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December 30, 2002

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Office of Proceedings

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Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34255 206964
Portland & Western Railroad, Inc.
-- Lease and Operation Exemption --
The Burlington Northern and Santa Fe Railway Company

STB Finance Docket No. 34204 206965
The Burlington Northern and Santa Fe Railway Company --Trackage Rights
Exemption--Portland & Western Railroad, Inc. -- Bush, Oregon to Albany, Oregon

Dear Secretary Williams:

We, the undersigned counsel for Portland & Western Railroad, Inc. ("PNWR") and The Burlington Northern and Santa Fe Railway Company ("BNSF") are writing to inform the Board that the parties consummated the lease transaction, and transitioned operations, as of 6:00 a.m. Sunday, December 29, 2002.¹ The trackage rights will begin to be operated late tonight or in the early morning hours tomorrow, December 31, 2002.

¹ The lease originally contemplated a January 1, 2003 closing. However, the parties agreed by letter dated December 18, 2002, a copy of which is attached hereto, to change the transition date to allow PNWR additional time for the transition before regular operations resume after the New Year. The parties were prepared to advise the Board of this change last week in response to the original Petition to Stay; however, the Board denied the stay before a response could be filed.

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The Honorable Vernon A. Williams

December 30, 2002

Page 2

Since the exemption has become effective and the transaction has already closed, it is inappropriate for the Board to consider the Appeal filed today by Fitzgerald. *See Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company (“Astoria Branch Exemption”)*, STB Finance Docket No. 33424 (served July 6, 1998), 1998 STB LEXIS 1 (noting Fitzgerald stay request not considered because filed same day notice became effective); *Port of Pend Oreille d/b/a Pend Oreille Valley Railroad – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33561, 1998 STB LEXIS 808 (holding that once exemption becomes effective, proper method of challenge is petition for revocation). Further the Appeal does not adequately demonstrate new evidence, changed circumstances or that the Board’s prior action involves material error.

Fitzgerald also raises again his request to change the designation of the Lease Agreement from “highly confidential,” and to require the submission of the financial data. Fitzgerald and his counsel act surprised by the designation although PNWR’s request for a protective order clearly indicated that it would be marking the lease agreement as a “highly confidential” document (and that it wanted to redact the financial information). Further, Fitzgerald’s counsel signed a “highly confidential” undertaking, and he was advised by PNWR’s counsel that the financial information would be redacted. The Board in its order issued December 26, 2002, told PNWR to supply the redacted financial information to Fitzgerald’s counsel pursuant to the protective order, and the appropriate pages were mailed to counsel on December 27, 2002. Fitzgerald’s counsel has never called counsel for PNWR to discuss any issues he had with either the designation or the redaction of the financial information.

The structure of the transaction and the financial arrangements are highly confidential and should not be made publicly available. The lease agreement is an integrated document, and PNWR should not have to separately designate individual sections of the agreement.² In evaluating the confidentiality of the lease provisions, it is important to note that labor is not the only party potentially interested in the terms of the agreement. In fact, Albany & Eastern Railroad – a carrier that connects with BNSF, PNWR and Union Pacific, that was interested in acquiring the line, and that has commenced an arbitration proceeding at the Board against BNSF – also requested (and was provided) a copy of the lease agreement pursuant to the Board’s protective order and a signed highly confidential undertaking.

Fitzgerald has not provided any basis to change the designation of the agreement in either the Petition for Stay (at 13) or the Appeal from Decision of the Chairman (at 9-10). He suggests

² The BNSF trackage rights agreement was independently filed as a public document with the Board, and served on Fitzgerald’s counsel, as part of the Trackage Notice.

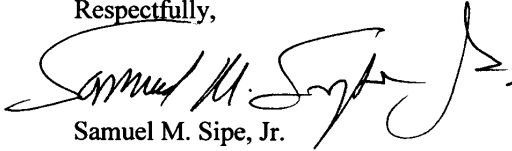
STEPTOE & JOHNSON LLP

The Honorable Vernon A. Williams
December 30, 2002
Page 3

that employees need to review the agreement to determine whether the transaction should be covered by Section 11323 instead of Section 10902. However, that issue is clearly a legal one that Fitzgerald's counsel can address based on his review of the lease agreement. Further, no justification is given as to why Fitzgerald or his counsel need the financial information that was redacted to evaluate the effect of the transaction or its impact on employees. Accordingly, the Board should not require any changes to the confidentiality designation of the agreement or the production of the financial terms of the agreement.

We are enclosing an original and 10 copies of this letter so that it may be filed of record in these proceedings.

Respectfully,



Samuel M. Sipe, Jr.

Counsel for The Burlington Northern and Santa Fe
Railway Company



Eric M. Hocky
Counsel for Portland & Western Railroad, Inc.

cc: Gordon P. MacDougall (by hand)

BNSF



PETER J. RICKERSHAUSER
Vice President - Network Development

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and Santa Fe Railway Company**
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December 18, 2002

Mr. Larry Phipps
President and General Manager
Portland & Western Railroad Company Inc.
650 Hawthorne Avenue SE
Salem, OR 97301

Re: First Amendment to Lease to Reflect Revised Effective Date

Dear Mr. Phipps:

This confirms our agreement to amend that certain Agreement for Lease and Transfer of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company to The Portland & Western Railroad, Inc. executed as of October 23, 2002, effective January 1, 2003 through December 31, 2017 ("Lease").

The parties have agreed, subject to receipt of appropriate governmental approvals, to modify the effective date of the Lease so that operations shall be transferred to Lessee and the terms of the lease shall become effective at 6:00 a.m. Pacific Standard Time, December 29, 2002 ("Revised Effective Date"). Accordingly, Section 2A, Effective Date and Term and the cover page of the Lease shall be amended as of the date written hereinabove, to reflect the Revised Effective Date set forth in this amendment.

Except as expressly provided herein, all terms of the Lease shall remain in full force and effect without modification thereto.

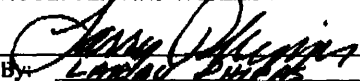
Please confirm Portland & Western's Agreement to the terms of this first amendment by signature of an authorized representative in the space provided below on both copies provided and return one signed copy to me at the above address.

Sincerely,


By: Peter J. Rickershauser
Title: Vice President, Network Development
Date: December 18, 2002

For The Burlington Northern and Santa Fe Railway Company

ACCEPTED AND AGREED:


By: LARRY PHIPPS
Title: PRESIDENT & G.M.
Date: 12/18/02

For The Portland & Western Railroad, Inc.