

CLARK HILL | Strasburger

John D. Heffner
T (202) 742-8607
F (202) 742-8697
Email: John.Heffner@clarkhillstrasburger.com

Clark Hill Strasburger
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036-4104
T 202 742 8600
F 202 742 8699

clarkhill.com

June 19, 2018

245964

BY E-FILING

Ms. Cynthia T. Brown
Chief of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
June 19, 2018
Part of
Public Record

**Re: FD 36199, Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc. --
Intra-Corporate Family Transaction**

Dear Ms. Brown:

I am submitting on behalf of Coos Bay Railroad Operating Company, LLC ("CBROC"), the incumbent operator of rail service on the subject rail line, a Petition to Reject or Stay the Notice of Exemption filed in this proceeding on May 31, 2018.

Sincerely yours,

CLARK HILL STRASBURGER



John D. Heffner
Attorney

Enclosure

cc: Audrey L. Brodrick

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36199

**OREGON INTERNATIONAL PORT OF COOS BAY AND
COOS BAY RAIL LINE, INC.
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

**PETITION TO REJECT NOTICE OF EXEMPTION
AND REQUEST FOR STAY OF EFFECTIVE DATE
OF
COOS BAY RAILROAD OPERATING COMPANY, LLC
d/b/a COOS BAY RAIL LINK**

Submitted By

John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
202-742-8697

Due: June 20, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36199

**OREGON INTERNATIONAL PORT OF COOS BAY AND
COOS BAY RAIL LINE, INC.
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

**PETITION TO REJECT NOTICE OF EXEMPTION
AND REQUEST FOR STAY OF EFFECTIVE DATE
OF
COOS BAY RAILROAD OPERATING COMPANY, LLC
d/b/a COOS BAY RAIL LINK**

**I.
INTRODUCTION**

On May 31, 2018, Oregon International Port of Coos Bay (“the Port”) and Coos Bay Rail Line, Inc. (“Coos Rail”)¹ filed a verified notice of exemption for a corporate family transaction between these two entities.² Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link (“CBR”), the incumbent operator of the subject line of railroad, petitions the Board to reject this Notice insofar as it is controversial and therefore not suitable for handling as a class exemption and because it contains materially false and misleading information.

¹ These two entities shall collectively be referred as to “the Port.”

² The notice was served on June 15, 2018.

CBR also seeks an indefinite stay of the effective date so that the Board has ample opportunity to investigate CBR's claims and issue a decision.

II. STATEMENT OF FACTS

Before proceeding to a discussion of the current dispute, CBR believes some background information is necessary to put this matter in a proper context. It is more complicated than a routine corporate family transaction. The subject line of railroad known as the Coos Bay Rail Line ("the Line") extends from the vicinity of Eugene, OR, westward and southward to Coquille, OR, via Coos Bay, OR, a distance of about 133 miles.³ It was originally constructed by a predecessor of the Southern Pacific Railroad and was one of a series of lines acquired in 1994 by a newly established common carrier short line railroad, Central Oregon & Pacific Railroad ("CORP"), a subsidiary of short line holding company Rail-Tex, Inc. In 2000 another short line holding company, RailAmerica, Inc., acquired control of RailTex, Inc., and in 2007, hedge fund Fortress Investment Group LLC in turn acquired control of RailAmerica, Inc. During Fortress' ownership of CORP, railroad service on and the physical condition of many of the lines owned and operated by CORP deteriorated badly causing CORP to embargo 94 miles of the

³ More specifically, the Line runs between MP 652.114 at Danebo, OR, to MP 763.13 at Cordes, OR, and from MP 761.13 at Cordes to MP 785.5 at Coquille.

Line and cease providing service.⁴ On July 11, 2008, the Port filed a Feeder Line Application⁵ with the Board under 49 U.S.C. §10907 to acquire the entire Coos Bay Rail Line. That application was granted in a decision served on October 31, 2008. The Port took possession of the Line in 2009.⁶

Rather than operate the Line itself, the Port solicited proposals from qualified short line operators and chose CBR to operate the Line. After a careful search, the Port entered into an interim operating agreement with CBR on August 15, 2011, and CBR promptly sought authority from the Board to operate the Line.⁷ Because of the badly deteriorated condition of the Line, CBR could not commence operations over its entire length. Instead CBR began service in stages with service beginning in October 2011. Thereafter on June 1, 2013, the Port and CBR executed a 10 year Management Agreement with a March 31, 2023, expiration date and began to serve the entire Line.

The Line handles 286,000 pound freight cars. Traffic-wise, CBR has aggressively sought new business increasing the number of car loads handled from

⁴ After abruptly terminating service without seeking proper Board authority, CORP sought and obtained authority to abandon those 94 miles.

⁵ Docketed as *Ore. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of Cent. Ore. & Pac. R.R.*, FD 35160.

⁶ As a result of that acquisition, the Port became a nonoperating common carrier railroad.

⁷ *Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link—Operation Exemption—Line of Railroad owned by the Oregon International Port of Coos Bay*, FD 35551 (STB served Sept. 14, 2011).

roughly 194 in 2011⁸ to over 7200 cars today. *Railway Age* magazine recognized CBR's marketing and maintenance successes by awarding it the Short Line of the Year in 2014.⁹

III. ARGUMENT

A. The Port's corporate family transaction should be rejected because it does not qualify for an exemption

The Board's class exemption procedures provide an expedited means of obtaining regulatory authority in certain classes of transactions involving routine matters. It will reject notices involving controversial transactions or ones that raise unresolved issues or questions that require considerable scrutiny. *See, e.g., Winamac S. Ry.—Trackage Rights Exemption—A. & R. Line, Inc.*, FD 35208, slip op. at 2 (STB served Jan. 9, 2009). Additionally, a notice that is misleading is void *ab initio*, and the Board will reject it. *U S Rail Corp.—Lease & Operation Exemption—Shannon G.*, FD 35042, slip op. at 3-4 (STB served Oct. 8, 2008); *FPN USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline*, FD 35155 (STB served Aug. 8, 2008) (holding that notices of exemption are intended to be used for routine and non-controversial cases. There the Board stated "in light of the issues raised by SD&AE, SDIV and CZRY, FPN's notice does not seem routine or non-controversial, and indeed raises more questions than it answers. Where, as here,

⁸ Partial year from October to December 2011.

⁹ Copy attached.

there are too many unanswered questions, the Board will reject a notice.”).

Moreover it will reject notices that contain false and misleading information. Failure to disclose material information can render a notice misleading by omission, and therefore void *ab initio*. *U S Rail Corp.—Lease & Operation Exemption—Shannon G., a N.J. LLC*, FD 35042, slip op. at 3-4 (STB served Oct. 8, 2008) cited in *Rail Switching Service, Inc.- Operation Exemption-Pemiscot County Port Authority*, FD 35685, slip op., STB served Jan. 8, 2013 (cited as *Pemiscot*). In *Pemiscot* the Board ruled as highly relevant here,

“When a party files a verified notice of exemption under 49 C.F.R. pt. 1150 Subpart D, § 1150.33(c) requires “[a] statement that an agreement has been reached or details about when such an agreement will be reached.” This rule contemplates that the party seeking authority to operate as a common carrier over the subject line either has, or is in the process of acquiring, an agreement with the underlying owner to provide that service. Without an agreement, or a plan to reach an agreement, a transaction would not qualify for an exemption under Subpart D. Therefore, under § 1150.33(c), an agreement is material to the transaction.” *Id.* at 4.

The Port’s notice must be rejected for two reasons. First, it is controversial. Superficially, the Port’s notice of exemption looks like a routine pleading whereby one railroad transfers its rights or obligations to an affiliated railroad. But appearances can be deceiving. This is no “plain vanilla” corporate family transaction exemption notice. The Port would have the Board believe that it is merely leasing the line it acquired in 2008 through the feeder line provisions to a newly created affiliate identified as “Coos Bay Rail Line, Inc.” The notice goes on

to represent that the Line is currently operated by CBR under a lease with the Port, that CBR's parent has advised the Port that it no longer wishes to operate the Line, and that the Port has sent CBR a letter inviting it to cure certain unidentified contractual breaches. The portion of the Port's notice explaining the transaction's purpose states that the transaction is "to facilitate a transition in operations from CBR to Coos Bay, enabling the Port to take the operation of its Line 'in house,' albeit by way of a Port-controlled subsidiary designed to assume the specific role of functioning and an operating rail common carrier in place of the Port." But what is really happening is that the Port wants to prematurely terminate its Management Agreement with CBR and substitute in its place its "in house" railroad, Coos Bay. Second, the Board has previously rejected notices where the applicant has misrepresented material facts or failed to disclose some key fact such as a contract dispute. *Pemiscot, supra* at 4 ("RSS failed to advise the Board of the active dispute between it and the owner of the Line regarding the interpretation of the agreement at issue here, namely, whether the agreement provided that RSS could seek operating authority from the Board to operate as a common carrier over the Line. We consider that omission of material fact to be misleading, and the notice is therefore void *ab initio*.").

Here the notice is deficient in four respects. It inaccurately represented that the agreement between CBR and the Port is a lease. It's a Management Agreement.

More significantly, it avoided mentioning the fact that the parties have a significant contractual dispute for which CBR has initiated arbitration to resolve as required under the Management Agreement. The only reference by the Port to any sort of dispute is its statement that the Port has sent CBR a letter inviting it to cure breach of contract issues.

The Port falsely represented to the Board that the parent company of CBR no longer wishes to operate the Line. CBR wishes to remain as the operator of the Line. Although CBR's owner wishes to sell its portfolio of railroad and railroad-related businesses, *it wishes to continue operating CBR*, a material distinction.

Finally and most significantly, the Port's filing is seriously deficient for failure to disclose that the Port cannot operate the Line without the approval of the Oregon Department of Transportation (ODOT) Rail Administrator and the Governor or her designee and the Port cannot terminate the Management Agreement, allow another operator on the Lines *or operate on the Lines itself* without the approval of the ODOT Rail Administrator and the Governor or her designee. *See Arbitration Demand* paragraphs 22 and 23, attached hereto.

B. The Board should stay the exemption's effectiveness pending the outcome of arbitration

CBR intends to challenge the Port's removal efforts and material breach claims by initiating arbitration as the Management Agreement requires. Failure to stay the effectiveness of the exemption will present numerous safety and operating issues as there would be two carriers sharing a light density line with few passing sidings and limited yard capacity. Moreover, having two carriers on a line competing with each other for a limited amount of traffic will be contrary to the following Rail Transportation Policy goals of the ICC Termination Act:

- To promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
- to ensure the development and continuation of a sound rail transportation system;
- to foster sound economic conditions in transportation;
- to operate transportation facilities and equipment without detriment to the public health and safety; and
- to encourage honest and efficient management of railroads.

A stay is necessary to allow the Board to consider the arguments made here and to decide whether it should require the Port to submit its request for authority by means of a formal application or an individual petition for exemption.

In deciding whether or not to grant a stay, the Board considers the same four factors employed by federal courts, namely (1) whether there is a strong likelihood that the movant will prevail on the merits of the dispute; (2) whether it will suffer

irreparable harm in the absence of a stay; (3) whether other interested parties will be harmed by the stay; and (4) whether the public interest supports the granting of a stay. See, e.g., *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958); and *The Kansas City Southern Railway Company-Trackage Rights Exemption-Gateway Western Railway Company, et al*, FD 33780 (STB served July 20, 1999)(where the Board stated “we believe that a brief, 60-day housekeeping stay would be appropriate to permit us to examine the issues in greater detail. The trackage rights agreement at issue is different enough from typical trackage rights agreements to cause us to want to examine it further.”). As with *Kansas City Southern, supra*, the facts here are different than the typical situation where the rail line owner merely wants to replace the incumbent carrier with a new entity. Accordingly, the Board needs the additional time to examine the facts and circumstances of this transaction. *Connex Railroad LLC-Lease and Operation Exemption-Line of Buzzi Unicem USA in College Park, GA*, FD 35986 (STB served Jan. 19, 2016)(where the Board did not explicitly grant a stay but postponed the effective date of the exemption to provide sufficient time for it to fully consider the arguments presented).

(1) There is a strong likelihood that CBR will prevail on the merits.

As noted above, the Board has a consistent policy of rejecting notices of exemption in controversial cases. Here the CBR has shown that the Port's exemption notice contains inaccurate and/or false statements, there are disputes between the parties that the Port has glossed over in its notice, that CBR has initiated arbitration, and that, under Board precedent such as *Pemiscot* cited above, the Port has no right to terminate the Management Agreement, allow another operator on the Line, or initiate service itself absent approval from ODOT and Oregon's governor. Allowing the exemption to become effective before the arbitration proceeding is concluded would be counterproductive as customers and connecting carriers will not even know which railroad (CBR or the Port's railroad) will be providing service. The proceeding could even result in CBR's continued use of the Line.

(2) CBR will suffer irreparable harm in the absence of a stay.

Should the Board deny its stay request, CBR will experience significant harm because operations conducted by the Port on this capacity constrained railroad could prevent CBR from meeting its common carrier obligations to its customers. As noted above, serious operational and safety problems could arise absent very careful coordination between two operators on the Line.

(3) No other parties will be harmed by a continuation of the status quo pending a resolution of this dispute.

Granting a stay will not adversely affect either the Port or shippers on the Line as CBR will continue to provide and its customers will continue to enjoy the same quantity and quality of rail service that they have had for the past 7 years.

(4) A stay will be in the public interest.

Granting a stay will serve the public interest. Granting this relief will promote safe and efficient railroad operations. Customers will have the certainty and confidence of knowing when they will be served and by whom.

III. CONCLUSION

The Board should reject the Port's notice as it is controversial and not suitable for handling as an exemption under a long line of Board precedent. Moreover, it should be rejected as it contains false and misleading information and omits important information. Finally, CBR asks the Board to stay the effectiveness of the exemption in order to give it sufficient time to analyze the substantive arguments presented in this Petition.

Respectfully submitted,



John D. Heffner

Clark Hill Strasburger

1025 Connecticut Ave., N.W.

Suite 717

Washington, D.C. 20036

202-742-8697

Due: June 20, 2018

(<https://www.railwayage.com>)

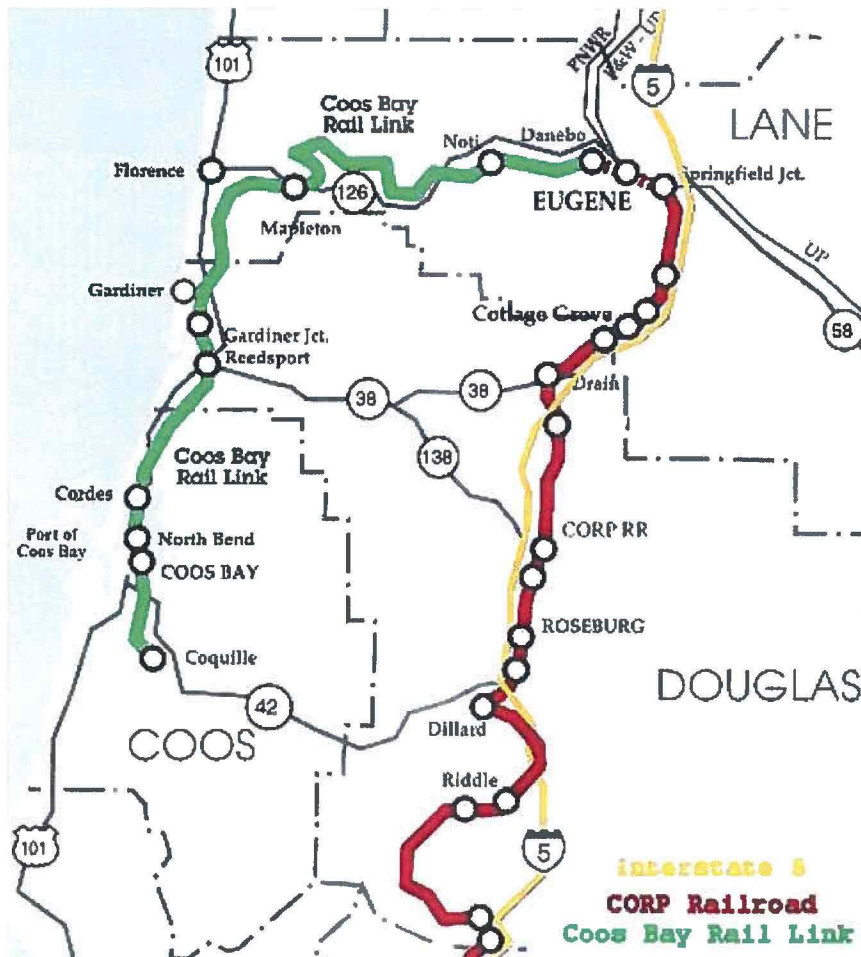
APRIL 03, 2014 (M/W) (<https://www.railwayage.com/category/mw/>), News

(<https://www.railwayage.com/category/news/>), Short Lines & Regionals

(<https://www.railwayage.com/category/freight/short-lines-regionals/>)

Short Line of the Year: Coos Bay Rail Link

Written by William C. Vantuono (<https://www.railwayage.com/author/wvantuonosbpub-com/>), Editor-in-Chief

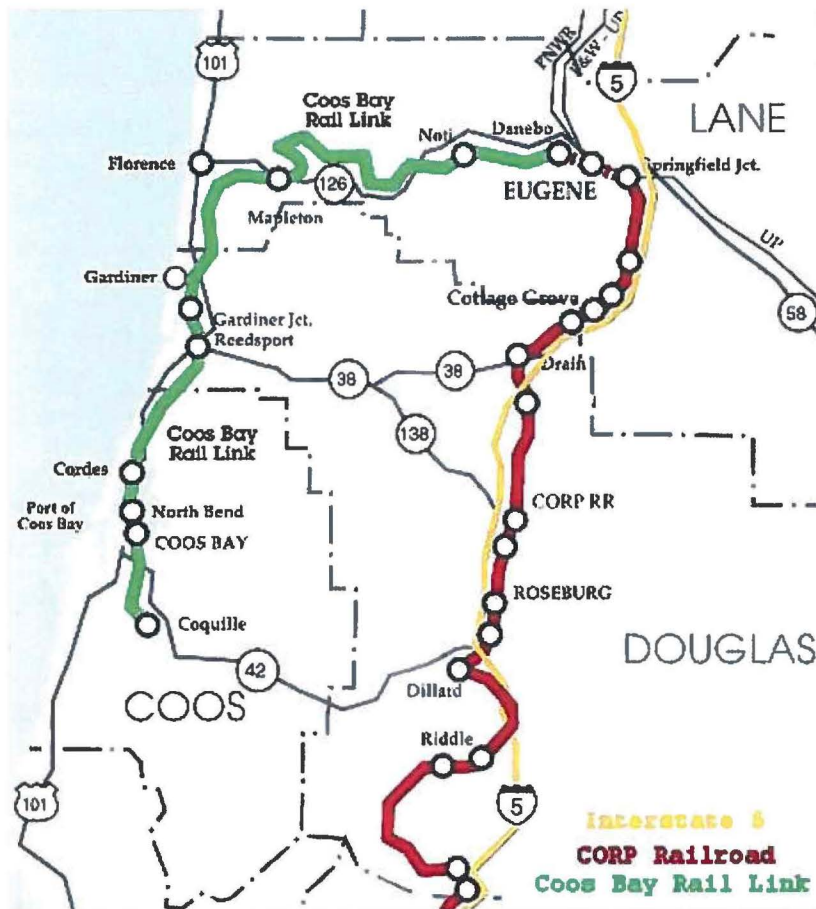


An Oregon right-of-way, moribund for four years, gets the resources and support it needs from its stakeholders to serve an eager and rapidly growing customer base.

The premature obituary in 2007 was ominous enough: Died from a collapsed tunnel, the exclamation point to a deteriorating rail right-of-way. The Coos Bay branch of the Central Oregon & Pacific Railroad, then a RailAmerica property, had been shut down as too costly to repair.

But stakeholders large and small in Oregon's Lane,

Douglas, and Coos counties didn't accept such an outcome, and their concerns were heeded at the state and federal levels. "The economic impact on the South Coast communities was



immediate and severe,” says Rep. Peter DeFazio (D-Ore.), who staffs an office in Coos Bay, Ore. “Timber companies and other industrial shippers were forced to truck their products, which was far costlier.” In 2009, the Oregon International Port of Coos Bay bought the derelict 111-mile branch, and rehabilitation efforts were under way.

Fast-forward to September 2011, when **Coos Bay Rail Link**

(<http://www.coosbayrallink.com/>) opened for business with a vengeance. The 134-mile short line is charging ahead in 2014, backed by a commitment from its operator, ARG Transportation Services, and by the Port of Coos Bay and the state of Oregon itself.

With a donation of 23 miles of right-of-way from Union Pacific, stretching from Coquille to North Spit (outside Coos Bay), and along with the Coos Bay Bridge donated earlier by UP, fertile business conditions were in place for a short line railroad to put rail service back into action—and recognition as Railway Age’s 2014 Short Line of the Year.

“We created something out of nothing,” Coos Bay Rail Link’s former General Manager Tom Foster says. “Together, we revived a transportation link vital to rural Oregon manufacturers and businesses that trade nationally and globally. We’re ecstatic about this honor.” Foster now is vice president of marketing for parent ARG Transportation Services.

Adds Rep. DeFazio, “The restoration of the rail line was an outstanding achievement and it deserves this national recognition.”

Railway Age has followed the rapid rise of Coos Bay Rail Link with interest and continuous coverage, while Engineering Editor (and RT&S Editor) Mischa Wanek-Libman made it a point to be on the property herself in November 2012 to see the goings-on. Coos Bay Rail Link's rapid rise to prominence caught the attention of editors and industry officials alike.

Courting the customer base

On Aug. 16, 2011, Eugene, Ore.-based ARG Transportation Services signed an interim contract with the Oregon International Port of Coos Bay to operate Coos Bay Rail Link. ARG Trans at that time announced the appointment of Tom Foster as Coos Bay Rail Link's general manager.

Foster, along with ARG President Scott Parkinson, immediately and literally hit the ground walking, reaching out to former customers and potential new ones.

Those customers needed reassurance that Coos Bay Rail Link was here to stay. Foster and Parkinson, among other items, pointed to Coos Bay Rail Link's financial backing of \$31 million in grants and loans from 10 different sources, including SAFETEA-LU, Connect Oregon, federal TIGER II, the American Recovery and Reinvestment Act, and the Oregon state lottery, among others.

Coos Bay Rail Link's infrastructure needs were staggering: Nine rail tunnels, 150 water crossings that included three major swing spans and 115 steel and timber bridges, and miles of right-of-way clogged by trees and brush growth. Add to that the needs of 250 public and private grade crossings, 14 of which are signalized, and the task was daunting at the very least.



Contractor teams led by Balfour Beatty Rail went to work, replacing 94,000 ties and delivering 54,000 tons of ballast. Grade crossings were upgraded. Signals were renewed. Drainage, a major overdue concern along the right-of-way and especially within the numerous tunnels, was addressed. One break: Coos Bay Rail Link was able

to continue using much of the existing rail inherited from Southern Pacific, allowing it to run 286,000 pound loads once operations resumed.

In October 2011, Coos Bay Rail Link began revenue operations. "Initially, we are providing service to customers as needed," said Foster at that time, adding, "Forest products will be a major source of traffic."

Foster's prediction was on the mark, with praise for Coos Bay Rail Link's efforts raining down from the likes of Eugene-based Seneca Sawmill Co., Allweather Wood, LLC of North Bend, Swanson Bros. Lumber Co., Inc. of Noti, and Coos Bay-based Treez.

Better interchange, transloading capabilities

Foster and Parkinson also reached out to Class I partner Union Pacific, seeking an interchange in Eugene, Ore. "For our part, we have increased the supply of centerbeam railcars for lumber loading and fostered a strong working relationship at the local operations level to ensure a fluid interchange with UP," says UP Senior Director-Short Line Marketing Todd A. Whitman.

"We know of recent highway conversions of 1,860 trucks, equivalent to 620 railcars, off of intrastate state highways," Whitman says. "We have been happy to support [Coos Bay Rail Link] with this endeavor and fully encourage their business development efforts." At Eugene, Coos Bay Rail Link also interchanges with Central Oregon & Pacific and, via UP, with Portland & Western railroads. Coos Bay Rail Link negotiated with other short line railroads to improve shipper opportunities, resulting in rising traffic volume and, not coincidentally, increased employee staffing and more motive power (from one locomotive to five) required to handle the increased business.

In the fourth quarter of 2013, Coos Bay Rail Link, aided by the Port of Coos Bay, completed a new siding in Finn, Ore., just west of Eugene, allowing the transloading of logs and rock products destined for the state's coastal region. The facility is expected to generate at least 2,000 loads in 2014; the first car was loaded in late February.

Indeed, Coos Bay Rail Link hopes to replicate its early established growth rate. In 2012, it moved 2,480 revenue carloads, "during a period when the railroad only had access to several major shippers for about half the year," notes Port of Coos Bay CEO David Koch. "2013 saw Coos Bay Rail Link increase revenue traffic by 95% to 4,845 revenue cars." Coos Bay Rail Link started operations in late 2011 with two customers; that's now up to 13 in 2014.

Says Foster, "Our traffic goal for 2014 is 7,300 carloads; if the first two months of the year are any indication, that goal will be met."

Coos Bay Rail Link is looking even farther ahead, signed a 10-year operating pact with the Port of Coos Bay last May. Says the port's CEO David Koch, "The Port believes that Coos Bay Rail Link's success as a railroad will grow significantly as it strives to meet ever-evolving shipper needs for competitive transportation options."

No obituary, that.

Instead, a prediction of a hale and hearty future for Coos Bay Rail Link, and the customers and territory the railroad serves.

Categories: M/W (<https://www.railwayage.com/category/mw/>), News (<https://www.railwayage.com/category/news/>), Short Lines & Regionals (<https://www.railwayage.com/category/freight/short-lines-regionals/>)

Tags: Central Oregon and Pacific (<https://www.railwayage.com/tag/central-oregon-and-pacific/>), Coos Bay Rail Link (<https://www.railwayage.com/tag/coos-bay-rail-link/>), Maintenance of Way (<https://www.railwayage.com/tag/maintenance-of-way/>), Management (<https://www.railwayage.com/tag/management/>), Short Lines (<https://www.railwayage.com/tag/short-lines/>)

RELATED ARTICLES



(<https://www.railwayage.com/passenger/commuterregional/nit-600mm-for-portal-north-bridge/>)

June 13, 2018 | Commuter/Regional

(<https://www.railwayage.com/category/passenger/commuterregional/>), High Performance

(<https://www.railwayage.com/category/passenger/high-performance/>), Intercity

(<https://www.railwayage.com/category/passenger/intercity/>), M/W

(<https://www.railwayage.com/category/mw/>), News

(<https://www.railwayage.com/category/news/>), Passenger

(<https://www.railwayage.com/category/passenger/>)

NJT: \$600MM for Portal North Bridge

(<https://www.railwayage.com/passenger/commuterregional/nit-600mm-for-portal-north-bridge/>)



(<https://www.railwayage.com/mw/create-75th-street-132-million-from-usdot/>)

June 12, 2018 | Class I (<https://www.railwayage.com/category/freight/class-i/>),

Commuter/Regional (<https://www.railwayage.com/category/passenger/commuterregional/>),

Freight (<https://www.railwayage.com/category/freight/>), Intercity

(<https://www.railwayage.com/category/passenger/intercity/>), M/W

(<https://www.railwayage.com/category/mw/>), News

(<https://www.railwayage.com/category/news/>), Passenger

(<https://www.railwayage.com/category/passenger/>), Safety

June 15, 2018

Aukjen Ingraham

Schwabe Williamson & Wyatt
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204

Re: Coos Bay Rail Link I Port of Coos Bay
Arbitration Demand

Dear Aukjen,

The Oregon International Port of Coos Bay (Port) and Coos Bay Railroad Operating Company, LLC doing business as Coos Bay Rail Link (CBR) are parties to a Management Agreement dated June 1, 2013 where CBR performs “Contracted Services” on the Coos Bay Line and Coquille Branch (Lines). Differences in interpretation of the parties’ respective obligations under the Management Agreement have arisen. Accordingly, CBR demands arbitration to interpret the Management Agreement and resolve other issues between the parties.

Arbitration Provision

Paragraph 26(a) of the Management Agreement provides for arbitration as set out below.

- (a) Arbitration. Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of this Agreement, shall be settled by arbitration in Coos County, Oregon, and any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

Statement of Claims

The claims or controversies to be arbitrated are listed below.

Routine Maintenance

1. A declaration setting out CBR’s obligations pursuant to the Management Agreement to perform “Routine Maintenance” of the Lines.
2. A declaration that CBR has complied with its Routine Maintenance obligations under the Management Agreement.

Capital Investment

3. A declaration setting out the Port’s obligations pursuant to the Management Agreement to perform “Capital Investment” in the Lines, right of way, buildings and structures.

4. An accounting of all grants received by the Port for the Lines, right of way, buildings and structures and the disbursements of the proceeds of those grants.
5. A declaration that the Port has failed to invest the proceeds of grants for Capital Investments in the Lines, right of way, buildings and structures.
6. An accounting of the Port's Capital Projects Surcharge Fee (CPSF) that CBR invoices to shippers pursuant to paragraph 6(d) of the Management Agreement and the disbursement of CPSF proceeds.
7. A declaration that the Port has failed to use the CPSF for Capital Investment in the Lines as required by paragraph 6(d) of the Management Agreement.
8. A declaration that the Port has failed to coordinate Capital Investment priorities and work plans with CBR as required by paragraph 9(b)(1) of the Management Agreement and failed and refused to provide information to CBR on Capital Investment plans and priorities.
9. A declaration that CBR's downgrading sections of track from Class II to Excepted was made necessary due to the Port's failure to make Capital Investments in those sections of track.
10. A declaration that the Port, not CBR, is responsible for costs and losses incurred as a result of the Port's failure to meet its Capital Investment obligations.
11. A declaration that in calendar years 2014, 2015, 2016 and 2017, the Port has made no planned Capital Investments improving the Lines.

Coos Bay Swing Bridge | Catastrophic Failure

12. A declaration that the Port's diversion of grants for rehabilitating the Coos Bay Swing Bridge for other purposes and its failure to make Capital Investments in the bridge resulted in catastrophic failure of the bridge and damage to CBR in excess of \$24,000 per month in stranded railcar charges, \$150 per day for a stranded locomotive, \$50,000 to recover the stranded locomotive and lost revenue from shippers south of the bridge.
13. A declaration that CBR is entitled to set off the charges for rail cars and the locomotive stranded south of the Coos Bay Swing Bridge from the revenue paid to the Port pursuant to the Management Agreement.

Wildcat Creek Bridge

14. A declaration that the Port's failure to make Capital Investments required by the Management Agreement threatens the safety and continued use of the Wildcat Creek Bridge and closure or failure of the bridge will sever connections to customers south of the Walton area.
15. A declaration that the Port is responsible for CBR's costs and losses incurred as a result of its failure to make Capital Investments in and around the Wildcat Creek Bridge, including derailment costs in excess of \$300,000.

Insurance

16. A declaration that the insurance maintained by CBR has at all times satisfied CBR's insurance obligations under the Management Agreement.

Environmental Contamination

17. A declaration that CBR is not liable for 100 years of environmental contamination that occurred before CBR began operations on the Lines.

False & Misleading Representations

18. A declaration that each of the Port's representations set out below are false and misleading.

- a. CBR has failed to meet its maintenance obligations.
- b. The Management Agreement is a lease.
- c. CBR is ceasing operation of the Lines.
- d. CBR has failed to maintain required insurance.

Good Faith & Fair Dealing

19. A declaration that the Port has breached the obligations of good faith and fair dealing it owes to CBR pursuant to the Management Agreement as set out below.

- a. By demanding that CBR make Capital Investments that are the Port's responsibility.
- b. By representing to government officials and other parties that CBR has failed to meet its Routine Maintenance obligations.
- c. By attempting to increase CBR's cost of doing business so that the Port could take over operation of the Lines.
- d. By sending letters to shippers requesting their support for the Port taking over operation of the Lines.
- e. By demanding that any purchaser of CBR agree to perform Capital Investments that are the Port's responsibility as a condition of approving any sale.
- f. By the Port's stated intention to become the operator of the Lines and its actions in furtherance of that intention.

Sale of CBR

20. A declaration that the Port's actions in furtherance of its intention to become the operator of the Lines constitutes an interference with an opportunity to sell CBR and other assets to a third-party purchaser, resulting in \$8.39 million in damages to CBR, not including the value of equipment and other assets retained by CBR.

21. A declaration that the assets of CBR include the Management Agreement and, upon sale of CBR, no assignment of the Management Agreement, and thus no approval by the Port of an assignment of the Management Agreement, is required.

ODOT & Governor Approval

22. A declaration that the Port cannot operate the Lines without the approval of the Oregon Department of Transportation (ODOT) Rail Administrator and the Governor or her designee.

23. A declaration that the Port cannot terminate the Management Agreement, allow another operator on the Lines or operate on the Lines itself without the approval of the ODOT Rail Administrator and the Governor or her designee.

No CBR Default

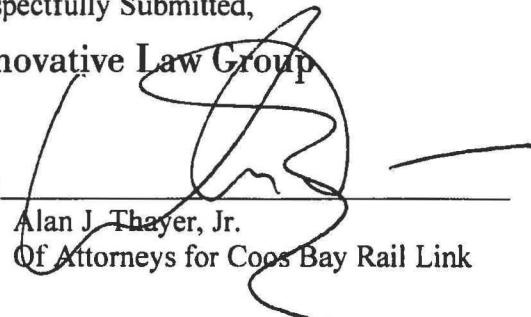
24. A declaration that there has been no default by CBR of the Management Agreement and the Port has no grounds for terminating the Management Agreement.

Arbitrator Selection

The parties have 30-days from the date of this Arbitration Demand to select an attorney licensed to practice law in the state of Oregon as a single arbitrator. CBR will submit the names of proposed arbitrators by a separate letter submitted together with this Arbitration Demand.

Respectfully Submitted,

Innovative Law Group

By: 

Alan J. Thayer, Jr.

Of Attorneys for Coos Bay Rail Link

AJT:sh

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of "Petition to Reject Notice of Exemption And Request Stay of Effective Date" of Coos Bay Railroad Operating Company, LLC dated June 19, 2018, was sent by electronic mail to all parties of record in this proceeding.

Audrey L. Brodrick, Esq.
Fletcher & Sippel LLC
Attorneys at Law
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832



John D. Heffner

Dated: June 19, 2018