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BY HAND DELIVERY

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

**Re: Docket No. AB 570 (Sub-No. 4X), Palouse River & Coulee City Railroad, L.L.C. –
Discontinuance Exemption – in Walla Walla County, Washington and Umatilla County,
Oregon**

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of Palouse River & Coulee City Railroad's Petition for Exemption under 49 U.S.C. § 10502. Also enclosed is a check covering the \$7,400 filing fee.

If you have any questions, please call me.

Sincerely,



Karl Morell

Enclosures



FILED
December 20, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 20, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-570 (Sub-No. 4X)

PALOUSE RIVER & COULEE CITY RAILROAD, L.L.C.
--DISCONTINUANCE EXEMPTION--
IN WALLA WALLA COUNTY, WASHINGTON AND UMATILLA COUNTY, OREGON

PETITION FOR EXEMPTION

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Attorney for:
Palouse River & Coulee City
Railroad, L.L.C.

Dated: December 20, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-570 (Sub-No. 4X)

PALOUSE RIVER & COULEE CITY RAILROAD, L.L.C.
--DISCONTINUANCE EXEMPTION--
IN WALLA WALLA COUNTY, WASHINGTON AND UMATILLA COUNTY, OREGON

PETITION FOR EXEMPTION

Palouse River & Coulee City Railroad, LLC ("PCC") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, PCC's discontinuance of its lease operations over approximately 55.56 miles of rail line owned by Union Pacific Railroad Company ("UP").

PROPOSED TRANSACTION^{3.76}

PCC proposes to discontinue its operations over the two rail lines leased from UP that are located between: (1) milepost 3.76, at Zangar Jct., Washington, and milepost 33.0, at Walla Walla, Washington; and (2) milepost 46.80, at Walla Walla, Washington, and milepost 20.48, at Weston, Oregon (the "Rail Lines"). The Rail Lines traverses U.S. Postal Service Zip Codes 99362, 99363 and 97886. A map of the Rail Lines is attached as Exhibit A.

Based on information in PCC's possession, the Rail Lines do not contain any federally granted right-of-way. Any documentation in PCC's possession will be made available to those requesting it.

STATEMENT OF FACTS

On November 20, 1992, Blue Mountain Railroad, Inc. (“BMR”) entered into a Lease Agreement with UP to lease the Rail Lines and it commenced operations over such Rail Lines. Pursuant to STB Finance Docket No. 33898, *Watco Company, Inc. South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc. Southeast Kansas Railroad Company, and Blue Mountain Railroad, Inc. – Corporate Family Transaction Exemption* (not printed), served July 24, 2000, BMR was merged into PCC.

In 1997, the Port of Columbia (“Port”) acquired a portion of the rail lines from milepost 48.0 near Walla Walla, WA, to milepost 71.3, at Bolles, WA, and between milepost 0.0 at Bolles, WA, and milepost 14.06, at Dayton, WA (the “Port Lines”) BMR remained the operator for the Port over the Port Lines. In 2016, CWW, LLC took over operations of the Port Lines, pursuant to Finance Docket No. 36044. At that time, PCC assigned its common carrier rights and obligations over the Port Lines to CWW as part of the transaction between CWW and the Port. PCC continued to operate over the remaining lines leased from UP.

Over the past 26 years, BMR and then PCC provided local and overhead rail service for the customers on the Rail Lines. During the past three years, the volume of traffic moving on the Leased Lines has steadily declined. As a consequence, PCC has come to the conclusion that it is no longer operationally or financially advantageous for PCC to continue to be the operator over the Rail Lines.

The following twelve rail shippers are located on the Leased Lines: Americold, Brown & Sons, Cliffstar Corporation, Columbia Walla Walla Railroad, Ferrell Gas, Garrett Packinggrowers, Northwest Grain Growers, Seneca Foods, Smith Frozen Food, Stubblefield Co., Victory Energy and Koncrete Industries, Inc.

Collectively, the volume of traffic shipped by these customers has steadily declined from 1,228 carloads in 2016, to 894 carloads in 2017, and to 704 carloads during the first nine months of 2018.

In light of these developments, PCC has decided to reconsider its 1992 Lease Agreement with UP. On April 30, 2018, PCC gave UP notice of its intent to terminate the Lease Agreement in order to provide UP adequate time to either locate another short line to take over PCC's operations or for UP to restart its former operations over the Rail Lines. Consequently, once PCC ceases its operations, the 12 customers on the Rail Lines will continue to receive service from either UP or a new operator.

EXEMPTION REQUESTED

PCC seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for PCC to discontinue service over the Rail Lines.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction or service is of limited scope; or
 - (b) regulation is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a)

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers

Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also Exemption From Regulation – Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy.

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”); STB Docket No. AB-6 (Sub-No. 409X), *The Burlington Northern and Santa Fe Ry. Co. – Abandonment Exemption – In Jefferson,*

Thayer and Nuckolls Counties, NE (not printed), served July 23, 2004. By discontinuing PCC's operations service over the Rail Lines and allowing UP to resume operations or for a new operator to commence operations, the overall operating efficiencies of PCC will significantly improve in the area. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.,* STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Also, the proposed discontinuance will promote a safe and efficient rail system by operationally improving the UP's overhead movements over the Leased Lines. [49 U.S.C. § 10101(3)]. In addition, granting the requested exemption will provide for the expeditious handling and resolution of proceedings before the Board. [49 U.S.C. § 10101(15)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since all of the local shippers on the Rail Lines will continue to receive rail service from UP as they have in the past or a new operator.

Where, as here, the former operator can elect to resume rail service and local service is not affected, the Board and its predecessor have consistently found that formal regulation of a proposed discontinuance is not necessary to carry out the rail transportation policy. *See, e.g.,* Docket No. AB-102 (Sub-No. 25X), *Missouri-Kansas-Texas R. Co. – Exemption – Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS* (not printed), served February 9, 1990. As the Board's predecessor noted: "We have long recognized that operating arrangements designed by carriers to promote more efficient or economical operations promote

the national [rail] transportation policy and should be encouraged.” Finance Docket No. 30703, *Soo Line R. Co. – Joint Use of Lines – Chesapeake and Ohio Ry. Co.* (not printed), served August 22, 1986, slip op. at 9.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is of limited scope. PCC seeks to discontinue lease operations over approximately 55.56 miles of rail line. While PCC seeks to discontinue operations over a total of approximately 55.56 miles of rail line, the length of the track involved in a proposed discontinuance is not dispositive of whether the transaction or service is limited in scope.

Docket No. AB-6 (Sub-No. 347), *Burlington Northern R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Greene, Sumter, Choctow, Washington and Mobile Counties, AL* (not printed), served July 6, 1993 (“BN Discontinuance”) (length of line not necessarily dispositive). *See also* *Norfolk and Western Ry. Co. – Purchase – Illinois Terminal R. Co.*, 363 I.C.C. 882, 895 (1981) (abandonment of overhead trackage rights on line segments totaling more than 200 miles found of limited scope).

Of greater relevance to the “limited scope” issue is the number of shippers, if any, that would be adversely affected by the proposed discontinuance. *See, e.g.*, *BN Discontinuance*

(discontinuance limited in scope where traffic would be handled by a prior operator); Docket No. AB-290 (Sub-No. 2X), *Southern Ry. Co. – Discontinuance of Trackage Rights Operations Between Greenwood and Piedmont, South Carolina* (not printed), served June 20, 1990 (transaction found to be limited in scope because shippers would be served by a new carrier).

As previously noted, there are only 12 rail shippers located on the Rail Lines several of which have shipped very low or no volumes in the past three years. Because UP will be able to resume its former local service on the Rail Lines once PCC stops service, not one shipper will lose service or otherwise be adversely affected by PCC's discontinuance of operations. Because the proposed discontinuance will not adversely affect rail service to any shipper, the proposed discontinuance should be found limited in scope.

C. This Transaction Will Not Result In An Abuse of Market Power

There are 12 shippers located on the Rail Lines. No shipper will lose rail service or experience a reduction in the number of carriers with access to its facilities. All of the local shippers will continue to receive rail service from UP or new railroad selected by UP. Prior to 1992, these customers were exclusively served by UP. From 1992 until the present, these customers were exclusively served by BMR or PCC. Once PCC discontinues its operations over the Rail Lines, these customers can again be exclusively served by UP. Consequently, the proposed discontinuance will not reduce the number of rail options available to any shipper. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576), *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*. The proposed

discontinuance will simply result in the substitution of one carrier (UP) for the service currently provided by another carrier (PCC). See STB Docket No. AB-566X, *Gateway Western R. Co. – Discontinuance of Service Exemption – In Jackson County, MO* (not printed), served July 21, 2000, slip op. at 2 (“Because service is being continued by the owner of the line, regulation is not necessary to protect shippers from the abuse of market power.”); STB Docket No. AB-554X, *Perry County Port Authority D/B/A Hoosier Southern RR – Discontinuance Exemption – In Spencer County, IN* (not printed), served October 19, 1998 (Discontinuance of lease and trackage rights operations exempted where owner cancelled lease and resumed complete operation, maintenance and control of line).

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. 1105.6(c)(2) and (6). Because UP can assume all of the operations currently provided by PCC, the proposed discontinuance will not result in significant changes in carrier operations. Also, because UP or a new carrier will assume all of the operations currently provided by PCC further Board approval is required for UP or the new carrier to abandon or discontinue any service on the Rail Lines and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, the proposed discontinuance does not require an historic report under 49 C.F.R. 1105.8(b). As such, this transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this discontinuance is of limited scope. Accordingly, PCC respectfully urges the Board to grant the discontinuance.

Respectfully submitted,



Karl Morell
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Washington, D.C. 20001
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Attorney for:
Palouse River & Coulee City
Railroad, L.L.C.

Dated: December 20, 2018

EXHIBIT B

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-570 (Sub-No. 4X)

PALOUSE RIVER & COULEE CITY RAILROAD, L.L.C.

--DISCONTINUANCE EXEMPTION--

IN WALLA WALLA COUNTY, WASHINGTON AND UMATILLA COUNTY, OREGON

On December 20, 2018, Palouse River & Coulee City Railroad, L.L.C. (PCC) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for PCC to discontinue its operations over the two rail lines leased from Union Pacific Railroad Company (UP) that are located between: (1) milepost 3.76, at Zangar Jct., Washington, and milepost 33.0, at Walla Walla, Washington; and (2) milepost 46.80, at Walla Walla, Washington, and milepost 20.48, at Weston, Oregon (the "Rail Lines"). The Rail Lines traverses U.S. Postal Service Zip Codes 99363, 99362, and 97886. The stations on the lines are Zanger Junction, Touchet, Lowden, Whitman, Walla Walla, Spofford, Milton-Freewater and Weston. The lines do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by March __, 2019).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for

exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,800. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB-570 (Sub-No.4X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Karl Morell, 440 1st Street, N.W., Suite 440, Washington, DC 20001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance at (202) 245-0238 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0291

Decided: _____ 2018.

By the Board, _____, Director, Office of Proceedings,

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-570 (Sub-No. 4X) was mailed via first class mail on December 20, 2018, to the following parties:

State Public Service Commission Washington Utilities & Transportation Commission P.O. Box 47250 Olympia, WA 98504 Oregon Department of Transportation 355 Capital Street, NE Salem, OR 97301-3871 Military Traffic Management Command MTMCTEA ATTN: SDTE-SA (Railroads of National Defense 1 Soldier Way, Building 1900W Scott AFB, IL 62225-5006 National Park Service Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service National Park Service 12795 W. Alameda Parkway Denver, CO 80225-0287	U.S. Department of Agriculture U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14 th Street S.W. Washington, DC 20250 Local Customers Americold 1115 W Rose Street Walla Walla, WA 99362 Brown & Sons 232 N, Evans, P.O. Box 249 Milton Freewater, OR 97862 Columbia Walla Walla Railroad 425 SE 3 rd Avenue, Suite 206 Portland, OR 97214 Cliffstar Corporation 1164 Dell Avenue Walla Walla, WA 99362 Ferrell Gas 204 Avery Walla Walla, WA 99362 Garrett Packinggrowers 11 NW Fourth Ave. Milton Freewater, OR 97862
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	Mountain Oil 1205 N. 11th Street Walla Walla, WA 99362 Northwest Grain Growers P.O. Box 310 Walla Walla, WA 99362 Seneca Foods P.O. Box 100 Dayton, WA 99328 Smith Frozen Foods P.O. Box 68 Weston, OR 97886 Stubblefield Co 116 N 11th Ave. Walla Walla, WA 99362 Victory Energy 10701 E. 126th Street North Collinsville, OK 74021 Koncrete Industries 502 N 13th Ave. Walla Walla, WA 99362

Dated: December 20, 2018

Karl Morell

Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in Docket No. AB-570 (Sub-No.4X) was published on December 19, 2018, in Walla Walla Union Bulletin, a newspaper of general circulation in Walla Walla County, Washington and Umatilla County, Oregon, as required by 49 C.F.R. § 1105.12.

Dated: December 20, 2018

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell

