

**Before the
Surface Transportation Board**

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STB Finance Docket No. 36865

**OPSEU Pension Plan Trust Fund, Jaguar Transport
Holdings, LLC, and Jaguar Rail Holdings, LLC
- Control Exemption -
Columbia Basin Railroad Company, LLC**

Petition to Hold Proceeding in Abeyance

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The Port of Moses Lake (“Port”) hereby petitions the Surface Transportation Board (“Board” or “STB”) to hold this proceeding in abeyance to enable investigation of several issues raised by the Notice of Exemption filed on July 14, 2025. This Petition to Hold Proceeding in Abeyance (“Petition”) is filed pursuant to 49 CFR § 1117.1. In support hereof, the Port states as follows.

I. Summary of Argument.

The relevant Notice of Exemption was filed by Applicants OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC (collectively, “Applicants”) to acquire control of Columbia Basin Railroad Company, LLC (“CBRW”) pursuant to a heavily-redacted Unit Purchase Agreement. The Port takes no position regarding the merits of the proposed transaction and, in fact, the Port is hopeful that the transaction will be beneficial for all affected parties. However, the currently available information is inadequate for the Port to make an informed assessment. Such an assessment is critical due to the Port’s

substantial investment in the rail network in Moses Lake, the recent transfer of a CBRW rail line to the Port, and CBRW's obligation to provide rail operations on Port-owned right-of-way in the future. A temporary pause in the effectiveness of the Notice of Exemption is appropriate to enable the Port (and the Board) to evaluate the proposal in a comprehensive manner and to facilitate Applicants' submission of clarifications and additional information as needed.

II. Identity and Interest of the Port.

The Port is in the midst of a long-planned redevelopment and rehabilitation of the rail network in the Moses Lake area. This endeavor, known as the Northern Columbia Basin Railroad Project ("NCBRP"), represents a substantial commitment of both Port and public resources. Under its charter, the Port is dedicated to promoting economic development in the Port District. The Port is considered a municipality of the State of Washington, and it is governed by three elected commissioners.

The NCBRP involves various components, including both new rail construction and also acquisition of a segment of preexisting track from CBRW. The Board approved the NCBRP project and a later minor modification to the construction route in FD Nos. 34936 and 34936 (Sub-No. 1). Just three months ago - on April 28th - the Port informed the Board that the acquisition from CBRW was consummated on March 10, 2025.¹ In the same filing, the Port requested supplemental authorization, if needed, regarding the acquisition of a small portion of the CBRW track. That request to the Board remains pending. Finally, the Port used the April 28th filing to confirm what had been communicated in earlier submittals to the Board - that CBRW would be the sole operator for the track owned by the Port, both the new construction

¹ See the Port's Petition for Supplemental Authorization to the Extent Needed, filed April 28, 2025 in Port of Moses Lake - Acquisition Exemption - Moses Lake, Washington, STB Finance Docket No. 34936 (Sub-No. 1).

(frequently known as “Segment 1”) and the newly-acquired segment from CBRW (known as “Segment 3”).² Development of the new Segment 1 rail line is ongoing. The Port is engaging in property acquisition at this time, with a plan for rail construction to start in mid-2026.

The Port’s substantial investment in and commitment to rail operations in the CBRW service area makes Applicants’ Notice of Exemption of particular interest to the Port. In fact, area businesses, rail line users, and the entire community have the potential to be impacted by the proposal.

III. Argument.

As mentioned above, the Port is not expressing opposition to the proposal, but the Notice of Exemption raises numerous questions and issues that warrant investigation and/or clarification before the proposed transaction can be consummated. The transaction is ostensibly described in the Unit Purchase Agreement (“Agreement”) attached to the Notice Exemption, but this Agreement is extremely lengthy, heavily redacted, and incomplete. As stated by Applicants, the public version of the Agreement attached to the Notice “omits entirely various schedules....that the parties....have determined....are commercially-sensitive in their entirety.”³ Consequently, the Port cannot fully evaluate the proposal.

From the information that is available to the Port, several important concerns are apparent, including:

- The Agreement appears to ignore the transfer of Segment 3 from CBRW to the Port on March 10th of this year. Section 3.07 states that “[s]ince January 1, 2025...there has not been...any...Material Adverse Effect” or “material changes to Business operations” or

² Petition for Supplemental Authorization to the Extent Needed at page 5 (filed April 28, 2025) in FD No. 34936 (Sub-No. 1).

³ See Applicants’ Notice of Exemption at page 21 (cover of Exhibit B).

“imposition of any Encumbrance upon any tangible....property or asset.” See Agreement §§ 3.07(a), (b), and (n). Exclusions to this warranty are in a Disclosure Schedule, but this schedule is not attached.⁴

- The CBRW map attached to the Notice of Exemption improperly includes the Segment 3 transferred to the Port on March 10th. See Applicants’ Notice of Exemption at page 20 (showing the segment north of Moses Lake as being a CBRW rail line).
- It is unclear if CBRW will continue to exist after the proposed transaction. While the Agreement describes an equity transaction of some sort, unspecified Pre-Closing Restructuring will occur (i.e., the relevant section is entirely redacted) and the Schedule of retained Business Names is redacted. See Agreement at Table of Contents (indicating title of redacted § 2.01). See also Agreement at § 2.01, § 5.12, and Schedule 5.12.
- It is unclear if CBRW’s future obligations to the Port are encompassed. In Section 3.06, the sellers warrant the absence of any “undisclosed liabilities” (including contractual commitments). Exceptions exist (such as certain contracts with future performance obligations), but these exceptions are in the unattached Disclosure Schedule 3.06. See Agreement at § 3.06.
- The Agreement does not appear to acknowledge the pending filing in FD No. 34936 (Sub-No. 1). In Section 3.17(a), the sellers warrant that “there is no Action pending....which affects any property or asset of any Target Company or the conduct of the Business.” Redactions in this Agreement section may refer to exclusions, but there is no way of knowing.

⁴ The Agreement is dated June 27, 2025 in the preamble, so the March 10th transfer by CBRW should have been included.

This list is non-exhaustive, as the Port only has a limited ability to interpret the proposed transaction and its implementing Agreement given the heavy redactions, the absent schedules, and the general length and complexity of the proposal. The concerns described above all may have satisfactory and simple answers, but the current record does not permit any such clarity.

In light of these factors, a temporary pause in this proceeding is appropriate. The Board has previously held proceedings in abeyance when a Notice of Exemption “raises issues of concern to the Board.”⁵ Along the same lines, the Board has delayed the effectiveness of a Notice of Exemption where it “does not provide sufficient information to allow the Board to make a definitive determination.”⁶ In such cases, the Board may direct the applicant to file supplemental information, because “[w]hen a notice raises issues of concern to the Board, that proceeding may be held in abeyance to allow the applicant to provide an explanation through the filing of supplemental information.”⁷ In a similar context, the Board has rejected a Notice of Exemption, without prejudice as to the future filing of a second Notice once concerns are resolved, when the subject Notice “and the information that was filed in response to it raised questions that required scrutiny beyond the short deadlines and limited procedures afforded by the Board’s class exemption procedures.”⁸

These types of actions by the Board have been found appropriate where inquiry is needed into issues such as unclear maps, uncertain relationships among corporate family railroads, rail

⁵ HGS Railway Holdings, Inc. - Continuance in Control Exemption - HGS-FCR, LLC and HGS-ATN, LLC, STB Finance Docket No. 36180, slip op. at 2 (served April 13, 2018).

⁶ Kan Rail, Inc. - Acquisition and Operation Exemption - In Wapakoneta, Ohio, STB Finance Docket No. 35794, slip op. at 1 (served April 29, 2014).

⁷ HGS Railway Holdings, slip op. at 3 (citations omitted). See also Kan Rail, slip op. at 2; Spectrum RR Holdings, LLC - Operation Exemption - Railroad Line in the Town of Brookhaven, N.Y., STB Finance Docket No. 36376, slip op. at 2 (served Jan. 17, 2020).

⁸ Saratoga and North Creek Railway, LLC - Operation Exemption - Tahawus Line, STB Finance Docket No. 35559, slip op. at 5 (served May 14, 2012).

construction mentioned in a Notice of Exemption for a rail line acquisition, and ambiguity about future rail operations and possible environmental impacts.⁹ Analogous if not similar circumstances apply here, as the Port is faced with a proposed transaction supported by an incorrect map yet lacking crucial and sufficient information to allow the Port to determine the impact of the proposal on the NCBRP.

A temporary pause should not result in any material harm. Applicants note that the property to be acquired is subject to a right of first refusal held by BNSF Railway Company, and that Applicants' closing on the proposed transaction "will depend upon BNSF's (pending) response." See Applicants' Notice of Exemption at 4 (n. 6). In contrast, the proposed transaction is of immediate interest to the Port, potential rail customers, and the entire Moses Lake business community. Substantial public effort and funds have been expended in the rehabilitation of the Moses Lake area rail network, an effort that is ongoing right now. The uncertainties in Applicants' Notice of Exemption - and their extreme relevance to that public investment - warrant the action requested herein.

IV. Conclusion.

The Port remains hopeful that the proposed transaction will be beneficial to all concerned parties, but the available information is inadequate for an informed assessment to occur. This proposal would materially affect the community of Moses Lake, rail users, and the Port's substantial investment in the future of rail transportation in the community. The Port

⁹ Spectrum RR Holdings, slip op. at 2 (need for new map); HGS Railway Holdings, slip op. at 2 (uncertain relationships among corporate family railroads); Kan Rail, slip op. at 1-2 (proposed rail construction); and Rio Grande Pacific Corporation - Continuance in Control Exemption - Colorado, Midland & Pacific Railway Company, STB Finance Docket No. 36470, slip op. at 4 (served March 25, 2021) (ambiguity surrounding future rail operations and environmental impacts).

respectfully requests that the Board hold this proceeding in abeyance, direct Applicants to respond to the concerns requested herein, and take any other action necessary to address these and similar concerns.

Respectfully submitted,

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July 25, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 2025, I served a copy of this Petition to Hold Proceeding in Abeyance via U.S. Mail, postage prepaid, upon all current parties of record shown on the Surface Transportation Board's website Service List. I also certify that on the same day a copy of the foregoing was served upon external counsel for the OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC via e-mail to:

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