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September 5, 2018

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VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
September 5, 2018
Part of
Public Record

Re: Docket No. FD 36199
Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc.--
Intra-Corporate Family Transaction Exemption

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

This supplemental filing is offered by the Oregon International Port of Coos Bay (the "Port") and Coos Bay Rail Line, Inc. ("Coos Rail"),¹ affiliated entities, in connection with the above-captioned proceeding. For the reasons set forth herein, P-CR urge the Board to lift its two-months-long housekeeping stay and issue the exemption notice that is the subject of this proceeding, and promptly to provide guidance regarding any additional steps that the Board believes must be undertaken to authorize Coos Rail to commence common carrier operations by no later than November 1, 2018. Because the extended housekeeping stay obstructs Coos Rail's now-definitive plans to initiate service, expedited action is warranted to permit Coos Rail to move forward with its operating plans for the railroad line in question.

As background, P-CR filed a verified notice of exemption (the "Notice") in the above docket on May 31, 2018, pursuant to which the Port sought authority to convey to an newly-created affiliate – Coos Rail – common carrier operating authority over interconnected railroad lines (the "Line") extending generally from Eugene, Oregon, westward and southward to Coquille, Oregon, via Coos Bay, Oregon, a total of roughly 133 route miles. Waiting until nearly the last possible moment, the incumbent operator of the Port's Line – Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link ("CBR") – filed on June 19, 2018, a petition to reject the Notice and to stay of the Notice's effective date of June 30, 2018, pursuant to the

¹ The Port and Coos Rail will be referred to collectively herein as "P-CR."

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Board's injunctive standards.² P-CR replied on June 26, 2018. The Board's Director of the Office of Proceedings (the "Director") issued a housekeeping stay on June 29, 2018, postponing indefinitely the Notice's effectiveness. In so doing the Director indicated that the Board needed more time to consider the arguments presented. Now, more than two months later, the Board has not addressed the merits of CBR's petition to reject or the elements of CBR's stay request.³

In the Notice, P-CR did not supply a date certain by which Coos Rail would commence railroad operations, remarking that the Port hoped for an orderly and cooperative transition from CBR to Coos Rail. It may be that a perceived lack of urgency by P-CR explains the Board's inaction. (A survey of comparable Board proceedings indicates that two months is a long duration for a housekeeping stay in a case such as this one.) But circumstances have changed, warranting this supplemental filing and P-CR's request for expedited action.

Coos Rail is undertaking steps to enable it to commence common carrier operations on the Line as of November 1, 2018, and is committed to commencing service on that date whether or not CBR remains as a common carrier on the Line at that time. Additionally, the Port has been engaged in discussions with CBR concerning future operations on the Line, including the planned November 1 transition. Although unresolved issues remain concerning the Management Agreement under which CBR had obtained the contract right to operate over the Line, P-CR have made clear that Coos Rail will be operating on the Line by the November 1 target date. CBR has expressed a willingness to cooperate with – or at least not to object to – the proposed transition. In fact, CBR has agreed to withdraw its objection to the Notice, provided that the Port issues a termination letter, but the timing of those actions has not been agreed upon.

P-CR remains interested in an orderly and uncomplicated transition in rail service on the Line by November, and the Port anticipates that CBR may cooperate by way of a change of operators transaction (and related exemption notice filing to the Board), whereby Coos Rail formally assumes CBR's common carrier rights and obligations, and CBR is thereby relieved of any common carrier status on the Line going forward. Regardless, Coos Rail must secure authorization to commence common carrier operations over the Line by no later than November 1, 2018 and it urges the Board to take appropriate action now to facilitate the Port's objectives.

P-CR understands that currently-pending authorization to undertake the subject intra-corporate family transaction is sufficient to permit Coos Rail to assume common carrier operations on behalf of its corporate affiliate, the Port. The Port, after all, is a rail common carrier by virtue of its federal-authorized ownership of the Line, and the Port could commence

² Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977) ("Holiday Tours") (citing Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958)).

³ The Board did not rule that CBR had satisfied the Holiday Tours standard. Instead the Director merely stated that the Board needed more time to address the issues. Deferred action on the Notice action gives CBR something of what it wanted – delay – even though its case for relief under the Board's injunctive authority at 49 U.S.C. § 1321 is meritless for reasons set forth in the P-CR Reply filing of June 26, 2018.

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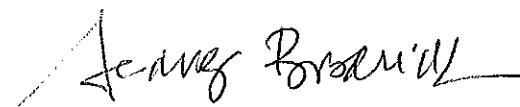
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operations in its own name as a matter of federal law without the need for any additional Board authorization. But if the Board nevertheless believes that additional regulatory authorization is necessary to permit Coos Rail to commence operations on behalf of its corporate affiliate, aside from issuance of the awaited notice of exemption in this proceeding,⁴ then P-CR respectfully requests that the Board promptly provide guidance as to what additional steps are necessary.

As the Board will remember, the Port, with considerable assistance from the State of Oregon, stepped forward roughly ten years ago to acquire portions of the Line at a time when it appeared that it might be lost forever to interstate commerce.⁵ Now, the Port seeks to undertake a transition in common carrier rail service in keeping with its prerogative as Line owner – a step that will protect against further deterioration of the Port's rail assets and foster local economic development. While the Port and CBR have contractual issues to work out, the Port is committed to the transition regardless of how the Management Agreement with CBR is resolved at arbitration.

Delayed Board action and uncertainty deprives the Port of its prerogative, and frustrates ongoing efforts to see Coos Rail commence operations over, and assume responsibility to maintain, the Line as of November 1, 2018. For these reasons, P-CR respectfully requests the Board to act expeditiously to lift the existing housekeeping stay, allow the subject exemption to become effective, and to provide guidance – if any is warranted – concerning the subject railroad service transition as described herein.

Respectfully submitted,



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cc: All parties of record

⁴ Again, Coos Rail anticipates that it may soon file a separate class exemption notice to assume CBR's common carrier rights and obligations, with CBR's non-objection, eliminating the need for CBR separately to file a costly discontinuance of service petition for exemption.

⁵ Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc., Docket No. FD 35160 (STB served Oct. 31, 2008; modified Mar. 12, 2009).