and Operation Exemption – Union Pacific R.R. Co and Willamette & Pacific R.R., Inc.* STB Finance Docket No. 35355 (served Mar. 10, 2010).

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. WPRR hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph iii. above.
 - vi. Albany & Eastern Railroad Company and Portland & Western Railroad, Inc. physically interchange with the Leased Lines and BNSF has an indirect connection with the Leased Lines.
 - vii. WPRR does not have the information to estimate the difference between the rent with and without the interchange commitment at the time of the Original Lease. Moreover, in connection with the current amendment and extension of the lease there was no discussion or negotiation of the lease with and without the commitment. Accordingly, WPRR requested an estimate of the difference from UP 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. A copy of the UP response is included in the Confidential Appendix.
 - viii. The caption of this proceeding reflects the existence of the interchange commitment.
- (i) In addition to the information set forth above, WPRR certifies that its revenues

currently exceed \$5,000,000. However, since WPRR will continue to be the operator of the Leased Lines both before and after the transaction, WPRR 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

WPRR 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 WPRR is already the operator of the Leased Lines, there will be no employees adversely affected by the 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 WPRR to discontinue (or for UP 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, WPRR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), WPRR would be required to give sixty days' notice to UP's employees working on the Leased 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, WPRR 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 Leased Lines. WPRR already leases the rail facilities, and has been the sole common carrier operator of the Leased Lines since 1993. The Amendment extends the term of the Original Lease and WPRR will continue to be the sole common carrier operator of the Leased Lines. No employees of the transferring carrier, UP or its predecessor, have worked on the line since 1993, and there are no employees of UP who will be affected or have to make any career choices as a result of the sale. Posting notices on the Leased Lines would not provide notice to any UP employees since none work on the Leased Lines. Further, there will be no operational changes and no employees of WPRR will be affected.³ Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting WPRR a waiver would be consistent with other circumstances in which the Board has granted

³ Notwithstanding that there will be no effect on employees of WPRR, WPRR is providing notice of this transaction to the national office of the union that represents employees working on the Leased Lines by serving it with a copy of this Notice of Exemption.

waivers from the labor notice requirements when a common carrier has filed to extend a lease it was previously leasing and will 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).

WPRR 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.

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Conclusion

Accordingly, WPRR requests that the Board issue a notice allowing the Amendment 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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Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Attorneys for Willamette & Pacific Railroad, Inc.

Dated: April 4, 2025

VERIFICATION

I, Daniel Dalton, President of Willamette & Pacific Railroad, Inc., 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 4, 2024

~~DBDalton~~
Daniel Dalton, President

EXHIBIT A

MAP



EXHIBIT B

LIST OF SHIPPERS

AIR LIQUIDE AMERICA 2750 NE LAFAYETTE AVE, MCMINNVILLE OR 97128
CASCADE STEEL ROLLING MILLS 3200 NE HWY 99W MCMINNVILLE, OR 97128-9330
COUNTRY PRIDE 11185 AIRLIE RD MONMOUTH OR 97361
DYNO NOBEL - FLYNN 33474 NOON RD PHILOMATH, OR 97370
GP TOLEDO 1400 SE BUTLER BRIDGE RD TOLEDO OR 97391
HAMPTON LUMBER - WILLAMINA 1000 SW WILLAMINA CREEK RD WILLAMINA, OR 97396
INTERFOR US INC 24808 ALSEA HWY PHILOMATH, OR - 97370
MCMINNVILLE GAS 1384 OR 99W MCMINNVILLE OR 97128
NUTRIEN AG SOLUTION - CORVALLIS 27550 LLEWELLYN ROAD, CORVALLIS OR 97333
NUTRIEN AG SOLUTION - RICKREALL 1095 S PACIFIC HWY 99W RICKREALL, OR - 97371
SIMPLOT 210 E STREET, INDEPENDENCE OR 97351
TIMBER SUPPLY CO 2354 MAIN STREET PHILOMATH, OR 97370
ULTRA QUIET FLOOR 403 N MAIN STREET NEWBERG, OR 97132
VALLEY AGRONOMICS - RICKREALL 9055 RICKREALL RD RICKREALL, OR - 97371

VALLEY AGRONOMICS - WHITESON 14000 S HWY 99 W MCMINNVILLE, OR - 97128
VANBEEK DAIRY 26455 MCFARLAND RD MONROE OR 97456
WEST COAST FEED & SEED 102 SE BOOTH BEND RD MCMINNVILLE, OR - 97128.
WESTERN CASCADE PO BOX 460 TOLEDO OR 97391
WHITES HAULING SERVICES 550 MORROW RD INDEPENDENCE, OR - 97351.
WILBUR ELLIS CO 8645 SUVER ROAD MONMOUTH, OR 97361

EXHIBIT C

CAPTION SUMMARY

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36827

**WILLAMETTE & PACIFIC RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY**

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

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Comments must be filed with the Board and served on WPRR's representative, Justin J. Marks, Esq., Clark Hill, PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; (202) 772-0916.

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: _____, 2025.

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

CERTIFICATE OF SERVICE

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

William J. Wallace
General Chairman – BLET UP Western Region
1804 Washington Avenue
La Grande, Oregon 97850
william_wallace@wrgca.com

and on the shippers shown on the following list.



Justin J. Marks

Dated: April 4, 2025

AIR LIQUIDE AMERICA 2750 NE LAFAYETTE AVE, MCMINNVILLE OR 97128
CASCADE STEEL ROLLING MILLS 3200 NE HWY 99W MCMINNVILLE, OR 97128-9330
COUNTRY PRIDE 11185 AIRLIE RD MONMOUTH OR 97361
DYNO NOBEL - FLYNN 33474 NOON RD PHILOMATH, OR 97370
GP TOLEDO 1400 SE BUTLER BRIDGE RD TOLEDO OR 97391
HAMPTON LUMBER - WILLAMINA 1000 SW WILLAMINA CREEK RD WILLAMINA, OR 97396
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