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February 6, 2019

VIA ELECTRONIC FILING

247072

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

ENTERED
Office of Proceedings
February 6, 2019
Part of
Public Record

**Re: STB DOCKET NO. AB-1270, Port of Benton, WA,
Adverse Discontinuance of Rail Service,
Tri-City Railroad Company, LLC**

Dear Ms. Brown:

I am submitting on behalf of the Port of Benton, WA, a copy of its Emergency Petition for Waiver Under 49 CFR 1152.24(e). I am also enclosing with this filing an email from Lisa Anderson, Executive Vice President of Tri-City Railroad Company, LLC, and two photographs of Surface Transportation Board notices posted on or near the Port of Benton's leased property.

Sincerely,



Sloane S. Carlough

Enclosures

cc: David J. Billetdeaux

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1270

**PORT OF BENTON, WA
ADVERSE DISCONTINUANCE OF RAIL SERVICE
TRI-CITY RAILROAD COMPANY, LLC
EMERGENCY PETITION FOR WAIVER
UNDER 49 CFR 1152.24(e)**

Respectfully submitted,

John D. Heffner
Sloane S. Carlough
Clark Hill PLC
1001 Pennsylvania Ave., N.W.
Suite 1300 South
Washington, D.C. 20004
(202) 572-8629

Eric M. Hocky
Clark Hill PLC
2005 Market Street
Philadelphia, PA 19103
(215) 640-8523

Dated: February 6, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1270

**PORT OF BENTON, WA
ADVERSE DISCONTINUANCE OF RAIL SERVICE
TRI-CITY RAILROAD COMPANY, LLC**

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**I
INTRODUCTION.**

Pursuant to the provisions of 49 CFR Part 1152.24(e), the Port of Benton, WA, (“POB” or “the Port”) hereby files its emergency Petition for Waiver of the Board’s requirement at 49 CFR 1152.20(a)(3) requiring abandonment applicants to post notice of intent to file a proposed abandonment application. The Port believes that the circumstances justifying waiver are so compelling as to require the Board to grant its request. POB files this request in conjunction with an abandonment application it intends to file around February 19, 2019 as a prelude to removing Tri-City Railway Company, LLC (“TCRY”), as the incumbent tenant railroad on

the Port's property. The Port believes that it has made the spirit of the regulation even if actual posting is not possible.

II. ARGUMENT

The Board's notice regulations at 49 CFR 1152.20(a)(3) require that an abandonment applicant post notice of intent of a proposed abandonment application at stations and other locations on the subject line of railroad. The regulation states:

Applicant must post a copy of its Notice of Intent at each agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.)

As the attached photo indicates, Applicant has endeavored to comply with this regulation. However, on January 31, 2019, Applicant received the following threatening email from TCRY's Executive Vice President and Corporate Secretary Lisa Anderson. In it she stated,

"Mr. Billetdeaux,

Access to the property, for the purpose of inspection, is provided for in section 18. of the Railroad Lease as follows:

18. ACCESS BY PORT. Port, of Port's representatives and agents, shall have access to the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the Property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the Property by Tenant.

The purpose of entering the premises tomorrow does not meet the language of the lease. If you enter the property in violation of the lease we will seek our remedy in the already pending federal action.

Furthermore, Section 23.8 of the Railroad Lease contains the following:

23.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Tenant shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

The Port's intentions are a violation of the tenant's right to quiet possession. This action by the Port is received as an attempt to harass TCRY and intimidate its employees by posting signage which will be received as discontinuing TCRY's operation of the railroad.

The Port does not have TCRY's permission to enter its leasehold for the purposes you describe."

A copy of her email is attached for the Board's attention.

Despite its intent to comply with the notice posting requirement, the Port fears that TCRY will remove those notices posted already and attempt to argue that the Port has not followed the necessary conditions for filing its abandonment application. Accordingly, POB believes that TCRY will then urge the Board to dismiss the application for failure to comply with the rules. POB asserts that urgent action is required by the Board to grant this request as it plans to file the application around February 19, 2019, a mere two weeks from now.

The Port notes that it has complied with the spirit if not the letter of the notice of intent regulation. Aside from its attempted posting, the Port has sent copies of the notice to all parties required to receive it and has arranged for

publication of the notice in a newspaper of general circulation for three weeks starting this Sunday.

III.
CONCLUSION

The Port respectfully requests that the Board promptly grant its Emergency Petition for Waiver so that it may proceed to file its abandonment application on February 19, 2019.

Respectfully submitted,

John D. Heffner
Sloane S. Carlough
Clark Hill PLC
1001 Pennsylvania Ave., N.W.
Suite 1300 South
Washington, D.C. 20004
(202) 572-8629

Eric M. Hocky
Clark Hill PLC
2005 Market Street
Philadelphia, PA 19103
(215) 640-8523

Dated: February 6, 2019

CERTIFICATE OF SERVICE

I, Sloane S. Carlough, hereby certify that a copy of the foregoing Emergency Petition for Waiver dated February 6, 2019 was sent by U.S. Mail to all parties of record in this proceeding.

Ryan M. Best
Attorney for Peterson & Tri-City Railroad Co. , LLC
Best Law, PLLC
905 Riverside Avenue
Suite 409
Spokane, Washington, 99201

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112

Honorable Jay Inslee
Office of The Governor
P.O. Box 40002
Olympia, WA 98504-0002

Office of General Counsel
National Railroad Passenger Corporation
50 Massachusetts Avenue, N.E.
Washington, D.C. 20002-4214

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive
Olympia, WA 98504-7250

Ms. Martha P. Rico-Parra
Secretary
United States Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611-2092

Mr. Rick Potts, Chief
Conservation and Outdoor Recreation Div.
River, Trails and Conservation Assistance Program
National Park Service
1849 C Street, N.W. (Org 2220)
Washington, D.C. 20240

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900 W
Scott AFB, IL 62225
United States Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

US Department of the Interior
National Park Service
Land Resources Division
1849 C Street, N.W.
Washington, D.C. 20240

US Department of Agriculture
Chief, Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0003

Rick Rose
ConAgra Foods Lamb Weston
8701 W. Gage Blvd.
Kennewick, WA 99336

Bill Friend, Warehouse Manager
Henningsen Cold Storage Company
2025 Saint Street
Richland, WA 99354

TCRY
Attn: Lisa Anderson
P.O. Box 6106
Kennewick WA 99356

Kevin Sheckla
West Coast Warehouse
P.O. Box 1187
Richland, WA 99352

10 N Washington
Attn: Lisa Anderson
P.O. Box 6106
Kennewick, WA 99336
Perma-Fix Northwest, Inc.
2025 Battelle Blvd.
Richland, WA 99354

Preferred Freezer Services
Ed Gottschalk, Plant Manager
2800 Polar Way
Richland, WA 99354

DelHur Industries
John Doyle
2935 Kingsgate Way
Richland, WA 99354

Central Washington Corn Processors
Dennis Kylo
427 W. 1st Avenue
Spokane, WA 99201

Certified DEF, Inc.
Attn: Phil Adams
50 W Forest Street
Suite 204
Brigham City, UT 84302

Schaeffer Industries
Attn: Clark Taylor
Executive Vice President & General Counsel
141 S. Western Coil Road
Linden, UT 84042

Packaging Corporation of America
Katy Conlan, Manager
101 South Capitol Blvd, Suite 800
Boise, ID 83702

ATI Richland
Kevin O'Connor, Plant Manager
3101 Kingsgate Way
Richland, WA 99354
WHECO Corporation
Jeff Williams
2989 Kingsgate Way
Richland, WA 99354

Mike Connerly
Energy Northwest, Turbine Coordinator
Reactor and Major Maintenance
P.O. Box 968
Richland, WA 99354



Sloane S. Carlough
Counsel

Dated: February 6, 2019

Carlough, Sloane S.

Subject: RE: Notice to Enter Property

From: Lisa Anderson <lisaanderson@tcry.com>
Sent: Thursday, January 31, 2019 5:34 PM
To: David Billetdeaux <david@portofbenton.com>
Cc: Heffner, John D. <jheffner@clarkhill.com>; Teresa Hancock <teresah@portofbenton.com>; Jose Romero <Jose@tcry.com>; Quentin Hanley <quentin@tcry.com>; Jamie Robison <jamie@tcry.com>; Ryan Best <ryan.best@bestlawspokane.com>
Subject: Re: Notice to Enter Property

Mr. Billetdeaux,

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Lisa Anderson
Executive Vice President
Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067

On Jan 30, 2019, at 11:40 AM, David Billetdeaux <david@portofbenton.com> wrote:

Ms. Anderson,

As a notice, Port employees will be posting required STB notices on or near the Port of Benton's Leased Property located at 2571 Stevens Drive, Richland, WA and at various stations along the rail line at approximately 9am this Friday, February 1, 2019.

Best regards,

David J. Billetdeaux | Port of Benton, Attorney
3250 Port of Benton Blvd. | Richland, WA 99354
509. 375. 3060 | Office

509. 375. 5287 | Fax
509. 578. 6189 | Mobile
Email: david@portofbenton.com

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