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May 22, 2019 247809

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
May 22, 2019
Part of
Public Record

**RE: Finance Docket No. 36304 CWW, LLC-Change in Operator Exemption Assigning
BNSF Railway Company Lease with Interchange Commitment—Palouse River &
Coulee City Railroad, L.L.C.**

Dear Ms. Brown:

Pursuant to the Board's new electronic filing Rules, attached for filing is an original **Verified Notice of Exemption of CWW, LLC, pursuant to 49 CFR § 1150.41** in the above-captioned proceeding. Separately I have electronically filed on behalf of CWW, LLC, Petitioner, a Verified Non-Public (Confidential) Letter pursuant to 49 CFR § 1150.41(h)(1) and have submitted the \$2,000.00 filing fee via pay.gov.

Please contact the undersigned by telephone at (908) 361-7097 or by email to jsavagelaw@aim.com with any questions regarding this filing.

Respectfully submitted,

/s/ James H M Savage

[electronically signed]
James H. M. Savage
Attorney for CWW, LLC

Att.

FILED
May 22, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 22, 2019
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36304

**CWW, LLC
-- CHANGE IN OPERATOR EXEMPTION ASSIGNING BNSF RAILWAY COMPANY
LEASE WITH INTERCHANGE COMMITMENT —
PALOUSE RIVER & COULEE CITY RAILROAD, L.L.C.**

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 CFR § 1150.41

Submitted By:

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
(908) 361-7097
jsavagelaw@aim.com

Counsel for Applicant
CWW, LLC

Dated: May 22, 2019

INFORMATION REQUIRED BY 49 CFR 1150.41(c)

Pursuant to 49 CFR § 1150.41, et seq., CWW, LLC (“CWW”), an existing Class III common carrier,¹ hereby files this Verified Notice of Exemption to assume operation of approximately 9.7 miles of interconnected railroad line owned by the BNSF Railway Company (“BNSF”) and currently leased by the Palouse River & Coulee City Railroad, L.L.C. (“PCC”) located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA (the “Rail Lines”). Based on projected combined revenues from its existing operations and those that would result from the proposed transaction, CWW expects to remain a Class III rail carrier.

In accordance with the requirements of 49 CFR § 1150.43, CWW supplies the following information:

Name and Address of Applicant:

49 CFR § 1150.43(a)

CWW, LLC
709 N. 10th Ave.
Walla Walla, WA 99362

Applicant’s Representative:

49 CFR § 1150.43(b)

Applicant’s representative to whom correspondence regarding this transaction should be sent as follows:

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
(908) 361-7097

Statement Concerning Agreement:

49 CFR § 1150.43(c)

¹ See: Finance Docket No. 36044, CWW, LLC-Lease and Operation Exemption-Port of Columbia, Wash. (Service Date: July 15, 2016) and Finance Docket No. 36276, CWW, LLC – Change in Operator Exemption Assigning Union Pacific Railroad Co. Lease with Interchange Commitment – Palouse River and Coulee City Railroad, L.L.C. (Service Date: April 5, 2019)

Currently, the Rail Lines are operated by PCC pursuant to the terms of a lease agreement between BNSF, successor to Burlington Northern Railroad Company, and Blue Mountain Railroad, Inc. (“BLMR”) dated October 25, 1993 (“1993 Lease”). Board authorization of the 1993 Lease was obtained pursuant to Verified Notice of Exemption filed in Blue Mountain R.R.—Lease and Operation Exemption—Burlington Northern Railroad Co., Finance Docket No. 32387 (ICC served October 6, 1994). BLMR was absorbed into PCC under a transaction evidenced by Watco Co.—Corporate Family Transaction Exemption, Finance Docket No. 33898 (STB served July 24, 2000). In accordance with 49 CFR § 1150.43(h)(1)(vi), a confidential version of the 1993 Lease is supplied to the Board under separate cover.

CWW advises the Board that it is entering into an Assignment, Assumption and Consent Agreement with BNSF and PCC pursuant to which the 1993 BNSF-BLMR Lease together with the October 29, 1993 BNSF-BLMR Interchange Agreement, including subsequent amendments, is being assigned to CWW; with CWW to accept all of PCC’s obligations thereunder except as specifically set forth therein.

Operator of the Property:

49 CFR § 1150.43(d)

As anticipated by this Notice, and as described in the transaction summary provided below, CWW will continue to hold itself out to provide common carrier rail freight service over the Rail Lines in place of PCC, so that, upon consummation of the proposed transaction, PCC will be relieved of any further common carrier obligation with respect to the Rail Lines.

Brief Summary of Transaction:

49 CFR § 1150.43(e)

This exemption involves the change in operator by CWW, an existing Class III short line railroad carrier, upon this exemption taking effect, of certain Rail Lines owned by BNSF and which had previously been leased to BLMR and operated by PCC.

(1) Name and address of incumbent railroad.

Palouse River and Coulee City Railroad, L.L.C.
315 West 3rd Street
Pittsburg, KS 66762

(2) Proposed time schedule for consummation of transaction. CWW plans to commence these operations on or after June 22, 2019, more than thirty (30) days after the filing of this Notice.

(3) Mileposts of the subject property. CWW intends to assume operation of interconnected railroad line owned by BNSF located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA

(4) Total Route Miles. CWW intends to assume operation of rail property comprising a total of 9.7 route miles.

Map of Area to be Served:

49 CFR § 1150.43(f)

A map clearly indicating the area to be served, including origins, termini, stations, cities, and states, is attached as Exhibit A to this notice.

Certificate of Carrier Classification:

49 CFR § 1150.43(g)

A certificate complying with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this notice. Accordingly, the advance notice requirements of 49 CFR 1150.42(e) are not applicable to this transaction.

Transactions Imposing Interchange Commitments:

49 CFR § 1150.43(h)

(i) The Lease Agreement being assigned to CWW contains an interchange commitment that charges CWW an Interchange Charge for carloads that originate or terminate on the Line that are not interchanged to BNSF. The affected interchange point is Walulla, WA.

(ii) The Lease Agreement containing the interchange commitment at Section 4.03 is being filed confidentially with the Board in accordance with the provisions of 49 C.F.R. §§ 1150.43(h)(l)(ii) and 1104.14(a);

(iii) The shippers who currently use or have used the Line within the last two calendar years are as follows: Refresco, Byrnes Oil, and Blue Mountain Seed.

(iv) The aggregate number of carloads originated or terminated on the Line during the last two years by the shippers identified in the preceding section is being filed confidentially with the Board in accordance with the provisions of 49 C.F.R. §§ 1150.43(h)(l)(iv) and 1104.14(a);

(v) CWW certifies that it has provided notice of the proposed transaction and interchange commitment to the shippers identified in subsection (iii) as further evidenced in Exhibit B;

(vi) Upon commencement of operations under the Lease Agreement and subject to the interchange commitment terms thereof, CWW could physically interchange with either UP or BNSF.

(vii) The Interchange Charge information is being filed confidentially with the Board in accordance with the provisions of 49 C.F.R. §§ 1150.43(h)(l)(vii) and 1104.14(a).

(viii) The case caption reflects the existence of an interchange commitment.

Caption Summary:

49 CFR § 1150.44

A caption summary in prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data:

49 CFR § 1105

Under 49 CFR § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes exceeding the thresholds established in 49 CFR § 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR § 1105.8(b)(1). The proposed lease is for the purpose of continued rail operations, further Board approval would be required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Respectfully submitted,

/s/ James H M Savage
[electronically signed]

James H.M. Savage
Counsel for CWW, LLC

Dated: May 22, 2019

Exhibit B Verification & Certification of Carrier Classification 49 CFR § 1150.41(c)

I, Paul Didelius, certify that I am the owner of CWW, LLC and that applicant's projected annual revenues would not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 CFR § 1211 (11).

I further hereby certify that CWW has provided, under cover of counsel's attached letter, notice of the proposed transaction and interchange commitment to shippers that currently use or have used in the prior two (2) years the rail lines located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA which are the subject of this proceeding.

I also verify that the Change in Operator Exemption Notice is true and correct to the best of my knowledge and belief.

Dated: _____

Paul Didelius

May 22, 2019
VIA U.S. MAIL
[SHIPPER ADDRESS]

RE: Docket No. FD 36304 CWW, LLC-Change in Operator Exemption Assigning BNSF Railway Company Lease with Interchange Commitment--Palouse River & Coulee City Railroad, L.L.C.

Dear Sir/Madam:

As a shipper on the rail lines described herein, and in accordance with 49 C.F.R. § 1150.43(h)(l)(v), this letter serves as notification that CWW, LLC (“CWW”) and BNSF Railway Company (“BNSF”) have agreed to a change in operator assigning the lease from BNSF to CWW of the rail lines from between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA, a total of 9.7 route miles. The lease from BNSF to CWW contains an interchange commitment under which Interchange Charges for the Line are imposed if CWW interchanges rail traffic originating or terminating on the Rail Lines with a railroad other than BNSF.

CWW will be filing a Notice of Exemption for a change in operator at the Surface Transportation Board in Docket No. FD 36304.

Sincerely,
James H. M. Savage
Attorney for the CWW, LLC

SURFACE TRANSPORTATION BOARD***Verified Notice of Exemption*****FINANCE DOCKET NO. 36304****CWW, LLC****-- CHANGE IN OPERATOR EXEMPTION ASSIGNING BNSF RAILWAY COMPANY
LEASE WITH INTERCHANGE COMMITMENT--
PALOUSE RIVER & COULEE CITY RAILROAD, L.L.C.**

CWW, LLC has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.41 to assume operation of railroad property owned by the BNSF Railway Company ("BNSF") and currently leased by the Palouse River & Coulee City Railroad, L.L.C. located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA. The Lease Agreement being assigned to CWW by BNSF contains an interchange commitment. CWW expects to consummate the proposed transaction on or shortly after the effective date of this notice of exemption.

Comments must be filed with the Board and served on Applicant's representative, James H. M. Savage, 22 Rockingham Court, Germantown, MD 20874. The telephone number of Applicant's representative is (908) 361-7097.

This notice is filed under 49 CFR § 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.

Dated: _____

By the Board

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify this 22nd day of May 2019:

1. I have served by First Class mail a true copy of the within pleading upon the following shipper entities:

Refresco 1164 Dell Ave. Walla Walla, WA 99362	Byrnes Oil 1205 N. 11 th St. Walla Walla, WA 99362
Blue Mountain Seed Company 203 E. Oak St. Walla Walla, WA 99362	

By: James H. M. Savage

/s/ James H M Savage
[electronically signed]

Attorney for CWW, LLC

I, Paul Didelius, certify that I am the owner of CWW, LLC and that applicant's projected annual revenues would not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 CFR § 1211 (11).

I further hereby certify that CWW has provided, under cover of counsel's attached letter, notice of the proposed transaction and interchange commitment to shippers that currently use or have used in the prior two (2) years the rail lines located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA which are the subject of this proceeding.

I also verify that the Change in Operator Exemption Notice is true and correct to the best of my knowledge and belief.

Dated: 5-22-2019


Paul Didelius