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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36850

**PORTLAND & WESTERN RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION –
PORT OF TILLAMOOK BAY**

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

(includes color images)

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*Attorney for Portland & Western
Railroad, Inc.*

Dated: April 24, 2025

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April 24, 2025
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TRANSPORTATION BOARD

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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 acquisition from Port of Tillamook Bay (“POTB”), and the operation of, approximately 1.01 miles of rail line currently owned by POTB located near Banks, OR between milepost 774.0 and milepost 775.01 in Washington County, Oregon (the “Line”). A map is enclosed as Exhibit A.

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:

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916

(c) Statement of Agreement:

PNWR and POTB have entered into a Purchase and Sale Agreement dated as of April 9, 2025 (the “Purchase and Sale Agreement”).

(d) Current Operator:

POTB is the current owner / operator of the Line. PNWR also holds incidental, overhead trackage rights over a portion of the Line extending from approximately milepost 774.0 to milepost 774.7 that it acquired in connection with an unrelated purchase of a parallel line from BNSF Railway Company (“BNSF”).¹ There are no current customers located on the Line, and POTB no longer has any railroad operating employees. PNWR operates over a parallel line of railroad that it acquired from BNSF (the “PNWR / BNSF” Line) through successive transactions.² Following the transaction, PNWR will operate the Line and its parallel PNWR / BNSF Line and will no longer need to exercise the incidental trackage rights.

(e) Brief Summary of the Proposed Transaction:

POTB acquired, via a modified certificate, the Line extending from milepost 770.5 to milepost 856.08 in 1990.³ PNWR acquired from POTB the segment of POTB’s original line acquisition extending between milepost 774.0, at Banks and milepost 770.5, at Schefflin in 2015.⁴ Subsequently, POTB terminated its operations on a portion of its original acquisition from milepost 775.01 extending north in 2016, which portion is being held and developed for interim

¹ *Portland & Western Railroad Inc., - Trackage Rights Exemption – The Burlington Northern Railroad Co.*, ICC Finance Docket No. 32765 (served Oct. 13, 1995) (“BN will also assign 4.2 miles of connecting, incidental, overhead trackage rights to PNWR over those lines of the Port of Tillamook Bay Railroad that connect to the BN lines, between milepost 770.5 near Schefflin and milepost 774.7 near Banks. The trackage rights became effective on September 29, 1995.”).

² *Portland & Western Railroad Inc., - Trackage Rights Exemption – The Burlington Northern Railroad Co.*, ICC Finance Docket No. 32765 (served Oct. 13, 1995); *Portland & Western Railroad Inc., - Lease and Operation Exemption – The Burlington Northern Railroad Co.*, ICC Finance Docket No. 32766 (served Jan. 5, 1996); *Portland & Western Railroad Inc., - Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Co.*, STB Finance Docket No. 33502 (served Nov. 24, 1997).

³ *Port of Tillamook Bay Modified Rail Certificate*, I.C.C. Finance Docket No. 31676, 1990 WL 288206 (served May 29, 1990).

⁴ *Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Port of Tillamook Bay*, STB Finance Docket No. 35911 (served Mar. 19, 2015).

trail use.⁵ Under this transaction, PNWR will acquire via the Purchase and Sale Agreement the remaining segment of the POTB Line that is not under interim trail use.

- i. The name and address of the company selling the Line is Port of Tillamook Bay, 4000 Blimp Boulevard, Suite 100, Tillamook, OR 97141.
- ii. PNWR intends to consummate the purchase of the POTB Line after 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 over the Line under its incidental trackage rights and will continue to do so until the purchase of the POTB Line has been consummated.
- iii. The mileposts of the Line are between approximately milepost 774.0 and milepost 775.01.
- iv. The total route miles subject to the Purchase and Sale Agreement is 1.01 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Line.
- (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 transaction does not include an 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 operate over the Line both before (under incidental trackage rights) and after (as the owner) the transaction, and since POTB has no active railroad employees, PNWR is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth

⁵ *Port of Tillamook Bay Railroad – Notice of Intent to Partially Terminate (Abandon) Service*, I.C.C. Finance Docket No. 31676 (filed May 26, 2016).

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 operating over the Line and since POTB has no active railroad employees, there will be no employees adversely affected by the Purchase and Sale Agreement.

Environmental and Historic Reports

This is the purchase and sale of a rail line 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 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 POTB's employees working on the Line (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 Line. PNWR already operates over the Line under incidental trackage rights, and POTB currently has no railroad employees. The Purchase and Sale Agreement will not effectively change current operations and after the transaction PNWR will be the sole common carrier operator of the Line. No employees of the transferring carrier, POTB or its predecessor, have worked on the Line since 2007⁶, and there are no employees of POTB who will be affected or have to make any career choices as a result of the sale. Posting notices on the Line would not provide notice to any POTB employees since none currently work on the Line. Further, there will be no operational changes and no employees of PNWR will be affected. 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 a notice of exemption to continue using a line it was previously operating 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*

⁶ A portion of POTB’s line past Banks was washed out by a storm in 2007 that could not be repaired. After that, any activity on the Line in Banks was conducted by contract with PNWR in the name, and for and on behalf of POTB.

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.

Conclusion

Accordingly, PNWR requests that the Board issue a notice allowing the Purchase and Sale Agreement to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,

/s/ Justin J. Marks

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
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Washington, DC 20004
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jmarks@clarkhill.com

Attorney for Portland & Western Railroad, Inc.

Dated: April 24, 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 24, 2025

DB Dalton

Daniel Dalton, President

EXHIBIT A

MAP

PNWR is acquiring from MP 774 to MP 775.01 in this proceeding, FD 36850.

PNWR owns from MP 774 south - acquired in FD 35911.

PNWR holds a freight easement and the state owns the underlying real estate on the rail line running parallel (to the right) of the Line to be acquired. This is identified by MP 27. PNWR acquired this line from BNSF FD 33502.

POTB terminated service (modified certificate on the line extending north of MP 775.01 in ICC Finance Docket No. 31676.

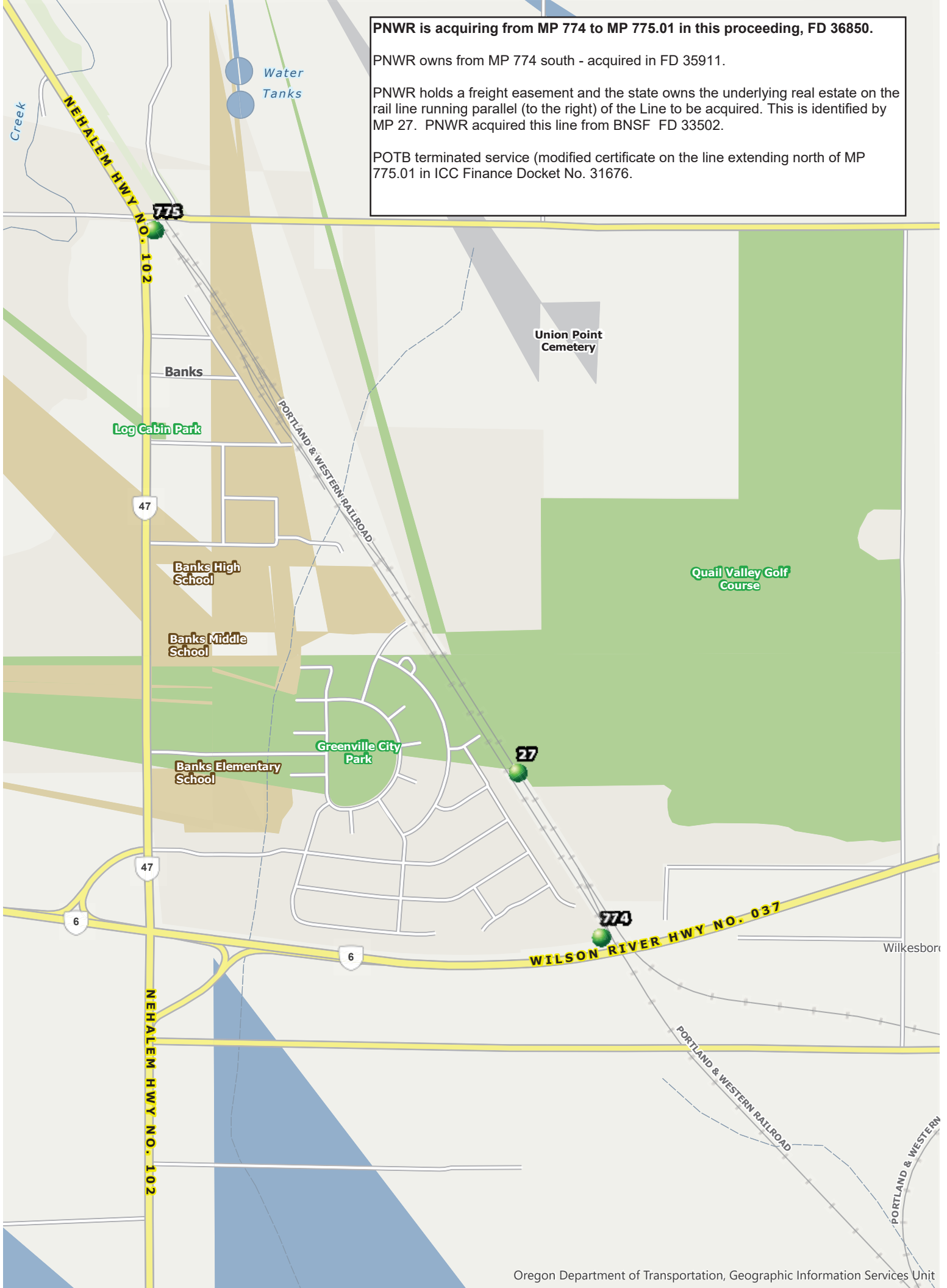


EXHIBIT B

CAPTION SUMMARY

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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.