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April 4, 2025
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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: Portland & Western Railroad, Inc.
– Lease and Operation Exemption –
Including Interchange Commitment –
Union Pacific Railroad Company
Surface Transportation Board Finance Docket 36826

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Notice of Exemption under 49 U.S.C. §10902 for Portland & Western Railroad, Inc. ("PNWR") 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 Portland & Western Railroad, Inc.

Enclosure

FILED
April 4, 2025
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 4, 2025
SURFACE
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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36826

PORTLAND & WESTERN 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 Portland & Western
Railroad, Inc.*

Dated: April 4, 2025

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36826

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

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

Portland & Western Railroad, Inc. (“PNWR”), a Class III railroad, files this Notice of Exemption under 49 USC § 10902 to exempt from regulation, PNWR’s entry into a lease amendment to extend the term of, and to make other changes to, its lease originally entered into with the predecessor to Union Pacific Railroad Company (“UP”), Southern Pacific Transportation Company (“SP”). The original lease (“Original Lease”) and the lease amendment (the “Amendment”) include the following segments of rail line totaling approximately 52.68 miles (together referred to herein as the “Leased Lines”): (1) the 28.91-mile Tillamook Branch, between milepost 740.72 near Willsburg, OR and milepost 770.50 near Schefflin; (2) the 9.45-mile Westside-Seghers Branch, between milepost 764.80 near Hillsboro and milepost 754.57 near Seghers; and (3) the 14.32-mile Newberg Branch, between milepost 763.99 near Cook and milepost 749.67 near Newberg. The Leased Lines are 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, PNWR hereby provides the following information:

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

(b) Applicant's Representatives:

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Clark Hill PLC
Two Commerce Square
2001 Market St.
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(215) 640-8523

Justin J. Marks
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Washington, DC 20004
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(c) PNWR and UP are entering into an eleventh 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 PNWR, and PNWR will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction: In 1995, PNWR entered into an agreement with SP (as a predecessor to UP) to lease and operate the Leased Lines pursuant to the Original Lease. *Portland & Western Railroad, Inc. – Lease and Operation Exemption – Southern Pacific Transportation Company.*, ICC Finance Docket No. 32758, 1995 WL 540306 (served September 13, 1995). The Original Lease was for a period of ten years and automatically extended into 2025. 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).

PNWR 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). PNWR 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 mileposts of the Leased Lines are: (1) the 28.91-mile Tillamook Branch, between milepost 740.72 near Willsburg, OR and milepost 770.50 near Schefflin; (2) the 9.45-mile Westside-Seghers Branch, between milepost 764.80 near Hillsboro and milepost 754.57 near Seghers;¹ and (3) the 14.32-mile Newberg Branch, between milepost 763.99 near Cook and milepost 749.67 near Newberg.
- iv. The total route miles to be leased and operated is approximately 52.68 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Leased Lines.
- (g) PNWR 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) PNWR 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 ninth amendment to lease agreement dated as

¹ The distance is correct, the mileposts have not been redesignated to reflect a previous abandonment.

of September 30, 2014 (the “Ninth Amendment”). The following additional information is provided by PNWR 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 2014 by the Ninth Amendment.
- ii. A confidential version of the Original Lease, the Ninth 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 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. PNWR 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. Willamette & Pacific Railroad, Inc. physically interchanges with the Leased Lines and BNSF has an indirect connection with the Leased Lines.
- vii. PNWR 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, PNWR 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, PNWR certifies that its revenues currently exceed \$5,000,000. However, since PNWR will continue to be the operator of the Leased Lines both before and after the transaction, PNWR 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

PNWR 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 PNWR 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 PNWR 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, PNWR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), PNWR 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, PNWR 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. PNWR already leases the rail facilities, and it has been the sole common carrier operator of the Leased Lines since 1995. The Amendment extends the term of the Original Lease and PNWR 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 1995, 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 PNWR will be affected.² 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 PNWR a waiver would be consistent with other circumstances in which the Board has granted 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).

PNWR 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.

² Notwithstanding that there will be no effect on employees of PNWR, PNWR 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.

Conclusion

Accordingly, PNWR 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,



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Washington, DC 20004
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jmarks@clarkhill.com

Attorneys for Portland & Western Railroad, Inc.

Dated: April 4, 2025

VERIFICATION

I, Daniel Dalton, President of Portland & Western 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, 2025

~~DBDalton~~
Daniel Dalton, President

EXHIBIT A

MAP



— PNWR Portland & Western Railroad, Inc.

••• Leased from Union Pacific

— Other Genesee & Wyoming Railroads

Dashed line indicates Trackage Rights. Grey line indicates Out of Service.

EXHIBIT B

LIST OF SHIPPERS

AERC 110 INDUSTRIAL WAY, LEBANON OR, 97355
ALPINE CARRIER & STORAGE 9696 SE OMARK DR MILWAUKIE, OR 97222
ALPINE FOOD DISTRIBUTION 2400 SE MAILWELL DR MILWAUKIE, OR 97222
ATI SPECIALTY ALLOY 1600 OLD SALEM RD NE ALBANY, OR 97321
CASCADE COLUMBIA DISTRIBUTION 14200 SW TUALATIN-SHERWOOD RD SHERWOOD, OR 97140
CASCADE PULP 30480 AMERICAN DR HALSEY OR 97348
CASCADE WAREHOUSE 1625 FRONT ST NE SALEM, OR 97301
EAGLE VENEERS PO BOX 40 JUNCTION CITY OR 97448
FLAKEBOARD 2550 OLD SALEM RD NE ALBANY OR 97321
FOUGHT & COMPANY 14255 SW 72ND AVE TIGARD, OR 97224-8042
HAMPTON LUMBER - BANKS 162 COMMERCE ST BANKS, OR 97106
HAYWORTH WAREHOUSE PO BOX 269 HARRISBURG OR 97446
HIGHLINE WARREN 3075 ARNOLD RD NE ALBANY, OR 97321
HUNTON WAREHOUSE 28390 MILLIRON RD JUNCTION CITY OR 97448

INTERNATIONAL PAPER - BAG PLANT 5800 SW WESTERN AVENUE BEAVERTON OR 97005
INTERNATIONAL PAPER - CORRUGATED PLANT 5500 SW WESTERN AVENUE BEAVERTON OR 97005
INTERNATIONAL PAPER - RECYCLING PLANT 5505 SW WESTERN AVE BEAVERTON, OR 97005
KNIFE RIVER CORP 12000 SW TONQUIN RD SHERWOOD, OR - 97140.
LINN WEST 30214 CARTNEY DR HARRISBURG OR 97446
MGC PURE CHEMICALS 701 ELM ST FOREST GROVE, OR - 97116.
NORTHSTAR CHEMICAL 14200 SW TUALATIN SHERWOOD RD SHERWOOD, OR – 97140
OMEGA MORGAN 921 SW WASHINGTON STREET, PORTLAND OR 97205
OREGON CASCADE 93945 HWY 99 S JUNCTION CITY OR 97448
RFP 93747 HWY 99 S JUNCTION CITY OR 97448
SAVAGE SERVICES CO 1330 SALEM INDUSTRIAL DR NE SALEM, OR – 97301
SCHNITZER STEEL 111 HWY 99 N EUGENE, OR – 974022634
SMITH SEED PO BOX 288 HALSEY OR 97348
STELLA JONES SHIPLEY 90049 HWY 99 N EUGENE OR 97402

STIMSON LUMBER

49800 SW SCOGGINS VLY RD GASTON, OR – 971199132

SUBURBAN PROPANE

10075 SW CASCADE BOULEVARD TIGARD, OR - 97223-4326

TRUS JOIST

2812 OLD SALEM RD NE ALBANY OR 97321

EXHIBIT C

CAPTION SUMMARY

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36826

**PORTLAND & WESTERN RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION
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Comments must be filed with the Board and served on PNWR’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 PNWR 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 Exhibit B.



Justin J. Marks

Dated: April 4, 2025

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