



2601 SR 509 North Frontage Road  
Tacoma, Washington 98421

MOUNTAIN DIVISION: Operated for the City of Tacoma

August 5, 2014

236449

Rachel D. Campbell, Director Office of Proceedings  
Surface Transportation Board  
395 E. Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
August 15, 2014  
Part of  
Public Record

RE: Acquisition Exemption Finance Docket No.35812  
Central Puget Sound Regional Transit Authority  
– Acquisition Exemption – Certain Assets of City of Tacoma  
in Pierce County, Washington

Dear Director Campbell:

Please file the attach certificate of service from Tacoma Rail, which certifies Tacoma Rail has provided service of the Board's August 1, 2014, decision with an effective/service date of August 4, 2014 to all shippers served by Tacoma Rail during the past two years..

Thank you for your assistance, and if you have any questions, please call or email me.

Sincerely,

Dale W. King  
Superintendent  
(253) 502-8894  
dale.king@cityoftacoma.org

SENT VIA REGULAR FIRST CLASS MAIL

**Before the  
Surface Transportation Board**

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**Finance Docket No. 35812**

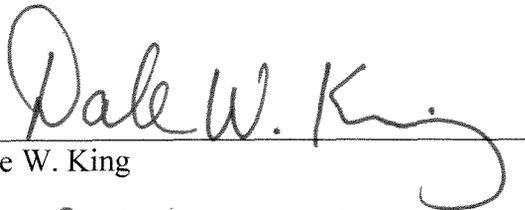
**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF CITY OF TACOMA  
IN PIERCE COUNTY, WASHINGTON**

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**Certificate of Service From Tacoma Rail**

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Pursuant to the decision of the Surface Transportation Board (Service Date August 4, 2014) in the above-referenced proceeding directing Tacoma Rail to serve a copy of the Board's decision (attached as EXHIBIT A) on all shippers for which it has provided service in the past two years ("SHIPPERS") within five days of the service date of the decision, I hereby certify under penalty of perjury that on August 5, 2014, I caused a copy of that decision to be served by first class mail, properly addressed and with postage prepaid, upon the SHIPPERS listed in the attached EXHIBIT B. I further certify that I am qualified and authorized to file the foregoing document



Dale W. King

Title: SUPERINTENDENT

Dated: August 5, 2014

EXHIBIT A  
STB DECISION EFFECTIVE AUGUST 4, 2014

Attached.

43835  
DO

SERVICE DATE – AUGUST 4, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35812

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY—ACQUISITION  
EXEMPTION—CERTAIN ASSETS OF CITY OF TACOMA IN PIERCE COUNTY, WASH.

Decided: August 1, 2014

On April 15, 2014, the Central Puget Sound Regional Transit Authority (Sound Transit), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from the City of Tacoma the physical assets and right-of-way of an approximately one-mile segment of rail line, commonly known as the Mountain Division, located approximately between milepost 1.0, at the BNSF Railway Company mainline near the Port of Tacoma, and milepost 1.99, at East D Street in the City of Tacoma, Pierce County, Wash. (the Tacoma Dome Segment).<sup>1</sup> Simultaneously, Sound Transit filed a motion to dismiss the notice, asserting that the transaction is not subject to the Board's jurisdiction because Sound Transit will not become a common carrier as a result of the transaction.

In this decision, the Board will direct Sound Transit and Tacoma Rail to submit additional information related to the proposed transaction in order to reach a determination on Sound Transit's motion to dismiss the notice of exemption. The Board will also direct that Tacoma Rail notify affected shippers of the proposed transaction and verify to the Board that it has done so. Finally, the Board will allow those affected shippers the opportunity to file comments related to the proposed transaction.

BACKGROUND

Sound Transit is a Washington regional transit authority that operates the Sounder commuter rail service that serves Pierce, King, and Snohomish Counties. Its commuter service currently operates on the Tacoma Dome Segment pursuant to an operating agreement with the City of Tacoma (City). The City, through its department of Public Utilities, operates Tacoma Rail, a Class III rail carrier,<sup>2</sup> over the Tacoma Dome Segment.

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on May 1, 2014 (79 Fed. Reg. 24,811).

<sup>2</sup> See Belt Line Div. of Tacoma Pub. Utils.—Operation Exemption—in Pierce, Thurston & Lewis Cnty., Wash., FD 33666 (STB served Nov. 6, 1998).

Sound Transit intends to acquire the physical assets and associated right-of-way from the City in order to continue its commuter operations over the Tacoma Dome Segment and to initiate capital improvements associated with its commuter rail service. Sound Transit states that Tacoma Rail would retain a permanent, exclusive freight rail easement and would continue to provide all common carrier rail service to existing and new customers on the line pursuant to a Purchase and Sale Agreement and Joint Use Agreement for the Tacoma Dome Segment. Sound Transit states that it would not become a rail carrier subject to the regulatory authority of the Board because it would not acquire any rights or obligations that implicate existing freight common carrier operations on the Tacoma Dome Segment. Sound Transit therefore seeks a determination from the Board that its acquisition transaction is not subject to the Board's jurisdiction under 49 U.S.C. § 10901.

In support, Sound Transit submitted unexecuted drafts of the Purchase and Sale Agreement and the Joint Use Agreement. Pursuant to those agreements, Tacoma Rail would retain an exclusive, permanent right to operate service on the segment to all existing and new customers after Sound Transit acquires the Tacoma Dome Segment. In particular, under the Joint Use Agreement: (1) Sound Transit and Amtrak trains would have priority over freight operations; (2) Sound Transit or its contractor would dispatch the Tacoma Dome Segment, preparing and implementing dispatching protocols that would "allow the City to move its freight [t]rains through the Tacoma Dome Segment without undue delay when it is safe and does not interfere with passenger [t]rains"; (3) Sound Transit would be responsible for maintenance of way of the Tacoma Dome Segment; (4) Sound Transit's proposed capacity improvements would be designed to provide freight access to existing Tacoma Rail freight customers equivalent to currently existing freight access; and (5) Tacoma Rail may transfer or assign the freight easement, subject to Sound Transit's review and reasonable approval.

## DISCUSSION AND CONCLUSIONS

The question presented by Sound Transit's motion is whether the Board's regulatory approval is required for Sound Transit to acquire the Tacoma Dome Segment. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. § 10901, even if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 135 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). However, the Board will not exercise its jurisdiction where no common carrier rights or obligations are transferred with the line. See Maine, Dep't of Transp.—Acquis. & Operation Exemption—Me. Cent. R.R., 8 I.C.C. 2d 835, 836-37 (1991).

In prior decisions, the agency has addressed the issue of whether rights acquired by a noncarrier were so extensive that the noncarrier had acquired control of the rail line, and therefore the obligations and rights of a common carrier. See, e.g., Orange Cnty. Transp. Auth.—Acquis. Exemption—Atchison, Topeka & Santa Fe Ry., 10 I.C.C. 2d 78 (1994); S. Pac. Transp. Co.—Aban. Exemption—L.A. Cnty., Cal., 8 I.C.C. 2d 495 (1992), reconsidered and clarified, 9 I.C.C. 2d 385 (1993). Here, however, the Board does not have enough information about Tacoma Rail's current and future freight operations to make a determination as to whether

Tacoma Rail will maintain control of the Tacoma Dome Segment and continue to be able to fulfill its common carrier obligation.

Sound Transit has offered general statements regarding the acquisition's impact on freight rail service but provides no specific evidence regarding Tacoma Rail's existing and future freight operations and how the needs of the shippers it serves would be met during normal operations, and during the planned capital improvements. In order to assess whether Tacoma Rail would have the ability to adequately meet the needs of its shippers, additional information pertaining to Tacoma Rail's freight operations is needed, including: (1) the number of trains that Tacoma Rail currently operates and is projected to operate over the Tacoma Dome Segment; and (2) information regarding any exclusive operating window for freight operations. Further, there is no evidence that affected shippers have been advised of the transaction and have had the opportunity to express their views on it. This information is needed before the Board can reach a determination on the motion to dismiss.

Accordingly, the Board will direct Sound Transit and Tacoma Rail to submit the information described above by August 25, 2014. The Board will also direct Tacoma Rail to serve a copy of this decision on all shippers for which it has provided service in the past two years, and to certify to the Board that it has done so within five days of the service date of the decision. The shippers may submit comments to the Board by September 3, 2014.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Sound Transit and Tacoma Rail are directed to provide the information as described above by August 25, 2014.
2. Tacoma Rail is directed to serve a copy of this decision on all shippers for which it has provided service in the past two years, and to certify that it has done so within five days of the service date of this decision.
3. The shippers may submit comments by September 3, 2014.
4. This decision will be effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT B  
SHIPPERS PROVIDED SERVICE IN THE PAST TWO YEARS

**Tacoma Rail Mountain Division (TRMW) Freight Customers:**

**Customer:** Baker Commodities  
Contact: Julie Liedahl  
Contact Phone: (323) 268-2801 x 3206  
Contact E-mail: jliedahl@bakercommodities.com  
Facility Address: 18119 50th Ave. East  
Tacoma, WA 98446

**Customer:** Boeing Commercial Airplane  
Contact: Sue Harber  
Contact Phone: (425) 965-4360  
Contact E-mail: ssgreclamation@boeing.com  
Facility Address: 6002 184th St. East  
Puyallup, WA 98373

**Customer:** Farwest Fabrication  
Contact: Bill Crites  
Contact Phone: (253) 847-2800  
Contact E-mail: Bill@farwestfab.com  
Facility Address: 5521 184th Street East  
Puyallup, WA 98375

**Customer:** James Hardie Building Products  
Contact: Tommy Green  
Contact Phone: (253) 875-2346  
Contact E-mail: tommy.green@jameshardie.com  
Facility Address: 18200 50th Ave. East  
Puyallup, WA 98446

**Customer:** Harris Rebar  
Contact: Todd Weishaupt  
Contact Phone: (253) 847-5001  
Contact E-mail: tweishaupt@harrisrebar.com  
Facility Address: 4421 192nd St. East  
Tacoma, WA 98446

**Customer:** Hunter Panels Inc.  
Contact: Mark Johnson  
Contact Phone: (253) 271-3222  
Contact E-mail: mark.johnson@syntec.carlisle.com

Facility Address: 19727 57th Ave. East  
Puyallup, WA 98375

**Customer:** **Medallion Foods**  
Contact: Marcello Mancini  
Contact Phone: (253) 846-2600 x 103  
Contact E-mail: marcello@medallionpasta.com  
Facility Address: 18420 50th Ave East  
Tacoma, WA 98446

**Customer:** **Pacific Steel & Recycling**  
Contact: Jason Heath  
Contact Phone: (253) 846-2640  
Contact E-mail: jason\_heath@pacific-recycling.com  
Facility Address: 18727 38th Ave. East  
Tacoma, WA 98446

**Customer:** **Parr Lumber Company**  
Contact: Mike Kruse  
Contact Phone: (253) 875-8005  
Contact E-mail: michaelk@parr.com  
Facility Address: 5301 184th St. East  
Tacoma, WA 98446

**Customer:** **Pendleton Flour Mills**  
Contact: Chase Faler  
Contact Phone: (208) 785-2800 x 12  
Contact E-mail: cfaler@graincraft.com  
Facility Address: 18420 50th St. East  
Tacoma, WA 98446

**Customer:** **Plastic Express**  
Contact: Erik Gabrielson  
Contact Phone: (253) 209-7448  
Contact E-mail: erik.gabrielson@plasticexpress.com  
Facility Address: 4200 Industry Dr. East Suite-A  
Fife, WA 98424

**Customer:** **PN Best**  
Contact: Paul Best  
Contact Phone: (425) 882-1000  
Contact E-mail: PNBESTCO@aol.com  
Facility Address: 5501 184th St. East  
Puyallup, WA 98375

**Customer:** Sygnet Rail Technologies  
Contact: Dave Swanson  
Contact Phone: (360) 264-8211  
Contact E-mail: dswanson@sygnetrail.com  
Facility Address: 5915 Waldrick Road S.E.  
Tenino, WA 98589

**Customer:** T. E. Walrath Trucking  
Contact: Tom Walrath Jr.  
Contact Phone: (253) 531-7499 x105  
Contact E-mail: tom@tewalrath.com  
Facility Address: 11405 24th Ave. East  
Tacoma, WA 98445

**Customer:** Tacoma Steel  
Contact: Dan Gadsden  
Contact Phone: (253) 272-2266  
Contact E-mail: dg@tacomasteel.com  
Facility Address: 701 East 64th St.  
Tacoma, WA 98404

**Tacoma Rail Mountain Division (TRMW) Storage Customers:**

**Customer:** BNSF Railway Company  
Contact: David Longsworth  
Contact Phone: (817) 867-6423  
Contact E-mail: david.longsworth@bnsf.com  
Facility Address: 2650 Lou Menk Drive 1st Floor  
Fort Worth, TX 76131-2830

**Customer:** First Union Rail  
Contact: Cindy Roberts/Jackie Gallo  
Contact Phone: (847) 384-5313  
Contact E-mail: cindy.roberts@wellsfargo.com or jacqueline.gallo@wellsfargo.com  
Facility Address: 6250 River Road, Ste. 5000  
Rosemont, IL 60018

**Customer:** Greenbrier Leasing  
Contact: Melanie Charles  
Contact Phone: (503) 670-3111  
Contact E-mail: melanie.charles@gbrx.com  
Facility Address: One Center Pointe Dr., Ste. 400  
Lake Oswego, OR 97035

**Customer:** **TEXPAR Energy LLC**  
Contact: Margie Desmond  
Contact Phone: (608) 779-6535  
Contact E-mail: margie.desmond@texpar.com  
Facility Address: 920 10th Avenue North  
Onalaska, WI 54650

**Customer:** **Westran Services Limited**  
Contact: Mike Peters/Hugh Little  
Contact Phone: (604) 520-6366 (Mike)  
Contact E-mail: mike@westran.com/hugh@westran.com  
Facility Address: P.O. Box 412  
Custer, WA 98240