

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

BRADON J. SMITH
(312) 252-1516
bsmith@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

August 16, 2018

246232

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 16, 2018
Part of
Public Record

Re: **Docket No. FD 36211**
Clackamas Valley Railway, LLC – Lease and Operation Exemption
with Interchange Commitment – Union Pacific Railroad Company

Docket No. FD 36212
Progressive Rail Incorporated – Continuance in
Control Exemption – Clackamas Valley Railway, LLC

Dear Ms. Brown:

Attached for filing in the above-captioned proceedings are the **Verified Notice of Exemption of Clackamas Valley Railway Company Pursuant to 49 C.F.R. § 1150.31(a)** and the **Verified Notice of Exemption of Progressive Rail Inc. Pursuant to 49 C.F.R. § 1180.2(d)(2)**, both dated August 16, 2018. The sum of \$3,900, representing the appropriate fees for these filings, was delivered via Federal Express on August 1, 2018.

If you have any questions regarding these filings, please feel free to contact me.
Thank you for your assistance on these matters.

Respectfully submitted,



Bradon J. Smith
Attorney for Clackamas Valley Railway, LLC
and Progressive Rail Incorporated

BJS/bs

Attachments

FILED
August 16, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 16, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36211

CLACKAMAS VALLEY RAILWAY, LLC
— LEASE AND OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT —
UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
CLACKAMAS VALLEY RAILWAY, LLC
PURSUANT TO 49 C.F.R. § 1150.31(a)**

Audrey L. Brodrick
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR CLACKAMAS VALLEY
RAILWAY, LLC**

Dated: August 16, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36211

CLACKAMAS VALLEY RAILWAY, LLC
— LEASE AND OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT —
UNION PACIFIC RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
CLACKAMAS VALLEY RAILWAY, LLC
PURSUANT TO 49 C.F.R. § 1150.31(a)**

Pursuant to 49 C.F.R. § 1150.31, et seq., Clackamas Valley Railway, LLC (“CVR”), a non-carrier, hereby files this Verified Notice of Exemption to lease and operate approximately 1.6 miles of track owned by Union Pacific Railroad Company (“UP”) in Clackamas, Oregon (the “Clackamas Industrial Lead” or the “Line”). The Clackamas Industrial Lead has no mileposts, and is currently operated by UP as excepted track under 49 U.S.C. § 10906. CVR will operate the Line in common carriage and as its entire line of railroad, and thus will become a rail carrier upon consummation of the proposed transaction.¹ Based on projected annual revenues, CVR expects to be a Class III rail carrier after consummation of the proposed transaction.

This Notice is related to Docket No. FD 36212, in which Progressive Rail Incorporated (“PGR”), CVR’s corporate parent, is concurrently filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of CVR once CVR commences

¹ Effingham R. Co. – Pet. for Declaratory Order, 2 S.T.B. 606, 609-610 (1997), reconsid. denied, Docket No. 41986 (STB served Sept. 12, 1997); see, e.g., Central Illinois Railroad Company – Lease and Operation Exemption – Lines of the Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL, Docket No. FD 33960 (STB served Sep. 12, 2002) at 3.

operations and becomes a carrier. PGR is a Class III rail carrier and controls six other Class III rail carriers operating in the Upper Midwest and in North Carolina.²

In accordance with the requirements of 49 C.F.R. § 1150.33, CVR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant herein is as follows:

Clackamas Valley Railway, LLC
21778 Highview Avenue
Lakeville, Minnesota 55044
(612) 791-3255

Applicant's Representative: 49 C.F.R. § 1150.33(b)

CVR's representative to whom correspondence regarding this transaction should be sent is:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

UP and CVR have negotiated and will shortly execute a Lease Agreement, pursuant to which CVR will lease the Clackamas Industrial Lead and related ancillary trackage and assets from UP.

² An additional notice of exemption is pending regarding a proposed transaction in California. Progressive Rail Incorporated – Continuance in Control Exemption – St. Paul & Pacific Railroad Company, Docket No. FD 36208 (STB filed July 16, 2018).

Operator of the Property: 49 C.F.R. § 1150.33(d)

CVR will operate and provide all rail common carrier service to shippers on the the Clackamas Industrial Lead.

Background and Summary of the Transaction: 49 C.F.R. § 1150.33(e)

CVR is a newly-formed, non-carrier subsidiary of PGR. Pursuant to the Lease Agreement to be executed by CVR and UP, CVR will lease and operate UP's Clackamas Industrial Lead, which extends east from a connection with UP's Portland-Eugene, Oregon main line immediately south of UP milepost 760.0 in Clackamas, Oregon, running parallel to and in-between Carver Rd. (to the north) and SE Jennifer St. (to the south) before continuing southeast to cross SE Jennifer St. and turning due south to Carpenter Dr., where it terminates. The Clackamas Industrial Lead is operated by UP as excepted track under 49 U.S.C. § 10906, but will be CVR's entire, regulated line of railroad upon consummation of the proposed lease transaction. See note 1, supra. The lease transaction also includes various short spurs and ancillary trackage connected to the Clackamas Industrial Lead that will remain excepted track pursuant to 49 U.S.C. § 10906.

CVR intends to consummate the proposed lease transaction on or shortly after August 31, 2018.

The name and address of the owner and current operator of the Clackamas Industrial Lead is as follows:

Union Pacific Railroad Company
1400 Douglas Street
Mailstop 1350
Omaha, Nebraska 68179

Map: 49 C.F.R. § 1150.33(f)

A map showing the Clackamas Industrial Lead is attached as Exhibit A to this Notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

Certification of compliance with the provisions of 49 C.F.R. § 1150.33(g) is included with the verification to this Notice.

Interchange Commitments: 49 C.F.R. § 1150.34(h)

(i) The Lease Agreement for the Clackamas Industrial Lead includes an interchange commitment whereby CVR cannot enter into any other agreement for the movement of CVR traffic without the prior consent of UP.

(ii) The complete, confidential version of the Lease Agreement to be entered into by UP and CVR is separately filed under seal herewith as Exhibit B-1. No additional motion is required pursuant to 49 C.F.R. § 1150.33(h)(1).

(iii) A list of shippers located on the Clackamas Industrial Lead that have made use of rail service over the past two years is attached hereto as Exhibit B-2.

(iv) The confidential aggregate number of carloads originated or terminated on the Clackamas Industrial Lead by the above-listed shippers is being filed separately under seal herewith as Exhibit B-3.

(v) CVR certifies that it has provided notice of the proposed transaction and interchange commitment to the above-listed shippers, under cover of the letter attached hereto as Exhibit B-4.

(vi) The Clackamas Industrial Lead connects with UP's Portland-Eugene main line, over which BNSF Railway Company holds overhead trackage rights. See Burlington

Northern Railroad Company – Trackage Rights Exemption – Southern Pacific Transportation Company, Docket No. FD 32526 (ICC served June 27, 1994). Those rights do not permit interchange at Clackamas.

(vii) CVR has been informed by UP that UP would not undertake the Lease Agreement absent the interchange commitment, and thus its value is inestimable.

(viii) CVR has filed this Notice of Exemption with the existence of an interchange commitment designated in the caption.

Advance Notice: 49 C.F.R. § 1150.32(e)

The annual revenues of CVR are not expected to exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See the certification included with the verification to this Notice.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), CVR's proposed lease and operation of the Clackamas Industrial Lead is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), CVR's lease of the Clackamas Industrial Lead also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to 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.

Caption Summary: 49 C.F.R. § 1150.32(a)

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

Respectfully submitted,

By: 

Audrey L. Brodrick

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

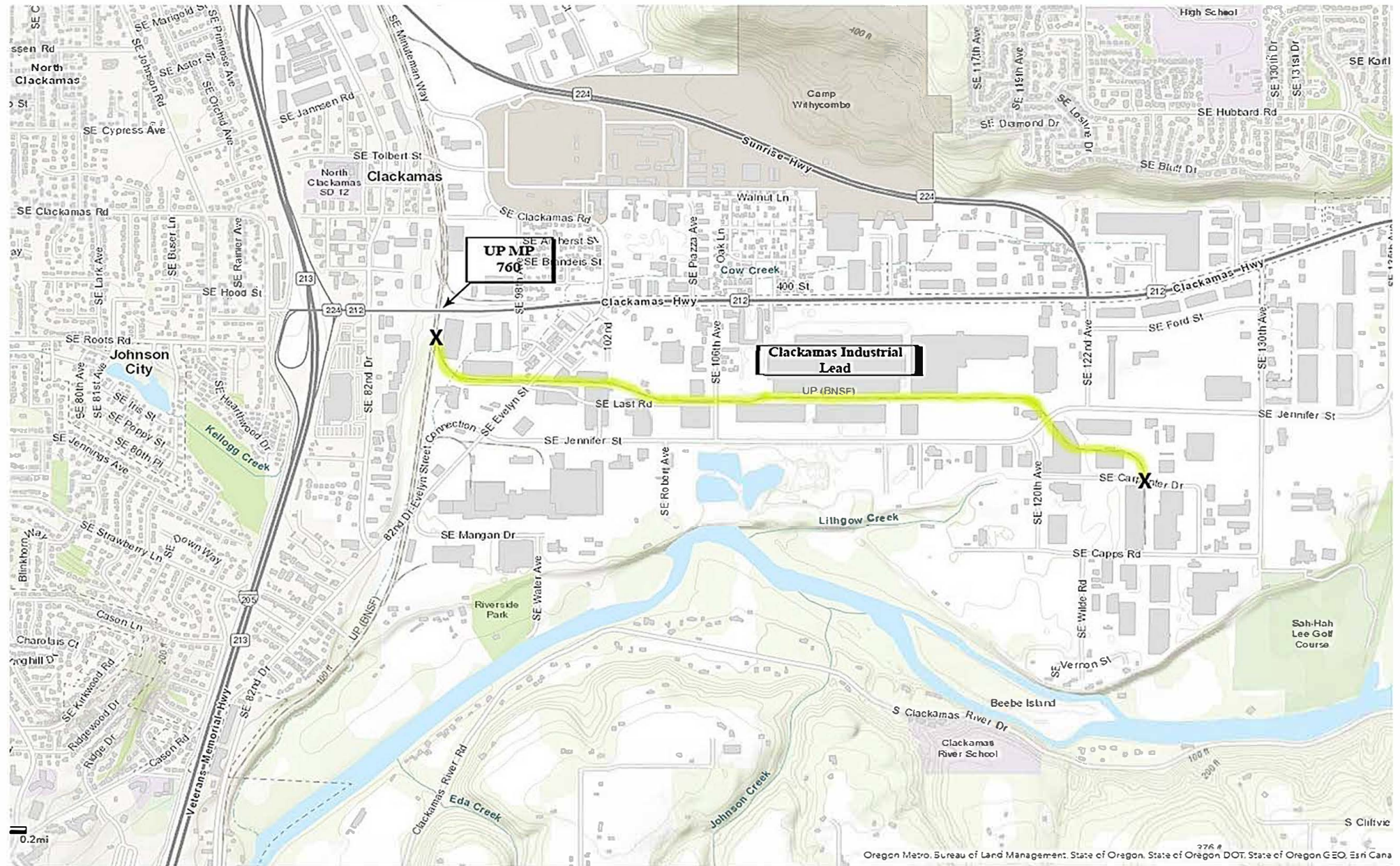
Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR CLACKAMAS VALLEY
RAILWAY, LLC**

Dated: August 16, 2018

**MAP OF LINE
REQUIRED BY
49 C.F.R. § 1150.33(f)**



UP-CVR LEASE AGREEMENT
REQUIRED BY
49 C.F.R. § 1150.33(h)(1)(ii)

FILED UNDER SEAL

PURSUANT TO

49 C.F.R. §§ 1104.14(a) AND 1150.33(h)(1)

**LIST OF SHIPPERS
REQUIRED BY
49 C.F.R. § 1150.33(h)(1)(iii)**

ARMSTRONG MOTORS
BRIDGEWELL AGRIBUSINESS LLC
CAROLINA INTERNATIONAL SALES
CERTAINTEED CORPORATION
CERTAINTEED MANAGEMENT SERVICES
DUSTBUSTERS ENTERPRISES, INC.
GREEN DIAMOND SAND PRODUCTS
HOUSE RAEFORD FARMS
INTERNATIONAL BUILDING MATERIALS, LLC
INTERNATIONAL WOOD PRODUCTS
J&D REFRIGERATED SERVICES
J&D REFRIGERATED SERVICES
LOUISIANA PACIFIC CORPORATION
LPI, INC.
PACIFIC FOOD DISTRIBUTORS
PACIFIC SEAFOOD GROUP
RADCHEM PRODUCTS
SAFEWAY
THAMES RIVER CHEMICAL
THERMO FLUIDS (NORTHWEST) INC.
THERMO FLUIDS INC.
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.
WILBUS-ELLIS COMPANY
WYMORE TRANSFER CO.

**AGGREGATE NUMBER OF CARLOADS THAT
ORIGINATED OR TERMINATED ON THE LINE
REQUIRED BY
49 C.F.R. § 1150.33(h)(1)(iv)**

FILED UNDER SEAL

PURSUANT TO

49 C.F.R. §§ 1104.14(a) AND 1150.33(h)(1)

**NOTIFICATION TO SHIPPERS
REQUIRED BY
49 C.F.R. § 1150.33(h)(1)(v)**

August 16, 2018

Bridgewell Agribusiness LLC
c/o SW&W Registered Agents, Inc.
1211 SW Fifth Ave. Suite 1900
Portland, OR 97024

Re: **Docket No. FD 36211**
Clackamas Valley Railway, LLC – Lease and Operation
Exemption Including Interchange Commitment – Union Pacific Railroad
Company

Docket No. FD 36212
Progressive Rail Incorporated – Continuance in
Control Exemption – Clackamas Valley Railway, LLC

Dear Sir/Madam:

Clackamas Valley Railway, LLC (“CVR”) has filed a Notice of Exemption at the Surface Transportation Board (“STB”) to lease and operate a line of railroad formerly operated by Union Pacific Railroad Company (“UP”). Pursuant to the lease, CVR will commence common carrier operations 1.6 miles of track owned by UP in Clackamas, Oregon, commonly known as the Clackamas Industrial Lead. The Lease contains an interchange commitment. Effective September 15, 2018 or as soon thereafter as possible, CVR will assume operation of the Line from UP and will be responsible for providing rail service to your facility.

We are providing you with this notice pursuant to the requirements of the STB, and you are not required to respond or to participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Respectfully submitted,

Bradon J. Smith
Attorney for Clackamas Valley Railway, LLC

BJS:dg

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 32611

CLACKAMAS VALLEY RAILWAY, LLC
— LEASE AND OPERATION EXEMPTION WITH INTERCHANGE COMMITMENT —
UNION PACIFIC RAILROAD COMPANY

Clackamas Valley Railway, LLC (“CVR”), a non-carrier, has filed a notice of exemption to lease from Union Pacific Railroad Company and operate 1.6 miles of track in Clackamas, Oregon extending east from a connection with UP’s Portland-Eugene, Oregon main line immediately south of UP milepost 760.0, running parallel to and in-between Carver Rd. (to the north) and SE Jennifer St. (to the south), continuing southeast across SE Jennifer St. and turning due south to termination at Carpenter Dr. (“the Clackamas Industrial Lead”). UP currently operates the Clackamas Industrial Lead as excepted track under 49 U.S.C. § 10906.

CVR intends to consummate the proposed lease transaction on or shortly after August 31, 2018.

Comments must be filed with the Board and served on:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This proceeding is related to Docket No. FD 36212 in which Progressive Rail Incorporated has concurrently filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of CVR once CVR leases the Clackamas Industrial Lead and becomes a carrier.

EXHIBIT C

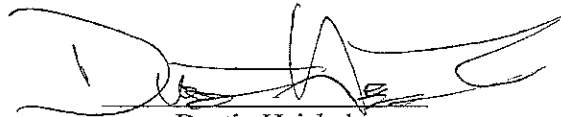
The notice is filed under 49 C.F.R. § 1150.31(a). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION AND VERIFICATION

Dustin Heichel hereby certifies and verifies under penalty of perjury as follows:

1. I am the Chief Operating Officer for the Clackamas Valley Railway, LLC ("CVR").
2. The annual rail revenues of CVR are not expected to exceed \$5 million, and will not result in CVR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (11).
3. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: August 16 2018


Dustin Heichel