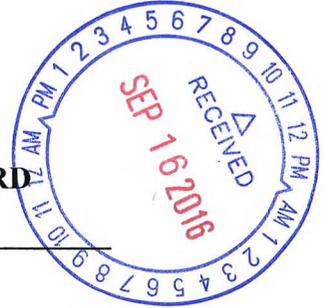


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September 16, 2016  
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Public Record



**BEFORE THE SURFACE TRANSPORTATION BOARD**

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DOCKET NO. 33888

TRI-CITY RAILROAD COMPANY LLC – MOTION TO AMEND  
NOTICE OF EXEMPTION – CHANGES IN CIRCUMSTANCE AND  
OPERATOR

---

**VERIFIED NOTICE TO AMEND EXEMPTION**  
**49 C.F.R. § 1150.31 *et seq.***

---

**PAINE HAMBLEN LLP**

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Company LLC

FILED  
September 16, 2016  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
Septmber 16, 2016  
SURFACE  
TRANSPORTATION BOARD

 **ORIGINAL**

The Tri-City Railroad Company LLC (“TCRY”), submits this Motion to the Surface Transportation Board (“Board”) to amend its Notice of Exemption, *Tri-City Railroad Company, L.L.C. – Lease and Operation Exemption – Rail Line of the Port of Benton in Richland, WA*, FD 33888 (served June 23, 2000). This motion updates the Board as to significant changes in operations upon approximately 17 miles of its leased rail line, known as the Hanford Site Rail System, Southern Connection, extending from milepost 46.6 at the junction with the Union Pacific rail line in Richland, Washington, to milepost 28.3 at the border of the U.S. Department of Energy’s Hanford Site, connecting with the Hanford Site Rail System, Northern Connection (north of the City of Richland).

### **Background**

On June 23, 2000, the Board issued a lease and operation exemption for TCRY under its verified notice of exemption pursuant to 49 C.F.R. § 1150.31. TCRY had entered into a maintenance and operation contract with the Port of Benton (“POB”) which provided for TCRY’s operation on the rail line on behalf of POB. (*Id.*)

In March, 2010, POB brought a complaint in federal court against TCRY for a declaratory judgment in favor of POB for it to exert general control over management and administration of the trackage as well as control over TCRY’s operating rules and regulations. (*See Exhibit 1*)

On December 14, 2011, the federal court held that TCRY’s use of the trackage was non-exclusive. (*See Exhibit 2*) Further, an Operating Plan was approved by the Court consistent with the ruling. (*Id.*) The Operating Plan provides that POB must approve of any changes to the Operating Plan, and that any dispute among the users of the track related to operations will submit their dispute to the POB which will make the final determination. (*See Exhibit 3*)

In August, 2015, a dispute arose over operations upon the track, and POB asserted its control under the Operating Plan to adjudicate the dispute. (See **Exhibit 4**) The POB stated that the track is non-exclusive and that the Union Pacific, Burlington Northern Santa Fe, and TCRY all have the non-exclusive right to use the entire track. This includes serving customers who are connected to track on other rail lines. The POB continues to reserve for itself authority for control over operations upon the right-of-way. Additionally, in the fall of 2015, the POB asserted control over the tariffs and demurrage charged by TCRY. (See **Exhibit 5**) Finally, in 2016, the POB asserted control over capital improvements, including use of non-union labor for reconstruction of trackage. (See **Exhibit 6**)

Consequently, TCRY brings the present motion to amend its notice of exemption to apprise the Board of the significant changes in circumstance since the time TCRY originally filed its notice of exemption. TCRY will continue operating on the trackage as a Class III carrier on a non-exclusive basis.

## **NOTICE OF EXEMPTION**

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

Tri-City Railroad Company LLC  
P.O. Box 1700  
Kennewick, WA 99352  
509-371-8313

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

William C. Schroeder  
Anne K. Schroeder  
Paine Hamblen LLP  
717 W. Sprague Suite 1200  
Spokane WA, 99301  
509-455-6000

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

TCRY continues to operate under a lease with the Port of Benton most recently signed in 2002. (See **Exhibit 7**) As described in the above background, TCRY's operations are also now subject to an Operating Plan ordered by federal court at the behest of the owner of the rail line, POB. TCRY has a non-exclusive use of the trackage.

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

Operation of the trackage rights is now governed by the Operating Plan ordered by federal court at the behest of the owner of the rail line POB. TCRY continues to operate on the line on a non-exclusive basis. Burlington Northern Santa Fe provides direct service to shippers on the line and connecting to the line. Union Pacific serves shippers on the line by connecting through TCRY pursuant to an interchange agreement.

**Summary of the Transaction: 49 C.F.R. § 1150.31**

The United States Department of Energy, successor in interest to the Atomic Energy Commission, transferred ownership and control of the trackage known as the Hanford Site Rail System, Southern Connection, to POB by indenture on October 1, 1998. The Board served approval for the acquisition and operation exemption on October 6, 1998. (FD 33653)

The Board served a lease and operation exemption to TCRY for the rail line of POB on June 23, 2000 (FD 33888). Significant changes in circumstances from June 23, 2000 to the present date have necessitated the instant amendment to apprise the Board of said changes.

**Map: 49 C.F.R. § 1150.33**

*See Exhibit 8.*

**Certificate of Compliance: 49 C.F.R. § 1150.33**

*See Exhibit 9.*

**Interchange Commitments: 49 C.F.R. § 1150.33**

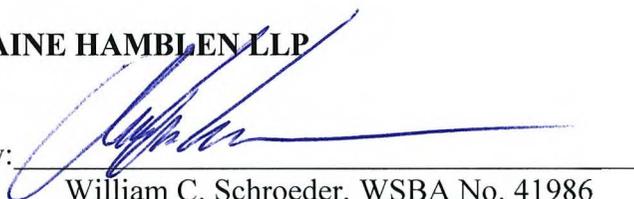
TCRY has entered into no interchange commitments as defined by 49 C.F.R. § 1150.33(h) concerning this trackage.

**Caption Summary 49 C.F.R. § 1150.34**

*See Exhibit 10.*

SIGNED this 15th day of September, 2016.

**PAINE HAMBLEN LLP**

By: 

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(509) 455-6000

**VERIFICATION**

State of Washington            )  
  ) ss:  
County of Benton                )

I, Lisa Anderson, being duly sworn do depose and state that I am the Executive Vice President of the Tri City Railroad Company LLC; that I am authorized to make this verification; that I have read the foregoing as well as the attached exhibits; and that I know the facts asserted therein are true and accurate to the best of my knowledge, information, and belief.

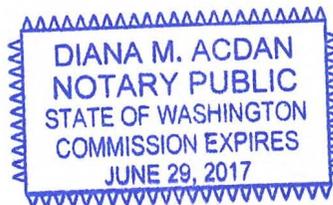
*Lisa Anderson*  
Lisa Anderson

Subscribed and sworn this 9<sup>th</sup> day of September 2016

*Diana M Acdan*  
Notary Public

(SEAL)

My Commission Expires: 6/29/17



**EXHIBIT 1**

1 THOMAS A. COWAN  
2 LUCINDA J. LUKE  
3 Cowan Moore Stam Luke & Petersen  
4 503 Knight Street, Suite A  
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6 Telephone: (509) 943-2676  
7 Facsimile: (509) 946-4257  
8 tcowan@cowanmoore.com  
9 luke@cowanmoore.com  
10 Attorneys for Port of Benton

The Honorable Edward F. Shea

*Draft*

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 BNSF RAILWAY COMPANY,  
11 Plaintiff,  
12 v.  
13 TRI-CITY & OLYMPIA RAILROAD  
14 COMPANY, L.L.C.,  
15 Defendant.  
16  
17 UNION PACIFIC RAILROAD  
18 COMPANY,  
19  
20 Intervenor Plaintiff.

Case No. CV-09-5062-EFS

INTERVENOR PLAINTIFF PORT OF  
BENTON'S [PROPOSED]  
COMPLAINT FOR DECLARATORY  
RELIEF

21 Intervenor, Port of Benton, for its complaint seeking declaratory  
22 judgment against Plaintiff BNSF Railway Company, Defendant Tri-City &  
23 INTERVENOR PLAINTIFF PORT OF BENTON'S  
24 PROPOSED COMPLAINT FOR DECLARATORY  
25 JUDGMENT - 1

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A Professional Limited Liability Company  
Attorneys at Law  
503 Knight Street, Suite A  
Richland, Washington 99352  
(509) 943-2676/Fax (509) 946-4257

1 Olympia Railroad Company, LLC, and Intervenor Union Pacific Railroad  
2 Company, alleges as follows:

3  
4 **I. PARTIES**

5 1. The Port of Benton is a municipal corporation of the State of  
6 Washington and is a special purpose district created pursuant to Revised  
7 Code Of Washington Chapter 53.

8  
9 2. BNSF Railway Company ("BNSF") is a Delaware Corporation  
10 with Texas as its principal place of business. BNSF engages in business  
11 operations in Washington.

12  
13 3. Tri-City & Olympia Railroad Company, LLC ("TCRY") is a  
14 Washington limited liability company with a Washington principal place of  
15 business. TCRY exclusively operates in Washington.

16  
17 4. Union Pacific Railroad Company ("Union Pacific") is a  
18 Delaware Corporation that engages in business operations in Washington.

19 **II. JURISDICTION AND VENUE**

20 5. This Court has subject matter jurisdiction over this action  
21 pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2201  
22

23  
24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 2

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1 (declaratory judgment) to determine whether this dispute should be before  
2 the Surface Transportation Board (“STB”) pursuant to 49 U.S.C. § 10501,  
3  
4 *et. seq.* Alternatively, this Court has subject matter jurisdiction over this  
5 action pursuant to 28 U.S.C. § 1331 (federal question) because the parties  
6 seek to have federal statutory rights and obligations determined.

7  
8 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391  
9 because the Defendants BNSF, TCRY, and Union Pacific are subject to  
10 personal jurisdiction in this judicial district and the events giving rise to this  
11 action also occurred within this judicial district.

### 12 **III. FACTUAL ALLEGATIONS**

#### 13 14 **A. Contracts between the Federal Government and Railroads related** 15 **to Richland Trackage.**

16 7. Pursuant to a November 6, 1947 contract (Contract No. AT-45-  
17 1-Gen-21) among the Northern Pacific Railroad (BNSF’s predecessor),  
18 Oregon-Washington Railroad (Union Pacific’s predecessor), Union Pacific  
19 (collectively referred to herein as “the Railroads”), and the Atomic Energy  
20 Commission, the federal government granted to BNSF and Union Pacific  
21 joint rights to operate over a line of railway and to use the interchange

22  
23  
24 INTERVENOR PLAINTIFF PORT OF BENTON’S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 3

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1 facilities and wye trackage associated with that line of railroad. Pursuant to  
2 the contract, a section of trackage was built beginning at a point of  
3 connection with Union Pacific's mainline from Kennewick and extending to  
4 a point beyond Richland (hereinafter referred to as the "Richland  
5 Trackage"). BNSF's and Union Pacific's rights were originally terminable  
6 upon 6 months notice from the Atomic Energy Commission.  
7

8  
9 8. By a separate agreement dated November 6, 1947, Union  
10 Pacific granted trackage rights to BNSF's predecessor over Union Pacific's  
11 line from Kennewick to the point along Union Pacific's mainline track that  
12 ultimately connects with Richland Trackage that was built pursuant to the  
13 November 6, 1947 contract with the federal government. On September 27,  
14 1948, the Interstate Commerce Commission ("ICC"), under ICC Finance  
15 Docket No. 15925, approved by order the operating authority for both  
16 railroads over the Richland Trackage.  
17  
18

19 9. In a supplemental agreement dated December 7, 1948,  
20 (Supplement Agreement No. 1), the government and the Railroads agreed to  
21 alteration of some of the terms that government the Railroads rights under  
22

23  
24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 4

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1 the November 6, 1947 contract including the termination provisions set forth  
2 in Article XV, which provides two alternative termination options:

3  
4 a. "The Commission may terminate this agreement at any time on  
5 six months' notice in writing being given by the Commission to the  
6 Railroads...."; or

7  
8 b. "If either of [the Railroads] fail to perform any of its obligations  
9 under this agreement, the Commission may terminate this agreement  
10 as to the railroad so defaulting by giving to such railroad six months'  
11 written notice of intention to do so; provided that if during such six-  
12 month period the default railroad corrects said default, then this  
13 agreement shall not terminate because of such default. A default by  
14 either railroad shall not be cause for termination of this agreement by  
15 the Commission as to the other railroad...."

16  
17  
18 10. In a January 24, 1961 contract, the government and the  
19 Railroads acknowledged that the November 6, 1947 contract concerning the  
20 operating rights to the Richland Trackage remained in full effect.

21  
22 11. From 1947 through 1979 the government and the Railroads  
23 entered into several additional agreements and amendments thereto.

24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 5

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1 However, the November 6, 1947 contract, December 7, 1948 supplemental  
2 agreement, and the January 24, 1961 contract (hereinafter referred to  
3 collectively as the "Richland Trackage Contracts") remained effective and  
4 controlling of the parties rights and interests related to Richland Trackage.  
5

6 12. In August, 1998, effective October 1, 1998, the Port of Benton  
7 entered into an Indenture with the United States Department of Energy  
8 ("DOE"), which was the successor to the Atomic Energy Commission. As  
9 part of the Indenture, the Port of Benton acquired the United States' interest  
10 in the Hanford Railroad, Southern Connection. DOE conveyed the Hanford  
11 Railroad ("Hanford Railroad") and other real property to the Port of Benton  
12 by a Quit Claim Deed dated August 28, 1998.  
13  
14

15 13. The Port of Benton acquired the Hanford Railroad to further its  
16 mission of economic development by providing railroad access to businesses  
17 located within the Port's boundaries. The Port of Benton subsequently  
18 leased the Hanford Railroad to TCRY.  
19

20 14. Because of the Port of Benton's ownership and the coextensive  
21 operational rights of both Union Pacific and BNSF, any change to the  
22 operational rights of BNSF or Union Pacific under the Richland Trackage  
23

24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 6

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1 Contracts necessarily impacts ownership of the Hanford Railroad and its  
2 rights and obligations under the Richland Trackage Contracts. The Port of  
3 Benton is, therefore, a necessary party to the pending lawsuit filed by BNSF.  
4

5 **B. Transfer of Government's Interest in the Hanford Railroad to the**  
6 **Port of Benton and TCRY's Operations.**

7 15. TCRY is a common carrier operating under Surface  
8 Transportation Board ("STB") authority. In 2002, the Port of Benton leased  
9 the Hanford Railroad to TCRY for maintenance and operation. Under the  
10 terms of the Lease, the Port of Benton delegated certain rights and  
11 obligations to TCRY, but the Port of Benton retained overall control and  
12 management of the Hanford Railroad. The STB, the successor to the ICC,  
13 granted the transfer to the Port and authority to TCRY to operate over the  
14 Hanford Railroad under STB Finance Docket Nos. 33653, 33888, and  
15 34203.  
16  
17  
18

19 **C. Dispute between BNSF and TCRY and request to Port to**  
20 **terminate contracts with Railroads.**

21 16. A dispute between BNSF and TCRY has developed. The  
22 dispute involves billing arrangements for TCRY's rail services and BNSF is  
23

24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 7

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1 seeking to begin direct service to rail customers along the Richland Trackage  
2 thereby eliminating its need to interchange with TCRY. Consequently,  
3 TCRY has allegedly physically prevented BNSF trains from entering the  
4 Richland Trackage.  
5

6 17. On July 20, 2009, BNSF filed suit in the District Court for the  
7 Eastern District of Washington alleging four separate causes of action and  
8 seeking among other remedies a declaration of the parties' operational rights  
9 to the Richland Trackage. The Port of Benton was not a named party in the  
10 BNSF lawsuit.  
11

12 Under the terms of the Richland Trackage Contracts, the Port of  
13 Benton has the right to terminate the rights of BNSF and Union Pacific to  
14 use the Richland Trackage. In a letter dated July 23, 2009, TCRY requested  
15 that the Port of Benton terminate as to both Union Pacific and BNSF the  
16 Richland Trackage Contracts.  
17

18 18. In a subsequent letter dated July 27, 2009, TCRY reiterated its  
19 request that the Port of Benton terminate as to both Union Pacific and BNSF  
20 the Richland Trackage Contracts.  
21

22  
23  
24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 8

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1 19. In a letter from the Port to TCRY and BNSF dated July 29,  
2 2009, the Port responded that it had decided not to cancel the rights to the  
3 Port of Benton tracks and to direct the parties to negotiate an operations  
4 agreement for the use of the Port of Benton tracks.  
5

6 **IV. CAUSE OF ACTION FOR DECLARATORY JUDGMENT**

7 20. Port of Benton incorporates each and every allegation contained  
8 within paragraphs 1 through 19 of its Complaint for Declaratory Relief.  
9

10 21. A case and controversy exists between the parties. The  
11 Richland Trackage Contracts, by their express terms, set forth the operating  
12 rights of both BNSF and Union Pacific to the Richland Trackage.  
13

14 22. BNSF's Verified Complaint dated July 20, 2009, purports to  
15 seek a determination of operational rights under the Richland Trackage  
16 Contracts. The Richland Trackage Contracts provide that "all disputes  
17 concerning questions of fact which may arise hereunder" shall be decided by  
18 the Commission (now the Port of Benton). Contract of November 6, 1947,  
19 Article XVIII. The Contracts further provide that issues within the  
20 jurisdiction of the Interstate Commerce Commission or other regulatory  
21 body having jurisdiction shall not be subject to this provision. The Port of  
22

23 INTERVENOR PLAINTIFF PORT OF BENTON'S  
24 PROPOSED COMPLAINT FOR DECLARATORY  
25 JUDGMENT - 9

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1 Benton's Lease with TCRY has a similar dispute provision. Shippers have  
2 submitted disputes related to TCRY's tariffs to the Port of Benton for  
3 review. The parties to the present litigation have not submitted any factual  
4 disputes to the Port of Benton for resolution.  
5

6 23. TCRY is contending that allowing the relief requested by BNSF  
7 has the potential to put TCRY out of business. Such a development may  
8 directly affect the Port of Benton's ability to maintain the Hanford Railroad  
9 for economic development purposes. The Richland Trackage Contracts  
10 require the Port of Benton to maintain the railroad tracks. Under the  
11 provisions of the Lease, TCRY has assumed that responsibility.  
12  
13

14 24. The Richland Trackage Contracts provide the "Commission  
15 will have the general control, management and administration of said  
16 railway between points B and E, said interchange facilities and wye" and is  
17 responsible for keeping it in good condition and repair. Contract of  
18 November 6, 1947, Article VIII. The Contracts further provide that BNSF  
19 and Union Pacific shall agree upon rules and regulations.  
20

21 25. As the owner of the Hanford Railroad and as a municipal  
22 corporation directly involved with economic development, the Port of  
23

24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 10

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1 Benton is in a unique position to represent the public interest and to protect  
2 the interest of shippers who use the Hanford Railroad. The Port of Benton is  
3 the successor to the United States and took ownership of the Hanford  
4 Railroad to fulfill public purposes. None of the existing parties to this  
5 litigation represents the public.  
6

7  
8 **V. PRAYER FOR RELIEF**

9 WHEREFORE, the Port of Benton prays for the following declaratory  
10 relief:

11 1. For a declaratory judgment in the Port of Benton's favor  
12 stating:

13 Pursuant to the Richland Trackage Contracts, the factual disputes be  
14 referred to the Port for resolution, and that all operating rules and regulations  
15 negotiated by the parties be referred to the Port for approval.  
16

17 2. Declaring the Port of Benton retains the general control,  
18 management and administration of the Richland Trackage, interchange  
19 facilities, and wye.  
20

21 3. For an award of costs and attorney's fees to the Port of Benton  
22 to the extent permitted by law; and  
23

24 INTERVENOR PLAINTIFF PORT OF BENTON'S  
25 PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 11

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1           4.     For such other and further relief that this Court deems just and  
2 equitable.

3  
4           DATED:   February \_\_\_\_\_, 2010.

5  
6                                   COWAN MOORE STAM LUKE & PETERSEN

7                                   By: \_\_\_\_\_  
8                                   Thomas A. Cowan WSBA #5079  
9                                   Lucinda J. Luke, WSBA #26783  
10                                  Attorneys for Port of Benton  
11                                  Cowan Moore Stam Luke & Petersen  
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18  
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24           INTERVENOR PLAINTIFF PORT OF BENTON'S  
25           PROPOSED COMPLAINT FOR DECLARATORY  
              JUDGMENT - 12

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ECF Certification

I hereby certify that on this \_\_\_\_ day of February, 2010, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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INTERVENOR PLAINTIFF PORT OF BENTON'S  
PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 13

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s/ Lucinda J. Luke  
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INTERVENOR PLAINTIFF PORT OF BENTON'S  
PROPOSED COMPLAINT FOR DECLARATORY  
JUDGMENT - 14

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**EXHIBIT 2**

835 F.Supp.2d 1056  
United States District Court,  
E.D. Washington.

BNSF RAILWAY COMPANY, Plaintiff,  
Union Pacific **Railroad** Company, and  
Port of Benton, Plaintiff-Intervenors,  
v.  
**TRI-CITY & OLYMPIA RAILROAD**  
COMPANY LLC, Defendant.

No. CV-09-5062-EFS.

Dec. 14, 2011.

### Synopsis

**Background:** **Railroad** brought action alleging that rail and track maintenance service provider breached **railroad** lease agreement when it blocked **railroad's** access to trackage and seeking declaratory judgment recognizing its operating rights over trackage and permanent injunction compelling lessee to afford it equal access to trackage. Another **railroad** and rail owner intervened, and provider filed counterclaims against owner for inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, quantum meruit, and tortious interference with contract. Plaintiff and provider filed cross-motions for summary judgment.

**Holdings:** The District Court, Edward F. Shea, J., held that:

[1] **railroads** had right to access entirety of trackage in question, and

[2] permanent injunction barring rail and track maintenance service provider from interfering with **railroads'** rights to operate on trackage was warranted.

Plaintiff's motion granted.

### West Headnotes (7)

#### [1] Contracts

↔ Extrinsic circumstances

Under Washington law, in interpreting contract, extrinsic evidence is only admissible as to entire circumstances under which contract was made, as aid in ascertaining parties' intent.

Cases that cite this headnote

#### [2] Federal Civil Procedure

↔ Contract cases in general

Under Washington law, when contract is unambiguous and its formation is undisputed, contract's interpretation is question of law that is appropriate for resolution on summary judgment.

Cases that cite this headnote

#### [3] Railroads

↔ Construction and operation

Under Washington law, **railroads'** agreements with United States granting **railroads** operating rights over "the tracks covered by this agreement" "as it may be necessary to use for the purpose of moving freight shipments to or from the tracks" granted **railroads** right to access entirety of trackage, even though one section of agreement listed only sections of track south of interchange facility, where agreement included detailed map depicting entirety of trackage, minus subsequently-built trackage and spurs, and another section granted **railroads** and industries served by them right to construct additional "industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards."

Cases that cite this headnote

#### [4] Declaratory Judgment

↔ Nature and elements in general

**Declaratory Judgment**

↔ Adverse interests or contentions

Declaratory judgment is proper when one party has established that there is substantial controversy, between parties having adverse interest, of sufficient immediacy and reality to warrant issuance of declaratory judgment. 28 U.S.C.A. § 2201.

Cases that cite this headnote

[5] **Injunction**

↔ Grounds in general; multiple factors

Permanent injunctive relief is proper when party can show that: (1) it has suffered irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering balance of hardships between plaintiff and defendant, remedy in equity is warranted; and (4) public interest would not be disserved by permanent injunction.

Cases that cite this headnote

[6] **Injunction**

↔ Clear, likely, threatened, anticipated, or intended injury

**Injunction**

↔ Irreparable injury

Irreparable injury requirement for permanent injunction is also satisfied by continuing and imminent threat of harm.

Cases that cite this headnote

[7] **Injunction**

↔ **Railroads**

Permanent injunction barring rail and track maintenance service provider from interfering with **railroads'** rights to operate on trackage was warranted, even though provider had right under maintenance and operation agreement and lease with owner to charge per-car fee for its services, where **railroads** were granted right to operate in prior agreements with United States, provider took possession of trackage subject to **railroads'** pre-existing

rights, and it was in public interest to encourage competition among **railroads** and to ensure that **railroad** service remained efficient.

Cases that cite this headnote

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**ORDER GRANTING BNSF'S MOTION FOR SUMMARY JUDGMENT, DENYING TCRY'S MOTION FOR SUMMARY JUDGMENT, AND DENYING ALL OTHER PENDING MOTIONS AS MOOT**

EDWARD F. SHEA, District Judge.

Before the Court, without oral argument, are Plaintiff BNSF Railway Company's (hereinafter "BNSF") Motion for Summary Judgment, ECF No. 267, and Defendant **Tri-City & Olympia Railroad** Company LLC's (hereinafter "TCRY") Motion for Summary Judgment, ECF No. 273. Also before the Court are BNSF's Motion to Compel Discovery Propounded to Defendant **Tri-City & Olympia Railroad** Company, L.L.C., ECF No. 305, and TCRY's Motion for Protective Order, ECF No. 316. After reviewing the submissions of the parties and applicable authority, the Court is fully informed. For the reasons discussed below, the Court grants BNSF's Motion for Summary Judgment, denies TCRY's Motion

for Summary Judgment, and denies all other pending motions as moot.

## I. BACKGROUND<sup>1</sup>

### A. 1947 Agreement

On November 6, 1947, the United States, acting through the U.S. Atomic Energy Commission (“Commission”), entered into an agreement (“1947 Agreement”) with several railroads to establish service to the Hanford Nuclear Reservation (“Hanford site”). BNSF and Union Pacific Railroad Company (“UP”), the undisputed successors-in-interest to the 1947 Agreement, were granted “equal joint” operating rights over trackage beginning near Kennewick and extending north of Richland to the Hanford site (“Richland Trackage”).

The 1947 Agreement identifies the rights of the parties to railway lines as shown on an August 25, 1947 map attached to the Agreement as “Exhibit A.” The 1947 Agreement acknowledges that “the Government has constructed on its property a line of railway ... extending from Hanford, Washington, southerly to a point near the north bank of the Yakima River,” and states as its purpose that “the Government desires to have a direct rail connection to the south so as to interchange business with [BNSF and UP's predecessors in interest].” To this end, Article V of the 1947 Agreement grants BNSF and UP's predecessors in interest the “equal joint right” to operate on the rail line and “to use said interchange facilities and wye for the purpose of interchanging business with the Government.” Article VII of the Agreement states that BNSF and UP's predecessors in interest “each of itself agrees to deliver and receive at said interchange facilities all business which either is obligated to transport as a common carrier railroad.” Article IX of the Agreement imposes an obligation on BNSF and UP's predecessors to “agree from time to \*1059 time upon rules and regulations covering the movement of engines, cars and trains over the line B–E and on said interchange facilities.”

The map attached to the 1947 Agreement identifies several points, labeled A through E. Point A is in Kennewick, and points B, C, and D extend along the rail line in a northwesterly direction toward the Hanford site. The map identifies point E as a location to the north of Richland upon which interchange tracks were to be built. The government later constructed an interchange facility at Point E, and today, Point E is TCRY's rail yard and is still

operated as an interchange facility. Though the 1947 map identified a location to the south of the interchange tracks for the wye, the wye was in fact later built to the north of the interchange tracks.<sup>2</sup>

In 1948, the 1947 Agreement was the subject of a ruling by the Interstate Commerce Commission (ICC). Because the government was the only “customer” served by BNSF and UP's predecessors, the railroads sought exemption from the required public convenience and necessity certifications for common rail carriers. The ICC's Order held that a certificate *was* required because the railroads would also provide common carrier services to businesses in and around Richland. The ICC's Order modified terms in the 1947 Agreement regarding payment and rights to termination, but left the remainder of the Agreement undisturbed.

### B. 1961 Agreement

In 1961, the Commission entered into a second agreement (“1961 Agreement”) with the Railroads. Section 1 of the 1961 Agreement leased three specified areas of track to the railroads. Section 2 of the Agreement granted “the Railroads, and the industries served by them, the right to construct additional industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards as may be required to provide rail service for industries.” Section 3 of the 1961 Agreement states as follows:

The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government's tracks shown on Exhibit “A” as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

Section 3's grant of authority was consistent with the agreement's stated purpose of allowing the railroads to operate on the United States' tracks “for the sole purpose of receiving and delivering shipments routed via the Railroads and consigned by or to shippers and receivers located on said spur or side tracks.”

The rail line depicted in a 1960 map attached as Exhibit A to the 1961 Agreement begins south of Richland at

the Yakima River Bridge, and extends to a Department of Energy (DOE) "barricade" roughly one thousand feet north of the wye tracks. The three segments of track leased in the 1961 Agreement are all south of the interchange facility and wye.

In 1979, the United States entered into an agreement with the railroads converting the 1961 lease agreement into a permit so that the tracks could be classified as surplus under the Federal Property and Administrative Services Act of 1949. This agreement deleted Sections 1 and 4 of the 1961 Agreement, which detailed the terms of the lease and the railroads' maintenance obligation, but left the 1961 Agreement's other provisions "in full force and effect."

#### \*1060 C. 1998 Indenture

In 1998, the United States, acting through the DOE, conveyed ownership of a six-mile section of track to the Port of Benton ("Port") through an Indenture, thereby assigning the DOE and Commission's rights under the 1947 and 1961 Agreements to the Port. The indenture stated that the 1947 and 1961 Agreements and the 1979 permit agreement governed access to the Railroad. The Indenture also stated that the Port, as assignee, agreed to be bound by the obligations and considerations in the United States' permit. As a result of these agreements, the Port has the right to terminate BNSF and UP's rights to use the Richland Trackage upon six months notice.

#### D. Interchange Agreement

On October 1, 1998, the Port entered into a Maintenance and Operation Agreement with TCRY's predecessor, Livingston Rebuild Center, Inc. ("Livingston"), under which it agreed to pay Livingston \$325, 000 per year for the maintenance of the Richland Trackage. These contractual rights and obligations were subsequently assigned to TCRY.

In May 2000, BNSF and TCRY contracted to interchange cars going into the Richland Trackage ("Interchange Agreement"). They exchanged cars at the Richland Junction, and TCRY served BNSF's customers along the Richland Trackage. TCRY maintained the trackage at its own expense and began charging a per-car fee for its services. This contract specifically reserved BNSF's rights under the 1947 and 1961 Agreements.

In a September 12, 2000 letter to then-TCRY President John Haakenson, the Port's Assistant Executive Director Scott Keller acknowledged that the Port was paying TCRY to maintain the railroad under a contract that allowed TCRY to charge a fee for its railroad operations, the revenue from which would offset the cost of maintenance. Recognizing that UP was using the Richland Trackage without paying a fee, the Port directed TCRY "to give written notice to [UP] terminating its rights to use the Port of Benton track." Beginning November 14, 2000, UP could no longer continue its unauthorized use of the Richland Trackage: it would need to establish an interchange agreement with TCRY.

From approximately April 2001 through November 2001, TCRY and BNSF continuously disagreed about BNSF's right to operate on the Richland Trackage. BNSF claimed the 1947 and 1961 Agreements allowed it to directly operate on the Richland Trackage without interchanging; TCRY maintained that BNSF could only operate on the Richland Trackage if it operated under the Interchange Agreement. This disagreement about BNSF's rights to operate on the Richland Trackage forms the essential controversy before the Court today.

#### E. Railroad Lease

In 2002, TCRY and the Port negotiated a lease agreement ("Railroad Lease") that authorized TCRY to provide rail and track maintenance services on the Richland Trackage. Paragraph 7.4 of the lease agreement states that TCRY "shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the Port's prior written consent."

#### F. Legal Action

In 2009, BNSF informed TCRY that it intended to exercise its rights to directly operate on the Richland Trackage. TCRY objected, and on July 20 and 21, 2009, TCRY erected a barrier which physically prevented a BNSF locomotive from reaching \*1061 BNSF customers along the Richland Trackage. A few days later, TCRY requested that the Port terminate the Richland Trackage agreements with BNSF. The Port refused.

BNSF filed this suit on July 20, 2009. ECF No. 1. UP moved to intervene on August 4, 2009, ECF No. 26, and the Court granted UP's motion. ECF No. 46. On August

12, 2009, 2009 WL 2486170, the Court granted BNSF's motion for a preliminary injunction, prohibiting TCRY from blocking BNSF's access to the Richland Trackage and requiring TCRY to charge its customary fee. ECF No. 46 & 93. TCRY filed an interlocutory appeal on September 9, 2009, which was voluntarily dismissed. ECF Nos. 67, 101, 108 & 109. Since August 15, 2009, BNSF and TCRY have been operating under the Proposed Operating Plan created to comply with the Court's preliminary injunction. ECF No. 52.

On March 8, 2010, the Court granted the Port of Benton's request to intervene. ECF No. 121. On June 2, 2010, TCRY filed a separate but related action in Benton County Superior Court against the Port, asserting claims for inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, and quantum meruit. ECF No. 209-1. By order dated August 20, 2010, the Superior Court stayed the state court action pending resolution of the federal claims in this Court. ECF No. 209-2.

On September 29, 2010, the Port amended its complaint, asserting that TCRY breached Railroad Lease Paragraph 7.4, which prohibits TCRY from "amend[ing], modify[ing], terminat[ing], or invalidat[ing]" other railroads' existing contractual relationships with the Port, when it temporarily blocked BNSF Railroad Company (BNSF)'s access to the Richland Trackage in July 2009. ECF No. 136. TCRY asserted several counterclaims against the Port, including inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, quantum meruit, and tortious interference with contract. ECF No. 165, ¶¶ 18-24.

TCRY filed a motion for summary judgment on October 20, 2010, seeking dismissal of the Port's Amended Complaint. ECF No. 142. On November 24, 2010, the Port moved for summary dismissal of TCRY's counterclaims. ECF No. 171. TCRY then moved on December 17, 2010, to remand the inverse condemnation claims to state court for determination where they were originally asserted. ECF No. 200. On July 1, 2011, 2011 WL 2607162, the Court denied TCRY's Motion for Summary Judgment and Motion for Remand. ECF No. 264. The Court's Order granted the Port's Motion for Partial Summary Judgment, dismissing TCRY's counterclaims against the Port. *Id.* In denying TCRY's

Motion for Summary Judgment, the Court found that under the 1947 and 1961 Agreements, BNSF and UP have "equal joint" rights to operate directly upon the Richland Trackage, and that TCRY took its lease of the Richland Trackage subject to BNSF and UP's rights. *Id.*

TCRY and BNSF now both move for summary judgment regarding the nature and extent of BNSF and UP's rights to operate on the Richland Trackage. ECF Nos. 267 & 273. TCRY asserts that BNSF and UP's rights under the Agreements are limited to use of the trackage only up to the interchange, or alternatively, the wye, and that BNSF may use those portions of track for interchange purposes only. BNSF argues that their right to operate directly extends to all Richland Trackage south of the old Department of Energy barricade, and is subject only to \*1062 the limitation that it be used "for the purpose of moving freight shipments." After reviewing the record in this matter, the arguments of the parties, and applicable authority, the Court is fully informed. Because the 1947 and 1961 Agreements give BNSF and UP the right to operate directly on the entirety of the Richland Trackage, the Court denies TCRY's motion and grant BNSF's motion.

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment is appropriate if the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Once a party has moved for summary judgment, the opposing party must point to specific facts establishing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the nonmoving party fails to make such a showing for any of the elements essential to its case for which it bears the burden of proof, the trial court should grant the summary judgment motion. *Id.* at 322, 106 S.Ct. 2548. When considering a motion for summary judgment, the Court does not weigh the evidence or assess credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505. When ruling on cross-motions for summary judgment, the Court has a duty to review the record supporting the parties' motions and to determine whether there are issues of material fact

precluding summary judgment. *Fair Housing Council of Riverside Cnty., Inc.*, 249 F.3d at 1136.

Here, both TCRY and BNSF have moved for summary judgment. Both parties agree that there are no genuine issues of material fact, and after reviewing the record in this matter, the Court finds that there are none. Summary judgment is thus appropriate if either party is entitled to judgment as a matter of law.

### B. Applicable Law

[1] [2] When interpreting a contract under Washington law, the Court attempts to “ascertain the parties’ intentions and give effect to their intentions.” *Taylor–Edwards Warehouse & Transfer Co. of Spokane, Inc. v. Burlington N., Inc.*, 715 F.2d 1330, 1334 (9th Cir.1983) (citing *Jones v. Hollingsworth*, 88 Wash.2d 322, 326, 560 P.2d 348 (1977)). Under Washington law, extrinsic evidence is only admissible “as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties’ intent.” *Berg v. Hudesman*, 115 Wash.2d 657, 667, 801 P.2d 222 (1990). When a contract is unambiguous and its formation is undisputed, the interpretation of the contract is a question of law that is appropriate for resolution on summary judgment. *See, e.g., Mfg’d Hous. Cmty. of Wash. v. St. Paul Mercury Ins. Co.*, 660 F.Supp.2d 1208, 1212 (W.D.Wash.2009) (citing *Mayer v. Pierce Cnty. Med. Bureau*, 80 Wash.App. 416, 420, 909 P.2d 1323 (1995)).

### C. The Parties’ Positions

TCRY concedes that BNSF has the right to directly on a portion of the Richland Trackage, but argues that language in the 1947 Agreement geographically restricts the United States’ grant to BNSF and UP’s predecessors to direct service between points “C” and “E” on the map attached as Exhibit A to the 1947 Agreement. Because point “E” on Exhibit A to the 1947 Agreement is the present-day site of TCRY’s interchange facility, TCRY argues that BNSF and UP should be enjoined \*1063 from directly serving points north of the interchange facility, and should be required to interchange with TCRY in order to serve customers north of the interchange facility. Alternatively, TCRY argues that BNSF and UP’s operating rights should terminate at the wye built a short distance north of the interchange facility.

TCRY also asserts, in an argument developed primarily in its reply memorandum, that the 1947 Agreement only grants the **railroads** rights to use trackage between points “C” and “E” on Exhibit A for the purpose of interchanging rail traffic with the government, and not to provide direct rail service to customers along that track. Finally, TCRY argues that it would be unfair to allow BNSF and UP to directly service customers north of the interchange facility because pursuant to the 1998 Maintenance and Operation Agreement, it is charged with the sole responsibility for maintaining the Richland Trackage. TCRY requests a permanent injunction prohibiting BNSF and UP from traveling north of its interchange facility.

BNSF argues that because the wye pictured in Exhibit A to the 1947 Agreement was later built to the north of the interchange facility (instead of to the south as represented in Exhibit A), the 1947 Agreement does in fact grant the **railroads** operating rights north of the interchange facility. BNSF further argues that Sections 2 and 3 of the 1961 agreement extended the **Railroads’** operating rights to the entirety of the Richland Trackage, limited only by the broad requirement that their operations be for the purpose of “moving freight shipments.”<sup>3</sup> BNSF requests a declaratory judgment recognizing its operating rights over the Richland Trackage and a permanent injunction compelling TCRY to afford it equal access to the Richland Trackage.

Intervenor–Plaintiff UP does not oppose BNSF’s motion, but asks that any ruling on the motion protect the “equal, just, and fair” operating rights to the Richland Trackage that it was granted by the 1947 Agreement. UP also asserts that BNSF does not have the right to provide direct rail service to the Hanford site, but that BNSF’s direct rail service rights instead terminate somewhere between TCRY’s interchange facility and Hanford.

### D. Analysis

#### i. BNSF’s Operating Rights on the Richland Trackage

[3] On close review of the underlying agreements, it is apparent that BNSF’s reading of the 1947 and 1961 Agreements is the correct one. While the 1947 Agreement’s grant to BNSF and UP’s predecessors in interest is explicitly limited to the “right to operate ... between

points B and E, and to use said interchange facilities and wye for the purpose of interchanging business with the government,” ECF No. 32–2 at 13, this agreement was speculative and referenced trackage that had yet to be \*1064 built. *See id.* at 12 (the Commission shall lay track in “approximately the location shown in yellow on said exhibit,” and shall build an interchange and wye “in the vicinity of point E.” (emphasis added)). At the time the 1947 Agreement was drafted, the United States was the only shipper on this section of track, and security concerns prevented private access to the Hanford site; thus, the Agreement’s reference to point “E” appears to be intended to demarcate a convenient place for interchange, rather than to provide an affirmative limitation on the railroads’ later ability to service rail customers. But regardless of the exact intent behind the 1947 Agreement, the 1961 Agreement greatly expands the United States’ grant to BNSF and UP.

The 1961 Agreement has the stated purpose of allowing the railroads to “receiv[e] and deliver[ ] shipments routed via the Railroads and consigned by or to shippers and receivers” located on spur or side tracks connecting to the United States’ tracks. ECF No. 32–3 at 62. As noted above, Section 3 of the 1961 Agreement states as follows:

The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government’s tracks shown on Exhibit “A” as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

*Id.* at 63. Exhibit A to the 1961 Agreement is a detailed map depicting the entirety of the Richland Trackage, minus the subsequently-built Port trackage and spurs extending west from the wye. The above-quoted language grants BNSF and UP broad operating rights over the Richland Trackage, and bulwark’s BNSF’s position.

TCRY makes much of Section 3’s limitation that the railroads may only use such segments of the tracks as may be necessary to access “the tracks covered by this agreement.” TCY argues that because Section 1 of the agreement, which contains the operative language of the lease, lists only sections of track south of the interchange facility, the “tracks covered by this agreement” are all

south of the interchange, and thus Section 3’s grant does not extend north of the interchange or wye. Section 2 of the agreement, however, also grants “the Railroads, and industries served by them,” the right to construct additional “industrial spur, set-out, and such other tracks connecting with the Government’s main tracks or classification yards as may be required to provide rail service for industries.” *Id.* It seems readily apparent that the Port’s spur tracks are “industrial spur, set-out, and such other tracks” that were constructed by “the industries served by [the railroads]” as the phrase is used in the 1961 Agreement. These subsequently-built tracks are thus “tracks covered by” the 1961 Agreement, and it follows logically that Section 3 also grants BNSF and UP the right to serve customers on these later-built sections of Port trackage and spurs extending west of the wye.

TCRY also argues that Section 3’s reference to “tracks shown on Exhibit ‘A’ ” precludes a reading of the 1961 Agreement that grants BNSF and UP rights relating to tracks built after the Agreement, because they by definition could not be shown on Exhibit A. But Section 3’s reference to “tracks shown on Exhibit ‘A’ ” relates to the section of track over which BNSF and UP are afforded rights, not the Section’s later use of the phrase “tracks covered by this agreement;” these tracks are precisely the tracks over which BNSF and UP seek access. This interpretation of the 1961 Agreement is supported by its stated purpose of opening up the Richland Trackage to common carrier rail service in order to promote industrial development in \*1065 the Richland area. Of course, BNSF and UP’s right to use the Richland Trackage may only be “for the purpose of moving freight shipments.”

Accordingly, the Court finds that the 1961 Agreement grants BNSF and UP the right to operate directly on the Richland Trackage. This right extends north of the TCY interchange facility, and includes both the spur tracks to the west of the wye and the main-line tracks north to Horn Rapids Road. Neither BNSF nor UP has a right to serve the Hanford site directly.

## ii. UP’s Operating Rights on the Richland Trackage

UP’s position is clearly supported by the 1947 Agreement. The 1947 Agreement grants both BNSF and UP’s predecessors in interest “the equal joint right” to operate on the relevant section of track. ECF No. 32–2 at 13.

This grant includes the future-looking assurance that “any right or privilege at any time granted by the Commission to one of said companies in respect to its operations shall be a right or privilege which the other company may at its option exercise in respect to its operations.” *Id.* Furthermore, the Agreement requires BNSF and UP’s predecessors to “agree from time to time upon rules and regulations” for the use of the Richland Trackage, and requires that such rules and regulations “shall be equal, just, and fair,” and “shall not unjustly discriminate against either.” *Id.* at 14. These portions of the 1947 Agreement have not been modified by later agreement, and remain in force today. As such, the Court includes UP in any declaratory or injunctive relief it affords BNSF.

## E. Relief Granted

### i. Declaratory Judgment

[4] Under the Declaratory Judgment Act, 28 U.S.C. § 2201, declaratory judgment is proper when one party has established that “there is a substantial controversy, between parties having adverse interest, of sufficient immediacy and reality to warrant issuance of a declaratory judgment.” *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 658 (9th Cir.2002) (quoting *Western Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir.1981)). Here, the factual background of this case unquestionably demonstrates that such a controversy exists and that declaratory judgment is proper.

BNSF requests a declaratory judgment recognizing its rights to provide direct rail service over the Richland Trackage.<sup>4</sup> For the reasons discussed above, the Court grants BNSF’s request in this regard, and issues a declaratory judgment recognizing both BNSF and UP’s rights to provide direct rail service over the Richland Trackage.

### ii. Permanent Injunction

BNSF also requests a permanent injunction compelling TCRY to allow it access over the Richland Trackage and requiring TCRY to coordinate train scheduling and dispatching with BNSF and UP.

[5] [6] Permanent injunctive relief is proper when a party can show “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006). The first factor, the existence of irreparable injury, is also satisfied by a continuing and imminent threat of harm. *See, e.g., Bowler v. Home Depot USA Inc.*, No. C09–5523 JCS, 2011 WL 166140, at \*3 (N.D.Cal. January 19, 2011) (citing *Monsanto Co. v. Geertson Seed Farms*, — U.S. —, 130 S.Ct. 2743, 2760, 177 L.Ed.2d 461 (2010)). The decision to grant or deny permanent injunctive relief is within the Court’s discretion. *See eBay Inc.*, 547 U.S. at 391, 126 S.Ct. 1837 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982)).

[7] Here, BNSF fulfills the first two factors because the percipient loss of customer goodwill that will occur if TCRY again blocks it from accessing the Richland Trackage is imminent; the loss of consumer goodwill is an irreparable injury, and legal remedies are inadequate to compensate for that injury. *See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991); *Regents of Univ. of Cal. v. Am. Broad. Cos.*, 747 F.2d 511, 519–20 (9th Cir.1984). The balance of hardships between BNSF and TCRY also runs in BNSF’s favor: While TCRY is currently tasked with maintaining the Richland Trackage under the 1998 Maintenance and Operation Agreement and the 2002 Lease, as the Court has already found, TCRY took possession of the Richland Trackage subject to BNSF and UP’s pre-existing rights; the temporary hardship TCRY will suffer under its contract with the Port is outweighed by the long-term hardship BNSF and UP would suffer if their rights under the 1947 and 1961 Agreements were permanently abrogated. Finally, as the Court found in its Order granting BNSF’s motion for a preliminary injunction, ECF No. 93 at 10–11, it is in the public interest to encourage competition among the railroads and to ensure that railroad service remains efficient. Accordingly, a permanent injunction is proper.

TCRY argues that if such relief is granted, the injunction should not be “asymmetrical.” TCRY cites *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir.2010),

in support of this position, but this case mentions no such consideration, and simply affirms a district court's preliminary injunction issued under the *Winter* framework. TCRY asserts that an order enjoining only it would be unfair because it would "give[ ] only one party the asymmetric right to seek an order of contempt over any claim of contract breach." ECF No. 283 at 15. However, only TCRY is in breach of the 1947 and 1961 Agreements, and BNSF has committed no harm that need be redressed with equitable relief. Furthermore, the Court's contempt power will only be available for breach of the *injunction*, and both parties will retain the ability to seek legal relief for breach of the underlying contract. As such, the Court denies TCRY's request for a "symmetrical" injunction.

For the reasons discussed above, the Court grants BNSF's request and issues a permanent injunction requiring TCRY 1) to allow both BNSF and UP to directly serve customers along the Richland Trackage, and 2) to coordinate train scheduling and dispatching with both BNSF and UP. The parties shall meet and confer to develop a comprehensive operational plan as detailed below.

#### F. Conclusion

For all of the historical complexity surrounding the Richland Trackage, the relative rights of the parties are actually quite simple: The United States granted BNSF and UP's predecessors in interest full rights to operate on the Richland Trackage, and TCRY took possession of the \*1067 Richland Trackage subject to these rights. Accordingly, the Court issues a declaratory judgment recognizing BNSF and UP's operating rights, and issues a permanent injunction protecting these rights.

#### Footnotes

1

In connection with their motions, the parties submitted Joint Statements of Uncontroverted Facts. ECF Nos. 281 & 294. The Court treats these facts as established consistent with Federal Rule of Civil Procedure 56(d), and sets these forth in this "Factual Background" section without reference to an ECF number. Any disputed facts are supported by a citation to the record. The Court has reviewed the record supporting the parties' cross-motions for summary judgment, and finds that there are no issues of material fact precluding summary judgment. See *Fair Housing Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir.2001) (discussing district court's duty to review the record when ruling on cross-motions for summary judgment).

Accordingly, **IT IS HEREBY ORDERED:**

1. BNSF's Motion for Summary Judgment, ECF No. 273, is **GRANTED**. Both BNSF and UP shall have the right to operate directly on the Richland Trackage. Representatives from BNSF, TCRY, and UP shall meet and confer at a mutually-convenient time and place—either by phone or in person—and draft a comprehensive operational plan (COP), consistent with the Court's ruling, that is signed and agreed upon by all three parties. A representative of the Port shall be permitted to attend and offer comments. The COP shall cover trackage from the Richland junction to Horn Rapids Road (and all spurs that spring therefrom). The proposed COP shall be filed for Court approval **no later than 5:00 p.m. on December 23, 2011** unless on or before that date, BNSF, TCRY, and UP file with the Court a joint stipulation to a later date. The Port shall have seven (7) days after the filing of the proposed COP in which to file a statement with the Court stating its comments or objections to the proposed COP. The parties shall have seven (7) days after the filing of the Port's statement in which to file individual or joint reply to the Port's statement. No other responsive or reply memoranda will be considered.

2. All pending motions are **DENIED as moot**.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and distribute copies to counsel.

#### All Citations

835 F.Supp.2d 1056

2

A wye is a triangular arrangement of rail tracks designed to allow railway equipment to change direction by performing a "three-point turn."

3

BNSF also argues that TCRY's argument is foreclosed by the law of the case. However, the Court's September 28, 2009, 2009 WL 3149569, Order Granting BNSF's Motion for Preliminary Injunction expressly stated that the Court's preliminary injunction ruling was "not binding on the Court in future proceedings in this case." ECF No. 93 at 2; *see also Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir.1984) (recognizing that trial court's findings regarding a party's probability of success on the merits are not binding on future stages of the case). Furthermore, while the Court's July 1, 2011 Order held that TCRY leasehold rights were "subject to UP and BNSF's continued use of the Richland Trackage, as secured by the 1947 and 1961 Agreements," ECF No. 264 at 23, the question of the exact nature and extent of the parties' rights over the Richland Trackage was not then before the Court.

4

TCRY argues that BNSF's requested relief must be denied because BNSF failed to name the Port and UP, who are necessary parties under Federal Rule of Civil Procedure 19. However, any argument that BNSF has improperly failed to join the Port and UP was rendered moot when they intervened in this lawsuit.

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End of Document

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**EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BNSF RAILWAY COMPANY,  
Plaintiff,  
UNION PACIFIC RAILROAD  
COMPANY, and PORT OF BENTON,  
Plaintiff-Intervenors,  
v.  
TRI-CITY & OLYMPIA RAILROAD  
COMPANY LLC,  
Defendant.

NO. CV-09-5062-EFS

**ORDER ADOPTING COMPREHENSIVE  
OPERATING PLAN, ENTERING  
JUDGMENT, AND CLOSING FILE**

This matter comes before the Court on the parties' submissions regarding the Comprehensive Operating Plan in this matter. ECF Nos. 333-339. On December 14, 2011, the Court issued an Order granting Plaintiff BNSF Railway Company's (BNSF) motion for summary judgment, denying Defendant Tri-City & Olympia Railroad Company LLC's (TCRY) motion for summary judgment, and denying other motions as moot. ECF No. 329. In order to give effect to the Court's permanent injunction, the Court required the parties to meet and develop a Comprehensive Operating Plan (COP) to govern the operation of the Richland Trackage. *Id.*

The parties stipulated to an extension of the deadline for their proposed COP, ECF No. 332, but when the parties met on January 12, 2012,

1 they were unable to resolve disputes over two aspects of the COP. See  
2 Brodin Decl., ECF No. 336 ¶ 10. The parties agreed that on the  
3 stipulated date, they would each file their proposed COP along with a  
4 five-page memorandum in support. *Id.*

5 On January 20, 2012, BNSF, TCRY, and Plaintiff-Intervenor Union  
6 Pacific Railroad Company (UP) all submitted memoranda in support of their  
7 proposed COPs. ECF Nos. 333, 334, & 337. On January 27, 2012,  
8 Plaintiff-Intervenor the Port of Benton ("Port") submitted a memorandum  
9 in support of its proposed COP. ECF No. 339. After carefully reviewing  
10 the submissions of the parties and the record in this matter, the Court  
11 is fully informed and determines that it can decide upon the terms of the  
12 final COP without oral argument. See Local Rule 7.1(h)(3)(b)(iv). As  
13 discussed below, the Court adopts the ten-paragraph COP submitted by  
14 BNSF. See ECF No. 336-1.

15 The parties have no disagreement regarding the substance of the  
16 first seven paragraphs of the COP. TCRY objects to paragraphs eight  
17 through ten, which were proposed by the Port. However, these paragraphs,  
18 which give the Port the power to approve proposed changes to the  
19 operating plan, System Special Instructions, and General Orders, as well  
20 as to resolve disputes arising under the plan, are necessary to implement  
21 the authority granted to the Port in the 1947 Agreement and the Railroad  
22 Lease. See ECF No. 329 at 2-9 (discussing history of agreements  
23 regarding the Richland Trackage). Accordingly, the Court finds that  
24 these paragraphs are properly included in the COP.

25 Additionally, BNSF and UP disagree about whether the COP should have  
26 an eleventh paragraph that uses language from the Court's December 14,

1 2011 Order, including the statement that "[n]either BNSF nor UP has a  
2 right to serve the Hanford site directly." *Id.* at 16. However, as BNSF  
3 correctly notes, this statement is taken out of context and is an  
4 imprecise representation of the Court's declaratory judgment; the issue  
5 of direct service to the Hanford site was not before the Court, had not  
6 been briefed, and indeed, appears to be unripe for decision at this time.  
7 Accordingly, the Court rejects UP's proposed COP and adopts the proposed  
8 COP submitted by BNSF.<sup>1</sup>

9 For the reasons discussed above, **IT IS HEREBY ORDERED:**

10 1. The ten-paragraph Proposed Operating Plan submitted by BNSF, **ECF**  
11 **No. 336-1**, is hereby **ADOPTED** as the Comprehensive Operating Plan  
12 governing the Richland Trackage.

13 2. **Judgment** shall be **ENTERED with prejudice** in Plaintiffs' favor.  
14 The Court retains jurisdiction over this matter to enforce the terms of  
15 its injunction.

16 3. The February 29, 2012 hearing is **STRICKEN**.

17 4. This file shall be **CLOSED**.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
19 this Order and distribute copies to counsel.

20 **DATED** this 14<sup>th</sup> day of February 2012.

21  
22 S/ Edward F. Shea  
23 EDWARD F. SHEA  
United States District Judge

24 Q:\Civil\2009\5062.final.COP.lc2.wpd

25  
26 <sup>1</sup> Additionally, the Court issues an Amended Order clarifying this  
aspect of the December 14, 2011 Order.

# EXHIBIT A

PROPOSED OPERATING PLAN

1. UP and BNSF recognize TCRY as the operating railroad on the line and will accordingly comply with requirements of GCOR 1.14 (Employee Jurisdiction).
2. Regular UP and BNSF operations will begin with entry to the line at Richland Junction at such time as agreed to between each respective railroad and TCRY. This does not preclude operation on any days or at times as needed and will be coordinated between UP, BNSF and TCRY.
3. Authority for movement shall be GCOR Rule 6.28 (other than main tract). GCOR rules shall be formally adopted and subscribed to by all parties. Prior to each entry on to TCRY tracks at Richland Jct, UP and BNSF shall be required to contact TCRY and TCRY will be required to be available to respond 24/7, pursuant to instructions listed in Timetable, System Special Instructions or General Order via radio on AAR channel 15/15 or telephone to coordinate operations including providing TCRY with an estimated departure time.
4. Communications shall be on AAR channel 15/15 as designated by TCRY. This shall in no way relieve any party of compliance with GCOR 6.28 and is for efficient use of the track only.
5. Operations testing of train crews shall be performed by the officers of the respective railroads in accordance with their own testing guidelines or jointly with TCRY.
6. Any car storage or required line maintenance shall be communicated by TCRY to UP and BNSF and shall not unreasonably impede service to railroad customers.
7. TCRY will provide either a clear track in Richland yard or a clear and accessible wye track to run around cars to be spotted at railroad customers.
8. Based upon potential changes in business patterns and volumes over time, any party may initiate discussions to revise the Operating Plan. Proposed changes to this Operating Plan shall be submitted to the Port of Benton for prior approval. The Port shall review the proposed changes for compliance with Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP.
9. Timetable, System Special Instructions and General Orders submitted with this document which becomes effective December 22, 2011 at 00:01 shall remain in effect. Any modifications,

additions or deletions which do not unreasonably restrict the rights of the parties may be enacted by TCRY upon 5 calendar days notice in advance of the effective date. Proposed System Special Instructions and General Orders shall be submitted to the Port of Benton for prior approval. The Port shall review the proposed changes for compliance with Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP. TCRY may, at its reasonable discretion, issue General Orders which will be immediately effective to protect the safety of railroad employees and the general public, such as temporary speed restrictions, tracks removed from service, malfunctioning grade crossing warning devices or other similar conditions requiring immediate protection.

10. In the event a dispute arises among the parties concerning the application of this Operating Plan or proposed changes to the Plan, Timetable, System Special Instructions and General Orders, related to rail operations over property given to the Port of Benton by the Department of Energy on or about October 1, 1998, the dispute shall be submitted to the Port of Benton under the terms of the Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP for resolution.

Agreed and submitted on \_\_\_\_\_, 2012 by:

\_\_\_\_\_  
Union Pacific

\_\_\_\_\_  
BNSF Railway Company

\_\_\_\_\_  
Tri City Railway



**Tri-City & Olympia Railroad Company**  
**General Order No. 1**  
**Effective: December 22, 2011, 00:01**

All General orders issued prior to December 22, 2011 are annulled.

On March 21<sup>st</sup>, 2000, the Tri-City Railroad Company of Richland, Washington, which is now known as the Tri-City & Olympia Railroad Company, submitted the required documentation to the Federal Railroad Administration to support the start up of local railroad service by TCRY.

The following programs, policies and procedures have been adopted by the Tri-City & Olympia Railroad Company:

- Roadway Worker Protection
- On-Track Safety Manual for Roadway Worker Protection
- Locomotive Engineer Qualification Program
- Drug & Alcohol Testing Programs
- Radio Standards
- Blue Signal Protection
- Flag Protection
- Accident Reporting
- Operating Rules & Operations Testing Program
- Safe Work Practices for Train & Engine Employees
- Timetable & Special Instructions
- Crossing Signal Reporting
- DOT Hazardous Material Training Regulations
- Internal Control Plans

The Tri-City & Olympia Railroad Company offers railroad switching and transportation services and shipment reload operations.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 2**  
**Effective: December 22, 2011, 00:01**

Occupancy of TCRY track from Richland Jct, MP B46.6 to Hanford (Horn Rapids Road) MP B35.8 is governed by GCOR Rule 6.28.

Upon arrival at Richland Jct all trains needing to occupy TCRY track must contact TCRY yardmaster or authorized employee.

To obtain permission to proceed past Steptoe Station No. 00201 (MP B45.8) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

To obtain permission to proceed past Saint Station No. 00212 (MP B38.6) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

To obtain permission to proceed past Horn Rapids Station No. 00310 (MP B37.0) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

TCRY radio frequency: 160.335  
TCRY telephone: 509-727-8824.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 3**  
**Effective: December 22, 2011, 00:01**

The following Systems Special Instructions and Timetables are now in effect:

1. TCRY System Special Instructions No. 8, dated December 22, 2011.
2. TCRY Timetable 1<sup>st</sup> Subdivision No. 8, dated December 22, 2011.

TCRY System Special Instructions No. 7 and TCRY Timetable 1<sup>st</sup> Subdivision No. 7 are RESCINDED and superseded by the foregoing.

All hours of service employees, officers and supervisors are required to have a copy of the current Timetable and System Special Instructions in their possession while on company property and engaged in company service.

These timetables, which are in effect until rescinded by General Order, shall be governed accordingly.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 4**  
**Effective: December 22, 2011, 00:01**

The following rules are now in effect:

1. General Code of Operating Rules, Fifth Edition, Effective April 3, 2005, including UPRR Amendments up to July 24, 2009
2. UPRR Air Brake and Train Handling Rules, effective April 1, 2004 (Including revisions up to August 13, 2009)
3. UPRR TY&E Safety Rules, effective July 30, 2005 (Including revisions up to August 7, 2009)
4. BNSF Mechanical Safety Rules and Policies, effective April 15, 2007 (Including revisions up to January 30, 2009)
5. UPRR Maintenance of Way Operating Rules, effective November 17, 2008 (Including revisions up to July 24, 2009)
6. UPRR Employee Safety Rules, effective July 30, 2007 (including revisions up to August 7, 2009)
7. UPRR Maintenance of Way Safety Rules effective November 17, 2008 (including revisions up to July 24, 2009)
8. United States Hazardous Material Instructions for Rail, effective July 29, 2009.
9. Tri City & Olympia Railroad Company On-Track Safety Manual for Roadway worker Protection, effective June 22, 2005
10. North American Emergency Response Guidebook, 2008 edition

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



## Tri-City & Olympia Railroad Company

### General Order No. 5

Effective: December 22, 2011, 00:01

#### Switching and Spotting Industries

For Safety and efficiency, all switching and spotting of freight cars at TCRY served industries will be done with a charged air system on every car.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 6**  
**Effective: December 22, 2011, 00:01**

Amendment to TCRY TY&E Safety Rule S-13.7.1 A. General Requirements 1

It will be the policy of Tri City & Olympia Railroad Company to stop the car, locomotive, or other on-track equipment at least 25 feet from the switch stand to be lined, when possible.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**TRI-CITY & OLYMPIA RAILROAD CO.**

**SYSTEM SPECIAL  
INSTRUCTIONS**

**No. 8**

**Effective 00:01**

Supersedes System Special Instructions No. 7

**December 22, 2011**

**RV Peterson, CEO**

**IMPORTANT PHONE NUMBERS**

Police & Fire Emergency	911
Non-emergency Kennewick	509-628-0333
“ “ Richland	509-628-0333
RV PETERSON, CEO	509-554-0503
Rydel Peterson Vice President	509-460-0523
Rhett Peterson, Operations Manager/Yardmaster	509-727-8824
Rhett Peterson, Operations Manager Office	509-371-8114
TRI-CITY RR Office	509-371-8313
Emergency Contacts:	
Signals:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Track:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Alternate Contact: Rydel Peterson	509-460-0523
CHEMTREC	1-800-424-9300

Special Instructions:

1. Speed Restrictions  
(Maximum Speed Permitted)  
All Subdivisions 25mph  
See individual subdivision for specific speeds
2. As stated in the Operating Plan "Prior to each entry onto TCRY tracks at Richland Junction, UP and BNSF shall be required to contact TCRY and TCRY will be required to be available to respond 24/7, pursuant to Instructions listed in Timetable, System Special Instructions or General Order via radio on AAR channel 15/15 or telephone to coordinate operations including providing TCRY with an estimated departure time."
3. Track Side Failed Equipment Detectors (FED)  
NONE
4. In effect on: TRI CITY & OLYMPIA RAILROAD CO.  
Employees will be governed by:  
  
General Code of Operating Rules, Fifth Edition, effective April 3, 2005, including UPRR Amendments up to July 24, 2009  
  
For Exceptions Refer to TCRY General Orders  
  
UPRR Air Brake and Train Handling Rules, effective April 1, 2004 (Including revisions up to August 13, 2009)  
  
UPRR TY&E Safety Rules, effective July 30, 2005 (Including revisions up to August 7, 2009)  
  
BNSF Mechanical Safety Rules and Policies; effective April 15, 2007(Including revisions up to January 30, 2009)  
  
UPRR Maintenance of Way Operating Rules, effective November 17, 2008 (including revisions up to July 24, 2009)  
  
UPRR Employee Safety Rules, effective July 30, 2007 (including revisions up to August 7, 2009)  
  
UPRR Maintenance of Way Safety Rules effective November 17, 2008 (including revisions up to July 24, 2009)  
  
United States Hazardous Material Instructions for Rail, effective July 29, 2009.  
  
Tri City & Olympia Railroad Company On-Track Safety Manual for Roadway Worker Protection, effective June 22, 2005  
  
North American Emergency Response Guidebook, 2008 edition
5. Equipment Restrictions  
The following equipment must be placed ahead of caboose or on the rear of caboose-less trains, except in work trains. Spacer/Idler cars may be used when necessary.  
  - Pile drivers
  - Locomotive cranes
  - Empty ribbon rail cars
  - Rear end only cars
  - Jordan spreaders
  - Wedge plows
  - Dozers  
When pile drivers, cranes, derricks or similar equipment are being moved on their own wheels or on cars in a train, they must be properly loaded and secured. Booms must be properly secured and, when possible, boom must be trailing. Equipment must be inspected before being moved.

Spreaders and dozers being moved in train must, when possible, be headed in the direction train is moving and wings must be properly secured.

**6. Car Restrictions**

Six or eight axle cars as well as dimensional cars (high/wide) may not move on Tri-City Railroad Co. trackage without prior approval of the General Manager.

A high/wide load may be moved in a train only after excessive dimension clearance message is received or a crewmember ascertains any applicable restrictions from the General Manager.

Crewmember must advise the General Manager and other crewmembers that train contains a high/wide load. Until the General Manager has been notified, the crewmember is responsible for protection against other wide loads.

Clearance message will contain all restrictions encountered over the entire route of movement.

When a high/wide load is set out enroute between terminals, load must be placed on a track which will provide sufficient clearance from the main track and the General Manager advised that the car is being set out.

When a high/wide load is handled, the crew is responsible for compliance with all restrictions in an excessive dimension clearance message.

A train must not pass a location where a restriction is shown for the meeting or passing of trains without authority from the General Manager.

**7. Emergency Stop or Severe Slack Action**

ALL Trains: Train must be visually inspected before proceeding if unusual slack action was experienced when stopped or if excessive power is required to start train. If excessive power is not required to start train, and physical characteristics prevent a complete walking train inspection, inspect as much of the train as possible. The train may then be moved, but may not exceed 5 MPH for the distance necessary to complete the inspection, and must be stopped immediately if excessive power is required to keep train moving.

**8. Rule 6.32.2 Automatic Crossing Devices**

Under any of the following conditions, a movement must not foul a crossing equipped with automatic warning devices until the device has been operating long enough to provide warning and the crossing gates, if equipped, are fully lowered:

- Movement had been delayed or stopped within 3,000 feet of the crossing
- Movement is closely following another movement
- Movement is on other than the main track or siding

**Employees must observe all automatic crossing warning devices and report any that are not operating properly to the yardmaster or proper authority by first available means of communication. Notify all affected trains as soon as possible.**

**9. Securing Cars or Engines**

When hand brakes are required, apply a sufficient number of hand brakes, but not less than two when there are two or more cars.

**10. Time signals**

Time signals received from WWVTIME may be used to set watches and clocks to correct time. The hours are given in Coordinated Universal Time; so, only the minutes and seconds may be used. Telephone number for WWVTIME is (402) 271-4601

**11. Rule 4.3 Timetable Characters**

- B General orders, Notices and Circulars
- C Radio Communications
- J Junction
- T Turning facility
- P Telephone

**12. Grade Crossing Accidents**

The following information is designed to serve as post grade crossing accident guidelines. It is designed to provide the utmost in safety for you and your crew.

After the accident has occurred and the train is stopped:

- a) Ensure the safety of crewmembers, accident victims, and the public.
- b) Meet the requirements of rule 6.23.
- c) Ascertain and advise emergency services of exact location of the accident.
- d) Include alternate routes for the emergency vehicles if your train is blocking road crossings.
- e) Assess the damage to the vehicle and train to determine if there is any danger to your crew or the public.
- f) Assign a crewmember to monitor a radio to provide further information for emergency assistance.
- g) If it is safe, render assistance to accident victims. It is important not to move the victim unless a life-threatening situation exists.
- h) Only give information to:  
The investigating officer, or, Authorized company managers. Cooperate with the investigating officer. Answer the officer's questions and provide as much information as you can recall. Record the badge number and name of the investigating police officer, that the headlight is on, and that the whistle and bell on lead unit are in proper working order. Also, note that the crossing warning devices are functioning.
- i) Assign a crewmember to verify the accuracy of the train list. Save all train lists, track warrants, track condition messages and other pertinent documents and provide these to Tri-City Railroad Co. Ascertain that no part of your train is derailed and that it will be safe to proceed once released by the investigating officer.
- j) Personal counseling will be available to any crew member who might experience post-accident trauma.

SPEED TABLE					
Time Per Mile		Miles Per Hour	Time Per Mile		Miles Per Hour
Minutes	Seconds		Minutes	Seconds	
12	--	5.0	2	45	21.8
6	--	10.0	2	30	24.0
5	--	12.0	2	15	26.7
4	--	15.0	2	10	27.7
3	30	17.1	2	5	28.8
3	--	20.0	2	--	30.0

FEET	TENTHS OF A MILE
528	.1
1,056	.2
1,584	.3
2,112	.4
2,640	.5
3,186	.6
3,696	.7
4,224	.8
4,752	.9

END



**TRI-CITY & OLYMPIA RAILROAD CO.**

**TIMETABLE  
1<sup>st</sup> Subdivision**

**No. 8**

**Effective 00:01**

**December 22, 2011**

**RV Peterson, CEO**

**IMPORTANT PHONE NUMBERS**

Police & Fire Emergency	911
Non-emergency Kennewick	509-628-0333
“ “ Richland	509-628-0333
RV PETERSON, CEO	509-554-0503
Rydel Peterson Vice President	509-460-0523
Rhett Peterson, Operations Manager/Yardmaster	509-727-8824
Rhett Peterson, Operations Manager Office	509-371-8114
TRI-CITY RR Office	509-371-8313
Emergency Contacts:	
Signals:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Track:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Alternate Contact: Rydel Peterson	509-460-0523
CHEMTREC	1-800-424-9300

TRI-CITY RAILROAD COMPANY

Timetable No.7 Page 2 of 3

## TCRY Station Table

Siding Length	Station No's	Mile Post Location	Stations	Rule 4.3 Opr's	Method of Operations
		B46.7	Union Pacific		GCOR 6.28
1800	00200	B46.6	Richland Jct.	J	GCOR 6.28
	00201	B45.8	Steptoe		
547	00205	B43.9	City Dock		
	00209	B39.5	Airport		
	00210	B39	Lamb		
845	00211		ConAgra		
	00212	B38.6	Saint		
	00300	B38.6	TCRY Yard	B,C,P,	
	00310	B37	Horn Rapids	T	
	00350	B35.8	Hanford		
	400		City Spur		

***TCRY LOCATIONS NOT SHOWN ON TABLE***

B45.7  
 B45.5  
 B44.4  
 B44.4  
 B43.3  
 B42.7  
 B41.9  
 B41.0  
 B40.0  
 B38.5

Irrigation Canal Bridge  
 Columbia Park Trail Overpass  
 Yakima River Bridge  
 Bike Path Pedestrian Crossing  
 Jadwin Ave Crossing  
 Berry's Overpass Bridge  
 Duportail Road Crossing  
 Cemetery Road Crossing  
 Van Giesen Road Crossing  
 Highway 240 Road Crossing

TRI-CITY RAILROAD COMPANY

Timetable No.7 Page 3 of 3

## Special Instructions

### 10. Speed Restrictions

MP 46.6 to MP 38.6	20 MPH
MP B38.6 to MP B35.8	10 MPH
Trains & engines through Turn-outs	10 MPH
On tracks other than Industrial tracks Or sidings	10 MPH
City Lead	10 MPH
Kingsgate Crossing	5 MPH

### 11. The following Bridges and Overpasses have no walkway:

Irrigation Canal Bridge MP B45.7  
Columbia Park Trail Overpass MP B45.5  
Yakima River Bridge MP B44.4  
Berry's Overpass Bridge MP B42.7

### 12. Type of Operation

GCOR Rule 6.28

END

**EXHIBIT 4**

# PORT OF BENTON

August 26, 2015

Mr. Randy Peterson	Mr. Chris Randall	Mr. Todd Witham
TCRY Railroad	BN Shoreline	UP Railroad
PO Box 1700	2500 Lou Menk Drive	1400 Douglas Street
Richland, WA 99352	Fort Worth, TX 76131	Omaha, NE 68179

Dear Gentlemen,

The Port received a letter from Tri-City Railroad Company (TCRY) dated July 23, 2015, which raised several issues related to the Operating Plan which was approved by the United State District Court, Eastern District of Washington. The letter stated there were some issues related to the implementation of the Operating Plan, in particular the operations of Burlington Northern Santa Fe (BNSF) Railway Company. The letter proposed a meeting of TCRY, BNSF and the Port to discuss the concerns and changes to the Operating Plan.

The Port elected to proceed in accordance with the provisions of Section 10 of the Operating Plan. The Port requested responses from BNSF and Union Pacific (UP) Railroad to the issues raised by TCRY. The Port received a written response from BNSF and, in turn the Port received a rebuttal from TCRR.

A meeting to discuss the issues raised by TCRR and BNSF was held on August 13, 2015 at the Port offices. John Miller and Rhett Peterson attended in person for TCRR; Chris Randall, Ward Angelos and Matthew Brodin attended in person for BNSF; and Todd Witham attended by phone for UP. Present for the Port of Benton were Scott D. Keller, Stuart Dezember, John Haakenson, Diahann Howard and Thomas A. Cowan.

There were a number of operational matters which had been raised, including delays for BNSF access to the Port of Benton track or delays in BNSF being having clear track to exit the Port of Benton track. With three railroads utilizing the Port of Benton railroad there are a certain number of conflicts which are inevitable. BNSF and TCRR representatives felt these conflicts can be resolved under the terms of the existing Operating Plan through closer communications among the railroads involved.

The most important element is to maintain the safe operation upon the Port tracks while providing access for each railroad to its customers. The parties will try to deal with the conflicts among themselves and if they are unable to resolve them the Port will arrange for another meeting.

The issue remaining for determination by the Port is the nature and extent of the rights of use for BNSF to the Port railroad under the contract between BNSF's predecessor and the Atomic Energy Commission, the predecessor to the Port, in light of the decision by Judge Shea of the United State District Court, Eastern District of Washington.

It seems clear that BNSF and UP have the right to use the entire Port of Benton track from the Richland Junction to the north end of Horn Rapids Road. Any use of the track to the north of Horn Rapids Road is controlled by the Department of Energy.

While BNSF and UP have the right to use the Port track with TCRR, the right is not exclusive to any of the three railroads, and any use of the railroad must accommodate the rights of the other users. The Operating Plan was adopted to coordinate those competing interests in a way that protects the rights of each of the parties and promotes the safe use of the tracks.

In Section 1 of the Operating Plan, UP and BNSF recognize that TCRY is the operating railroad on the line. This requires UP and BNSF to coordinate their operations through TCRY while requiring TCRY to adopt regulations for safe operations by the railroads while providing equitable access.

Section 2 allows UP and BNSF to have regular access to the tracks at times agreed to between the respective railroad and TCRY. If either UP or BNSF wishes to establish recurring days and times for access to the Port track it can work out a schedule with TCRY. Otherwise, non-periodic access must be coordinated among the three railroads with TCRY as the contact point.

In order to coordinate, BNSF and UP should provide sufficient notice to TCRY so TCRY can provide access.

TCRY cannot use its control of access to the track to discriminate against the other users and access must be equitable. However, for non-periodic use, BNSF and UP should provide sufficient notice of their need for access to allow TCRY to complete its operations.

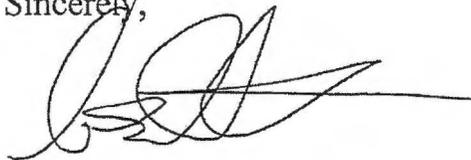
Section 6 requires TCRY to advise UP and BNSF of any car storage on the tracks or line maintenance and the storage or maintenance shall not unreasonably impede service to rail customers. It is important that TCRY not use the tracks to store its cars if that storage will interfere with either of the other railroads access to rail customers. Rail customers include not only Customers serviced directly by the Port railroad but also customers served by other lines connecting to the Port tracks.

Section 7 provides that if TCRY spots cars at a railroad customer, it must provide either a clear track in the Richland yard or a clear and accessible wye track for other users to run around the cars spotted by TRCY. This requirement does not define the rights of UP and BNSF to use any other portion of the tracks when TCRY is not providing cars to a customer.

In conclusion, BNSF and UP have the right to use any portion of the Port railroad to serve customers either on the Port track or on tracks which are branches or spurs to the Port track. That right of use is not exclusive. Each of the railroads has a right to use the tracks and TCRY is charged with the need to coordinate the use in an equitable manner.

If you have any questions please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott D. Keller", with a long horizontal flourish extending to the right.

Scott D. Keller, PPM®  
Executive Director

C: Port Commission and Counsel

**EXHIBIT 5**

# PORT OF BENTON

September 21, 2015

Mr. John Miller  
TCRR  
PO Box 1700  
Richland, WA 99352

Dear ~~Mr. Miller~~ *John*:

The Port has learned that Tri-City Railroad Company has adopted new tariffs which became effective on August 1, 2015. If this is true, the new tariffs have not been reviewed and approved by the Port of Benton. Section 7.1 of the Railroad Lease between the Port and Tri-City Railroad states:

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all applicable laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. **Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.**

Any tariffs proposed by Tri-City Railroad cannot be imposed upon users of the Port of Benton Railroad until they are reviewed and approved by the Port.

Please review all of the existing Tri-City Railroad tariffs to make sure they have been submitted to and approved by the Port. If any of the tariffs have not been submitted and approved, please submit them as soon as possible. When submitting proposed tariffs to the Port for review and approval, please provide supporting documentation to establish the tariffs are reasonable in light of the use of the railroad and the tariffs comply with the Port's agreements with the United States.

Sincerely,



Scott D. Keller, PPM®  
Executive Director

C: Port Commission and Counsel



October 29, 2015

Ms. Lisa Anderson  
TCRR  
PO BOX 1700  
Richland, WA 99352

Dear Ms. Anderson,

Thank you for your letter of October 16, 2015.

As part of the dispute between Tri-City Railroad Company, LLC and West Coast Warehouse and Logistics, Inc. the Port was asked to identify which of the TCRR imposed tariffs the Port had approved. A review of the Port's records revealed that TCRR had not submitted its tariffs to the Port for review and approval.

Although the Port is aware that TCRR has established tariffs and operating orders, these have not been submitted and approved as required. In a discussion between Tom Cowan, the Port's attorney, and William Schroeder, TCRR's attorney, Mr. Cowan suggested that all of TCRR's current tariffs be submitted to the Port for review and approval in order to cure this deficiency.

Your letter gives a history of the various tariffs which TCRR has imposed upon the users of the railroad. I assume from your letter that all of the current tariffs are now posted on the TCRR website. Therefore, the Port will begin a review of the tariffs and will advise you when the review is completed and which of the tariffs the Port has approved.

In the future, TCRR should submit any additional tariffs and modifications of tariffs to the Port for review and approval. The review will be handled in accordance with the provisions of the Railroad Lease, the Quit Claim Agreement and Indenture, and the Operating Plan approved by Federal District Court Judge Shea.

In particular, the Lease provides:

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States

of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all applicable laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

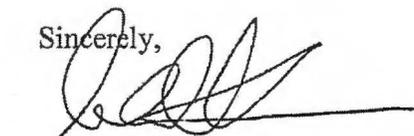
The Agreements with the United States include the Quit Claim Deed and the Indenture cited in the Lease. If you review the terms of the Indenture, it contains explicit provisions regarding charges for the use of the railroad.

In addition, the Operating Plan entered into by TCRR and adopted by the Federal Court requires any changes to the Operating Plan must be submitted to the Port for prior approval (see Sec. 8); any System Special Instructions and General Orders shall be submitted to the Port for prior approval (see Sec. 9); and disputes among the parties related to the Operating Plan must be submitted to the Port (see Sec. 10).

The use of the Port of Benton Railroad has increased markedly over the past few years. With this increase, there has been an increase in conflicts among the users of the tracks. The Port must utilize its authority as the owner to make sure the Railroad is operated safely, efficiently and in a manner to accomplish the economic development goals for which it was acquired. Undoubtedly, this will require additional attention by TCRR to its obligations, but the Port hopes to be able to work cooperatively with TCRR to attain the appropriate results.

Please let me know if you have any further questions or concerns.

Sincerely,



Scott D. Keller, PPM®  
Executive Director

C: Port Commission and Counsel

# PORT OF BENTON

December 17, 2015

Mr. John Miller  
TCRY  
PO Box 1700  
Richland, WA 99352

Mr. Kenneth Miller  
Miller, Mertens, & Comfort, PLLC  
1020 N Center Parkway, Ste. B  
Kennewick, WA 99336

Re: Tariffs on Port of Benton Railroad

Gentlemen:

West Coast Warehouse & Logistics, Inc. has raised a question about the tariffs established by Tri-City Railroad Company (TCRY) on the Port of Benton Railroad. Although TCRY has imposed tariffs on the railroad use, it has not previously submitted the tariffs to the Port for its review and approval. The Port has been aware of the existence of tariffs on the Railroad, but the tariffs have not been submitted to the Port for review and approval. As a result of the issues raised by West Coast Warehouse, the Port has asked TCRY to submit all of the tariffs for review and approval.

TCRY operates the Railroad pursuant to a Railroad Lease with the Port. Section 7.1 of the Lease provides:

... Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

The initial requirement of the Lease is that the tariffs must be reasonable in light of the use of the railroad.

The Port has asked its consultant, Tangent Services to review the tariffs and to compare the tariffs to comparable tariffs which are commonly used in the railroad industry. Tangent Services has concluded that the tariffs are reasonable in light of the standard tariffs used in the industry. The Port accepts the conclusions provided by Tangent Services.

The second requirement is that the tariffs comply with the Port's agreements with the United States. The Port acquired the Railroad from the United States by Quit Claim Deed and the parties entered into an Indenture Agreement for the transfer of the Railroad and other property. The Indenture is binding upon the Port as Grantee, and its successors and is specifically binding upon TCRY under the terms of the Lease.

The Indenture includes the following provisions:

#### Article XVIII. USE OF REAL PROPERTY AND RAILROAD

Grantee shall use and maintain the Real Property and Railroad on fair and reasonable terms without unlawful discrimination. In furtherance of this condition (but without limiting its general applicability and effect) Grantee specifically agrees that: (i) it will establish such fair, and non-discriminatory conditions to be met by all users of the Real Property and Railroad, providing Grantee may prohibit or limit any given type and kind of use if such action is necessary to promote safe operations; . . . (iii) that in any agreement, contract, lease or other arrangement under which a right or privilege granted to any person, firm or corporation to conduct or engage in any lawful activity, Grantee shall insert and enforce provisions requiring the party to: (i) furnish said service on a fair, equal and nondiscriminatory basis to all users, thereof; and (ii) charge fair, reasonable, and nondiscriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Based upon the information provided to the Port, it does not appear that the tariffs are unfair or unreasonable. This is supported by the report from Tangent. Further there is no evidence that the tariffs are being applied in a discriminatory fashion.

The Port concludes that the tariffs imposed by TCRY upon the users of the Railroad comply with the provisions of the Railroad Lease and the Indenture. This conclusion would be subject to review and modification if a party is able to demonstrate that the application of the tariffs is unfair or unreasonable in light of the use of the Railroad or that the tariffs are actually being applied in a discriminatory manner.

Any new tariffs or modifications to the existing tariffs shall be presented to the Port for review and approval prior to implementation.

Please let me know if you have any further questions or concerns.

Sincerely,



Scott D. Keller, PPM®  
Executive Director

C: Port Commission and Counsel

**EXHIBIT 6**

**From:** Stuart Dezember Dezember@portofbenton.com  
**Subject:** Union labor  
**Date:** May 28, 2015 at 2:08 PM  
**To:** Lisa Anderson lisaanderson11@me.com  
**Cc:** Scott Keller keller@portofbenton.com, RGW Enterprises roger@rgwenterprises.com, Kelly Thompson Kelly@portofbenton.com

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Lisa,  
Good Afternoon

The Port of Benton is undertaking Capital Improvements to the Railroad Bridge, Canal Bridge and related tracks.

We consider this to be work that does not have to be under TCRY's collective bargaining agreement.

MJ Hughes and West Rail have our permission to use "non-union" labor on this capital project. This includes transporting West Rail equipment from the Inland Asphalt siding to the job site and back at the end of the shift. This will begin tomorrow evening at the start of their work.

This will also apply to any future railroad "capital" improvements that the Port chooses to perform.

Thank you.

**Stuart B. Dezember | Port of Benton**

3250 Port of Benton Blvd. | Richland, WA 99354  
509.375.3060 | Office  
509.375.5287 | Fax  
509.430.9215 | Mobile  
Email: [dezember@portofbenton.com](mailto:dezember@portofbenton.com)

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**From:** Lisa Anderson lisaanderson11@me.com  
**Subject:** Re: Questions and Comments from TCRY  
**Date:** August 5, 2016 at 8:20 AM  
**To:** Stuart Dezember Dezember@portofbenton.com  
**Cc:** Teresa Hancock teresah@portofbenton.com, Haakenson John D. Johnh@portofbenton.com, Kelly Thompson Kelly@portofbenton.com



Stuart,

In reply to your July 26th email, please find my remarks below.

With regard to the Port's agenda for the meeting, the Port confirmed to me at 8:52 a.m. prior to the scheduled meeting time of 10:00 a.m. that it had no agenda.

1. As you know Stuart, TCRY welcomes Port funded Capital Improvements. It has been stated repeatedly and in many forms of communication over the years.

Most recently as an example, and since learning of the Port's intention to spend the surplus money from the Columbia Park Trail Bridge Capital Project, TCRY has accommodated several specific Port requests relating to that project. As you have requested, TCRY will review the Ballast Replacement Capital Project plans and specifications and will respond timely.

TCRY will absorb the internal costs for this review. Outside services such as legal and engineering will be passed through at cost without the standard additional charge of 15% for handling.

2. You ask about TCRY flagging costs for the Ballast Replacement Capital Project.

TCRY's standard hourly rate for flagging is \$95 per hour per flagger and has not changed since 2012. This rate was applicable for the Columbia Park Trail Bridge Capital Project last summer, which surplus funds will apparently be used for the Ballast Replacement Capital Project.

3. You ask that TCRY provide to you a complete list of its insurance requirements for the Ballast Replacement Capital Project.

Again, as you know, TCRY provides its Standard Insurance Guidelines on its website and represents a complete list of required insurance. A link is provided below for your convenience.

[http://media.wix.com/ugd/a6d54b\\_a25afac658ab4e0694fd2874cb796a8b.pdf](http://media.wix.com/ugd/a6d54b_a25afac658ab4e0694fd2874cb796a8b.pdf)

4. You ask about the 2015 Bridge Inspection Report.

The 2015 Bridge Inspection Report was received the week of July 20th and a courtesy copy was provided to the Port on July 26th.

5. You said in your email that values in the Port's forthcoming railroad track appraisal will increase and that TCRY will need to increase its insurance values to match the increased appraisal values.

Well, it's interesting that you say the values will increase even before receiving the report. I'll wait for the report before commenting.

6. You ask that TCRY provide the Port a written plan on how it expects to comply with the maintenance of the railroad tracks/infrastructure in accordance with the lease.

As you know, TCRY has a safe, successful and documented history of maintaining the railroad tracks/infrastructure over the last sixteen years.

Your request now, sixteen years into the Lease, for TCRY to provide a written plan in which it is to explain how it expects to comply with the maintenance of the railroad in accordance with the Lease, is disingenuous.

TCRY's impeccable safety record, in part, is due to its exemplary performance of track maintenance.

The tracks are in better condition and safer than when they were received by TCRY sixteen years ago.

TCRY maintenance practices are in accordance with the Code of Federal Regulations (CFR) 49 part 213 and overseen by the Federal Railroad Administration (FRA). Please review recent TCRY correspondence to the Port on this point dated 10/01/15, 10/28/15, 11/23/15 and 12/04/15.

On average, TCRY participates in more than 4 random FRA inspections per year on one or more parts of CFR 49 parts 200-299. To my knowledge, never has an FRA inspection of TCRY tracks resulted in an unfavorable report.

Inspection of the tracks is a regular part of safe railroading. As an example, TCRY this year to date, has performed more than thirty track inspections.

You may not know that Section 8 of the Lease speaks to inspections being conducted in accordance with FRA regulations, but does not call for TCRY to provide copies of the inspections to the Port. TCRY has however, from time to time, provided the Port courtesy copies.

Further, the Lease does not call for TCRY to provide written reports or maintenance plans to the Port.

The tracks are maintained by TCRY trained and experienced employees. These folks are committed to maintaining and operating a safe railroad.

Safety is TCRY's highest priority. TCRY also utilizes video technology to capture the entire track system weekly. A courtesy copy of a recent TCRY track inspection video was made available to the Port last week.

TCRY has never had a reportable train derailment in its history. However, the tracks were built back in 1948. The trains were smaller, shorter and lighter than trains of today.

The Port allows big, heavy and long trains to run on the tracks that were NOT built for this purpose at volumes not anticipated. TCRY has pointed this out to the Port on numerous occasions that this exceeds normal wear and tear.

TCRY again, strongly recommends the Port upgrade the entire mainline to 136 lb rail as soon as possible, in order to safely accommodate the big heavy, long trains now using the tracks.

TCRY plans to and will continue to maintain the old 1948 lightweight track infrastructure in accordance with the lease.

7. Toward the end of your email, you stated that at this point the Port has not seen any evidence that indicates that the railroad ties are being replaced at a pace that will keep up with their deterioration and that the Port's consultant suggests that a couple hundred ties should be replaced each year.

I'm not sure what you mean by "evidence" and "deterioration" but I can tell you that TCRY replaces many ties every year and has replaced more ties already this year than the couple hundred calculated for an entire year by some Port consultant.

The ties themselves are deteriorating faster than normal due to the big, long, heavy trains running on the old 1948 track designed for smaller lighter trains.

I will finish by mentioning that TCRY applied for and received over \$380,000 in WSDOT grant funding to improve four of the at-grade crossings on the line with work to begin this coming year. TCRY has also installed video surveillance cameras on every at-grade crossing on the mainline. The at-grade crossings represent a serious safety concern not only for TCRY employees but the general public as well. The crossing equipment at the various at-grade crossings has experienced extensive property damage from cars and trucks involving 40 separate incidents since 2008. TCRY encourages the Port to upgrade the old at-grade crossing equipment.

TCRY is constantly improving employee safety, customer safety and the general public safety through its commitment to training, education and investment.

Sincerely,



Lisa Anderson, Corporate Secretary  
Executive Vice President  
PO Box 1700 | Richland, WA 99352  
Cell 360.239.9067 | Fax 509.582.4964  
TCRY.com

On Jul 26, 2016, at 12:35 PM, Stuart Dezember <[Dezember@portofbenton.com](mailto:Dezember@portofbenton.com)> wrote:

Lisa,

I'm not sure what happened this morning regarding an agenda for today's meeting, I was at a dr. appt prior to the meeting.

Regardless, I did have several items that I would like to get a response from TCRY on:

Ballast Replacement Project:

- Once construction plans and specs are 80% complete, the Port will provide TCRY a copy for review and comment. The Port will require a written response from TCRY on the plans and specs within 10 business working days. If no response is received then the Port will assume that TCRY has no comments. Port is asking what review costs if any TCRY is expecting?
- Flagging of Track, as we have discussed at prior meetings, the Port is asking TCRY to consider flagging this project at no cost to the project. This would allow more funds to be used for actual ballast work. Please let the Port know what TCRY expects regarding flagging costs if anything.
- Insurance for contractor, please provide the Port a complete list of TCRY insurance requirements for this project. The Port will then take this information and determine the insurance that will be required in the contract between the Port and the contractor.

The Port is again requesting a copy of the 2015 bridge inspection report.

Railroad track appraisal:

- As we discussed the Port is in the process of valuing the railroad tracks and related infrastructure. We expect a final report by the end of next week. Once a final report is received I will email you the values and what the TCRY needs to increase the insurance coverage values to be.

Track Maintenance Plan:

- Please provide the Port with a written plan on how the TCRY expects to comply with the maintenance of the railroad tracks/infrastructure in accordance with the lease. The Port's consultant has calculated that TCRY should be replacing several hundred railroad ties each year. At this point we have not seen any evidence that indicates that the railroad ties are being replaced at a pace that will keep up with their deterioration.

I would like to get your comments and answers to these questions on or before August 5, 2016. Any items not addressed or if there is a disagreement, those will be addressed by the Port's attorney.

Thank you for your time and have a great afternoon!

**Stuart B. Dezember | Port of Benton**

3250 Port of Benton Blvd. | Richland, WA 99354

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From: **Stuart Dezember** Dezember@portofbenton.com  
Subject: Response to 8-5-2016 email  
Date: August 17, 2016 at 4:11 PM  
To: Lisa Anderson lisaanderson11@me.com, Lisa Anderson (lisaanderson@tcry.com) lisaanderson@tcry.com  
Cc: Kelly Thompson Kelly@portofbenton.com

---



Lisa,

This email will respond to the comments in your August 5, 2016 email.

TCRY has elected to again assume a confrontational relationship with the Port. The Port has worked diligently to resolve a number of outstanding issues with the TCRY and its representatives and the Port is frustrated with the lack of meaningful progress.

The Port does intend to protect and improve the railroad and related assets which it owns.

#### **Outside costs for the Ballast Replacement Capital Project.**

The Ballast Replacement is a Port project and a capital improvement for the Port's railroad. The Port will provide plans and specifications to TCRY for its review, but it does not require TCRY's approval or concurrence. The Port cannot compensate TCRY for any outside fees or costs which TCRY elects to incur.

Additionally, if the Port were to agree to reimbursement of any fees or costs, the consultants and the amounts must be approved in advance. As a public entity, the Port will follow state law governing public contracts. TCRY does not have the authority to incur any separate obligations to be paid by the Port, as it attempted to do in the Control Tech matter.

#### **Management of Port construction projects.**

Although the Port acquiesced with using TCRY flaggers in the prior project, that created a number of problems and inefficiencies which the Port does not wish to repeat in this Project. Since this is a capital improvement project, the Port will control the work and expenditures. The Port and its contractors will work with TCRY to ensure the work is done safely and with a minimum of disruption to the rail traffic.

As the owner of the railroad, the Port retains the right to construct capital improvements and it also maintains the responsibility to manage those construction projects.

#### **Insurance coverage for capital projects.**

The Railroad Lease requires TCRY to maintain railroad liability insurance and property insurance in effect for the mutual benefit of TCRY and the Port. The Port will be relying upon this coverage when it performs capital improvement projects on the railroad. There is no need to reduce the funds available for a project by requiring redundant insurance coverage when TCRY is already required to provide the insurance. To the extent necessary, the Port will require insurance coverage from its contractors to cover the contractor's operations.

## **Appraisal Process.**

The Port provided a great deal of factual and documentary information to the appraiser as background. The appraiser reviews the information and incorporates the relevant data into the analysis. The appraiser then provides the draft to the Port for its review of the facts and documentation to assure the factual data is accurate. After review, the Port provides any corrections related to the factual information. This process insures the accuracy.

As a result, the Port knew the valuation of the railroad was increasing, but until the report is final, the Port does not have final numbers. You should not have disputed the integrity of Port management nor of the appraiser.

The Port has received the final report and a copy of the appraisal will be provided to you under separate cover.

## **Maintenance Expenditures and Maintenance Plan.**

The Railroad Lease requires TCRY to maintain the Port's railroad as part of the compensation for the use of the railroad. Over the years, the Port has repeatedly asked TCRY to provide information on the expenditures for maintenance of the railroad and TCRY has refused to provide that information.

As a result of concerns expressed to the Department of Revenue related to the "free use" of the Port railroad, the amount of rent paid by TCRY will come under increased scrutiny as well.

The monthly rent currently paid by TCRY seems extremely low in comparison to the value of the tracks and land (\$25M), the value of an 80,000 square foot building (\$7M) and the value of the rail maintenance equipment (\$1M). The Department of Revenue could easily determine that the rent the Port is receiving is not market rent and it can establish a higher rent value as the basis for leasehold tax calculations.

If TCRY can establish that it has spent a significant amount for railroad maintenance, the Department might accept that annual expenditure as additional compensation to the Port for the lease. Even that additional amount should be lower than the market rent determined by the Department. However, TCRY's on-going refusal to provide information to the Port about the cost and extent of maintenance will not be helpful if there is an audit.

The Department does have the ability to audit TCRY's records to obtain the information it needs and to impose additional leasehold excise tax for prior years. In the past, the Department of Revenue has imposed an increased leasehold excise tax on Port tenants going back six years when the Department has determined the rent paid is not market rent.

The Port has been successful in obtaining grants for the maintenance and improvement of its railroad. The Port received emergency funding to replace the bridge after it was maliciously burned by an arsonist. It replaced the remaining wooden trestles to avoid such problems in the future. And it now has funds to do some ballast replacement.

In order to pursue additional grant funding, the Port needs information about deferred maintenance, annual maintenance costs and a written maintenance plan for future years. The receipt of additional grants will benefit TCRY as well by reducing maintenance costs in the future. If, as you state, TCRY's highest concern is railroad safety, it is difficult to understand TCRY's refusal to cooperate with an effort to obtain additional funds for improving the railroad.

If you have any questions or comments please let me know.

**Stuart B. Dezember | Port of Benton**

3250 Port of Benton Blvd. | Richland, WA 99354

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**From:** Stuart Dezember Dezember@portofbenton.com  
**Subject:** RE: Response to 8-5-2016 email  
**Date:** August 24, 2016 at 2:26 PM  
**To:** Lisa Anderson lisaanderson11@me.com  
**Cc:** Kelly Thompson Kelly@portofbenton.com



Lisa,

Thank you for your email. The Port does have these documents, but I appreciate you providing them.

The Port is asking for the same information that Mr. Keller asked for in his April 1, 2013 email to you. Again to be more specific, the Port is asking for calendar year 2013, 2014, 2015 and 2016 year-to-date repairs/maintenance costs of the railroad. We are not asking for operational costs.

The Port would like to know the total cost of maintaining the railroad, not the 1171 building or other laydown yards. Costs we would expect to see are repairs and maintenance of the tracks and related infrastructure, payroll costs of employees directly related to the repairs/maintenance. Other questions we have are how many ties have you purchased each year? How many tons of ballast do you purchase each year?

If you have any questions or need further clarification please let me know.

**Stuart B. Dezember | Port of Benton**

3250 Port of Benton Blvd. | Richland, WA 99354  
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509. 375. 5287 | Fax  
509. 430. 9215 | Mobile  
Email: dezember@portofbenton.com

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**From:** Lisa Anderson [mailto:lisaanderson11@me.com]  
**Sent:** Monday, August 22, 2016 3:01 PM  
**To:** Stuart Dezember  
**Cc:** Kelly Thompson; Jamie Robison  
**Subject:** Re: Response to 8-5-2016 email

Good afternoon Stuart,

TCRY has always been cooperative and this message is provided with that in mind.

In 2013 the Port received (via email) detailed cost information specific to operating the railroad. I'm not sure where your copy is so I have included an attachment from that time period which encompasses several communications on this topic.

If you have questions don't hesitate to let me know.



Lisa Anderson, Corporate Secretary  
Executive Vice President

PO Box 1700, Richland, WA 99352  
Cell 360.239.9067 | Fax 509.582.4964  
TCRY.com

**EXHIBIT 7**

RAILROAD LEASE

Port of Benton-Tri-City Railroad Company

PARTIES:

**LESSOR:** PORT OF BENTON, a municipal corporation of the State of Washington, hereafter "Port".

**TENANT:** TRI-CITY RAILROAD COMPANY, L.L.C., a Washington limited liability company hereafter "Tenant".

RECITALS:

WHEREAS, the Port acquired the Southern Connection of the Hanford Railroad from the United States Department of Energy (hereafter "DOE") to prevent the closure of the railroad and to maintain railroad operations for economic development purposes.

WHEREAS, DOE conveyed the former 1100 Area to the Port to enable the Port to generate revenues to pay the costs of operation and maintenance of the railroad.

WHEREAS, the Port entered into an Operations and Maintenance Agreement with Livingston Rebuild Company dated October 1, 1998 which has been assigned to the Tenant and this agreement requires the Port to pay certain expenses related to the railroad, including insurance premiums, in excess of \$100,000.00 per year and the Port has the responsibility for the inspection, maintenance and replacement of the bridges and overpasses.

WHEREAS, the Port has been required to pay for the replacement of a section of the railroad bridge which was destroyed by fire.

WHEREAS, the Port entered into a Building Lease with Livingston Rebuild Company for the railroad maintenance building in the Port's Manufacturing Mall (formerly DOE's 1100 Area), which Lease has been assigned to the Tenant.

WHEREAS, the parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to the Tenant.

WHEREAS, the Port has been required to respond to an inquiry by the Railroad Retirement Board concerning the Port's liability for pension payments as an railroad operator and the Port wants to avoid classification as a railroad operator.

WHEREAS, the Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities; now therefore it is hereby agreed among the parties as follows:

AGREEMENTS:

1. LEASE. Port hereby leases to Tenant upon the terms, covenants and conditions contained herein, the real and personal property known as the Port of Benton Railroad Southern Connection and the 1171 Building (hereafter the "Property"). The real property is described on Attachment 1.

1.1 The Property consists of approximately 16 miles of railroad trackage and right of way extending from the Richland Connection in Kennewick, Washington to the Port of Benton's Manufacturing Mall in Richland, Washington, and generally bordered by Horn Rapids Road on the north, formerly known as the 1100 Area, including the tracks, bridges, trestles, crossings and maintenance equipment. The equipment and fixtures are more particularly described on Attachment 2 to this Agreement.

1.2 The Tenant has been operating the Port of Benton railroad and has occupied the 1171 Building since October, 1998 and is fully familiar with the Property and agrees to take the Property in its present condition, and subject to the restrictions contained in the Indenture between the United States of America and the Port, the amendments thereto, and the Quit Claim Deed from the United States of America, copies of which has been provided to the Tenant. The Tenant agrees to take the Property in its present condition without warranties. The Tenant is relying upon its own inspections of the Property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease.

1.3 The Port may acquire trackage rights to use additional railroad tracks owned by DOE serving the Hanford Project. To the extent that the Port acquires additional trackage rights from the DOE, the Port will attempt to negotiate an agreement with the Tenant to add the track rights to this agreement, if permitted by the terms of any agreements with the United States and to the extent the terms of the agreement for trackage rights are acceptable to the Tenant. An agreement to add additional track to this agreement, may require the Tenant to pay additional fees to the Port based upon volume of traffic over the tracks. Provided, that the Port may cancel any agreement with the United States for trackage rights without any further obligation to Tenant. Provided, further, in the event the Port terminates its agreement with the United States for trackage rights, the Tenant shall be free to negotiate with the United States for the trackage rights.

1.4 The Port of Benton currently has a Memorandum of Agreement with DOE to use the track north of Horn Rapids Road to the Energy Northwest Generating Station site, which the Port agrees to allow the Tenant to utilize under the terms of this Lease, provided that the Tenant maintains the track as herein required. DOE has proposed a Memorandum of Agreement with the Port of Benton for use of the Hanford Railroad north of the Energy Northwest Generating Station. After the execution of the MOA by the Port and DOE, the Port will permit the Tenant to utilize additional track which is covered by the MOA, provided that the Tenant complies with the terms and conditions of the MOA and subject to the provisions of this Lease.

2. TERM. This lease shall run for a period of ten years commencing on the 1st day of August, 2002 and terminating on the 31st day of March, 2012.

2.1 The Tenant shall have the option to extend this Lease for two additional terms of ten years each after the expiration of the initial term and after the expiration of the first renewal term.

2.2 The option to extend this Lease shall be deemed to have been exercised unless the Tenant shall give the Port written notice of its intent not to exercise an option at least one hundred eighty (180) days prior to termination of the initial term or the expiration of the first renewal term.

2.3 The Tenant may only exercise the right to extend the term of this Lease if the Tenant is not in material default in the performance of the terms of this Lease at the time the Tenant exercises the option or at the time an option is deemed to be exercised under Section 2.2.

2.4 In the event the Tenant elects not to exercise the Lease extension as provided in this Section, then this Lease shall terminate and the Tenant shall have no further rights under the terms of the Lease.

3. RENT. Tenant shall pay rent, in advance on the first day of each month during the term of this lease, in the following amounts:

3.1 During the initial term of the lease, the parties have agreed that the monthly rental for the real property, railroad trackage, right of way and building more particularly described in Attachment 1, shall be \$2,000.00, plus the applicable leasehold tax as hereafter provided.

3.2 In addition to the rent for the real property, the Tenant shall pay \$2,000.00 per month as rent for the railroad maintenance and operation equipment owned by the Port and more particularly described on Attachment 2. The Tenant shall be responsible for the payment of any sales tax which may be payable as a result of the lease of equipment.

3.3 Rent payments shall be made payable to the Port of Benton and shall be paid at the Port offices at 3100 George Washington Way, Richland, Washington, or at such other address as the Port shall direct in writing.

3.4 In addition to the rent provided for herein, the Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold Tax shall be paid with each monthly installment of rent. The current leasehold tax rate is 12.84%.

3.5 Commencing five (5) years from the commencement date of this lease, and on every anniversary thereafter, the minimum rent set forth in sections 3.1 and 3.2 shall be increased in order to reflect the proportionate increase, if any, occurring between the commencement date and such adjustment date in the cost of living as indicated by the Consumer Price Index for Urban Consumers - Western US Average - All Items, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"). Such adjustment shall be accomplished by multiplying the numerator of which shall be the Index level as of the January preceding the date of adjustment, and the denominator of which shall be the Index level as of the January preceding the Lease commencement date. Any adjustment of rent shall become effective immediately. In no event shall the rent be less than that specified in sections 3.1 and 3.2. If the index is discontinued, Landlord shall substitute a similar index of consumer prices.

3.6 Any rent payment not paid within ten days of the date upon which the Tenant receives notice that a payment is past due shall accrue interest on the unpaid rent at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

4. **CONDITION OF PROPERTY.** The Tenant shall take the Property in its present condition, without warranties or representations by the Port except as set forth in this Lease. The Tenant shall be responsible for the maintenance and repair of the railroad maintenance and operation equipment owned by the Port and used by the Tenant pursuant to this Lease. In the event any of the Port equipment becomes inoperable or unusable for any reason the Port shall not be required to provide replacement equipment. If the equipment becomes obsolete or inoperable through no fault of the Tenant, the unusable equipment shall be returned to the Port and the rent shall be adjusted to account for the equipment which is no longer being used by the Tenant. This provision shall not apply to the equipment that becomes inoperable due to the Tenant's failure to properly maintain the equipment.

5. **SECURITY.** The Tenant shall provide a rent security in accordance with RCW 53.08.085 in an amount equal to the rent and Leasehold Tax to be paid during the initial year of this Lease.

6. **TAXES AND ASSESSMENTS.** Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the Property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the Property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided

that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in installments, shall survive the termination or expiration of this Lease.

6.1 Tenant may contest the legal validity or amount of any taxes, assessments or charges which Tenant is responsible for under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the Property from any lien. Port appoints Tenant as Port's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments or charges.

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

7.2.1 If the complaint involves matters which are within the purview of National Surface Transportation Board (NSTB), the Port will, to the extent applicable, utilize the rules of the NSTB to resolve the dispute.

7.2.2 If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

7.2.3 Complaints which can not be referred to the NSTB, shall be resolved pursuant to the terms and conditions of this Lease.

7.3 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

7.4 The Tenant shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the

Port's prior written consent. The Tenant shall continue to provide railroad access to areas currently served by the railroad unless the Port and Tenant mutually agree that such access is no longer practicable.

8. MAINTENANCE OF PROPERTY. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall maintain the Property and all improvements and fixtures then existing thereon in good condition and repair, subject to reasonable wear and tear, and in accordance with all applicable covenants, laws, rules, ordinances, and regulations of governmental agencies applicable to the maintenance and operation of the railroad, provided, however, that the Port shall be responsible for the maintenance of the roof and the exterior walls of the 1171 Building. The Tenant will maintain the equipment described on Attachment 2 in good working condition and repair, ordinary and usual wear and tear excepted.

8.1 Tenant will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad. Tenant will promptly repair any conditions which require repair or replacement in order to comply with applicable rules and regulations. The obligation to maintain the railroad shall include the maintenance, repairs or replacements of the bridges, spans and overpasses and the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. In the event the Port assigns trackage rights to the Tenant pursuant to agreements with DOE, and the Tenant accepts the trackage rights, the Tenant agrees to assume the obligation to maintain the additional track in accordance with the terms and conditions of the agreement which the Port has entered into with DOE.

8.2 Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. Tenant shall promptly report any such conditions to the Port.

8.3 Tenant will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

8.4 Tenant will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract.

8.5 Tenant shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if Tenant determines that the equipment is no longer needed for maintenance of the railroad, Tenant shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

8.6 In the event the equipment becomes unavailable for use due to obsolescence or for any other reason, Tenant shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

8.7 The equipment shall be used only for the maintenance and operation of the railroad and for no other purpose without the prior written consent of the Port and an use agreement which provides for payment for the use of the equipment.

8.8 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad.

9. **CONDITIONS OF CONSTRUCTION.** Before any construction, reconstruction or alteration of the improvements on the Property, except for interior improvements or non-structural modifications is commenced and before any building materials have been delivered to the Property in connection with such construction, reconstruction or alteration by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Port's written waiver of the following condition or conditions:

9.1 Tenant shall deliver to Port, for its approval, one set of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington including, but not limited to, preliminary grading utility connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable Port to make an informed judgment about the design and quality of construction. All improvements shall be constructed within the exterior property lines of the Property provided that required work beyond the Property on utilities, access, and conditional use requirements will not violate this provision. Tenant shall permit Port to use the plans without payment for purposes relevant to and consistent with this Lease.

9.2 The Port shall examine the plans and specifications for the purpose of determining reasonable compliance with the terms and conditions of this Lease, the Protective Covenants and compatibility with the overall design and use. Approval will not be unreasonably withheld. Approval or disapproval shall be communicated to the Tenant, and disapproval shall be accompanied by specification in reasonable detail of the grounds for disapproval; provided that Port's failure to disapprove the initial construction plans within fourteen (14) days or subsequent construction plans within thirty (30) days after delivery to Port shall be considered to be approval.

9.3 Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by the Port, submit them to the appropriate governmental agencies for approval, and deliver to Port one complete set as approved by the governmental agencies.

9.4 Tenant shall notify Port of its intention to commence the initial construction at least fourteen days before commencement of any such work or delivery of any

materials. The notice shall specify the approximate location and nature of the intended improvements. During the course of construction, Port shall have the right to post and maintain on the Property any notices of non-responsibility provided for under the applicable law, and to inspect the Property at all reasonable times.

9.5 Except as specifically provided in this Lease, Port makes no covenant or warranties respecting the condition of the soil or subsoil or any other condition of the Property.

9.6 Once work is begun, Tenant shall, with reasonable diligence, complete all construction of improvements. Construction required at the inception of the Lease shall be completed and ready for use within eighteen (18) months after commencement of construction, provided that the time for completion shall be extended for so long as the Tenant is prevented from completing the construction due to delays beyond the Tenant's control; but failure, regardless of cause, to commence construction within eighteen (18) months from the commencement date of the Lease shall, at Port's election exercised by thirty days written notice, terminate this Lease. All work shall be performed in a workmanlike manner, substantially comply with the plans and specifications required by this Lease, and comply with all applicable governmental permits, laws, ordinances, and regulations.

9.7 Tenant shall pay the cost and expense of all Tenant's improvements constructed on the Property. Tenant shall not permit any mechanic's, or construction liens to attach to the Property. Tenant shall not permit any mechanics', materialmen's, contractors' or subcontractors' lien arising from any work of improvement performed by or for the Tenant to be enforced against the Property, however it may arise. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Port's Property interests are not jeopardized. Tenant shall defend and indemnify Port against all liability and loss of any type arising out of the construction of improvements on the Property by Tenant. Unless caused by the Port, its agents, contractors, and invitees, Tenant shall reimburse Port for all sums paid according to this paragraph, together with the Port's reasonable attorneys' fees and costs plus interest on those sums at the legal rate.

9.8 On completion of the construction of any improvements, additions or alterations, covered by this Section 9, Tenant shall give Port notice of all structural or material changes in plans or specifications made during the course of the work and shall at that time supply Port with drawings accurately reflecting all such changes. Changes which are non-structural or which do not substantially alter the plans and specifications as previously approved by the Port do not constitute a material change.

10. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the Property by Tenant as permitted by this Lease shall be owned by Tenant until termination of this Lease. Upon the termination of this Lease for any reason, any buildings, improvements or trade fixtures installed on the Property shall become the property of the Port. Provided, however, in the event, the Tenant has failed to maintain the Property as required by this Lease, or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Tenant or its successors, such that in any event the value of the improvements is less than the cost of removal,

remediation or renovation to bring the Property into compliance, then the Port may require the Tenant to remove any improvements or trade fixtures installed by the Tenant. The Tenant shall repair, at Tenant's expense, any damage to the Property resulting from such removal.

10.1 The equipment and fixtures on the property which belong to the Port shall remain the property of the Port and the Tenant shall be required to maintain the Port-owned equipment and fixtures during the term of this Agreement. The equipment and fixtures owned by the Port shall be returned to the Port upon the termination of this Agreement, reasonable wear and tear excepted.

11. ASSIGNMENT AND SUBLETTING. Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written consent. Each sublease for any portion of the premises in addition to the reference to Section 7 of this lease, shall specifically advise the subtenant that the sublease is subject to the reverter contained in the deed and indenture from the United States to the Port of Benton. No assignment or sublease of the Lease shall relieve the Tenant of its obligations under this Lease.

12. INSURANCE. Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form railroad liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, operation, maintenance, occupancy, misuse, or condition of the Property and improvements, with limits of liability of at least \$5,000,000 and with deductibles in such amounts as may be reasonably acceptable to the Port. The Port shall be an additional insured on such policies.

12.1 RAILROAD PROPERTY INSURANCE. Throughout the term of the Lease, at Tenant's sole cost and expense, the Tenant shall keep or cause to be kept in force, for the mutual benefit of the Port and the Tenant, property insurance insuring all of the tracks, bridges, trestles, crossing and other improvements, fixtures, equipment and all of the railroad property subject to this lease against loss or damage from any cause, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port.

12.2 BUILDING PROPERTY INSURANCE. The Port shall maintain property insurance insuring the improvement known as the 1171 Building described in Attachment 1 against loss or damage from fire, flood, wind, or other natural disasters, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port. The Tenant shall maintain insurance coverage on the Tenant's property, fixtures and equipment located on the premises.

12.3 PROOF OF COMPLIANCE. The Tenant shall provide the Port with Certificates of Insurance showing the coverages and deductibles. All property insurance which the Tenant is required to maintain on the Port's property shall name the Port as the owner of the property and shall insure the Port's interest in the property. The Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies required by this

Lease. Tenant shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least ninety (90) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least ninety (90) days prior written notice to Port.

13. INDEMNIFICATION. The Tenant shall indemnify and hold the Port harmless from all liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceedings brought against the Port by any party alleged to have resulted from the Tenant's use, operation, maintenance or occupation of the railroad or any portion of the premises or any of Tenant's activities incidental thereto, or any breach or default in the performance of any of the terms or conditions of the Tenant's obligations under this lease agreement.

14. DEFAULT.

14.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Tenant and a breach of this Lease.

14.1.1 The breach of any of the terms or conditions of the Lease Agreement

14.1.2 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

14.1.3 The appointment of a receiver to take possession of the Property or improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

14.1.4 An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

14.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

14.3 TENANT'S RIGHT TO CURE. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have ten

(10) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

14.4 TIME OF THE ESSENCE. Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

15. PORT'S REMEDIES. If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, subject to the provisions of Section 13, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

15.1 Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

15.2 Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

15.2.1 The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

15.2.2 The loss of rental on the Property accruing until the date when a new tenant has been or with the exercise of reasonable diligence could have been, obtained.

15.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Tenant from any obligations under the Lease. In the event Port re-enters the Property for the purpose of reletting, Port may relet all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any tenant which Port may reasonably consider objectionable.

15.4 In the event Port relets the Property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts.

15.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

15.4.2 The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

15.5 All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any, and the balance shall be remitted to Tenant.

16. WAIVER. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

17. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

18. ACCESS BY PORT. Port, or 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.

19. RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant, and

as long as the information in the memorandum is accurate the other party agrees to sign the memorandum of lease.

20. **HOLDING OVER.** In the event Tenant shall hold over after the expiration or termination of this Lease, or at the expiration of any option term, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the lease except that the rental rate shall be adjusted as provided in Section 3 and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

21. **SECURITY FOR TENANT'S OBLIGATIONS.** In addition to the security provided for in Section 5, in order to secure the prompt, full and complete performance of all of Tenant's obligations under this Lease, including but not limited to, Tenant's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Tenant hereby grants to Port a security interest in and assigns to Port all of Tenant's right, title and interest in and to all rents and profits from the Property, all of the materials stored on the premises, and all permanent improvements constructed thereon, to secure the Tenant's obligations under this Lease. In the event Tenant defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 15.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Tenant's obligations hereunder, including payment to Port of any sums due from Tenant. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease. This security interest will not extend to the Tenant's business receivables other than rents and profits from the property, provided that this exception will not affect the enforcement or collection of any judgment obtained against the Tenant by the Port.

22. **HAZARDOUS MATERIALS.** Tenant shall not take or store upon the Property any hazardous or toxic materials, as defined by the law of the State of Washington or by federal law, except in strict compliance with all applicable rules, regulations, ordinances and statutes. Tenant shall comply with the Port's Hazardous Materials Communications Policy, but shall not be subject to the notice requirements thereof in connection with the installation, use, operation, or removal of usual office equipment including, without limitation, computers and photocopiers.

22.1 Tenant shall not permit any contamination of the Property. The Tenant shall immediately remove any contaminants or pollutants and shall promptly restore the Property, subject to any condition existing prior to the commencement of this Lease, which shall be the responsibility of the Port.

22.2 Tenant shall defend Port and hold it harmless from any cost, expense, claim or litigation arising from hazardous or toxic materials on the Property or resulting from the contamination of the Property, caused by the acts or omissions of the Tenant, its subtenants, employees, agents, invitees, or licensees, during the term of this Lease.

22.3 In the event of the termination of this Lease for any reason, the obligation of the Tenant to restore the Property and the obligation to indemnify the Port set forth above, shall survive the termination.

23. GENERAL CONDITIONS.

23.1 NOTICES. Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

Port: Port of Benton  
3100 George Washington Way  
Richland, Washington 99352

Tenant: Tri-City Railroad Company, L.L.C.  
2355 Stevens Drive  
P.O. Box 1700  
Richland, WA 99352

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U. S. Postal Service that the mailed notice is available for pick up.

23.2 NONMERGER. If both Port's and Tenant's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

23.3 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

23.4 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" includes matters incorporated by reference.

23.5 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned, or

conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

23.6 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission, or fees claimed by any broker or agent in connection with this Lease.

23.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Tenant each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

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.

23.9 LEASE CERTIFICATION. Upon the request of the Tenant the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: i) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Tenant is current in the payment of the rent and other charges under the terms of the Lease; iv) whether the Port is aware of any default or breach on the part of the Tenant.

23.10 PARTIAL INVALIDITY. If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

23.11 CONSTRUCTION. The parties lease have reviewed this lease and have the opportunity to consult with their respective counsel. The lease shall not be deemed to be drafted by either party and the lease shall not be construed against either party as the drafter.

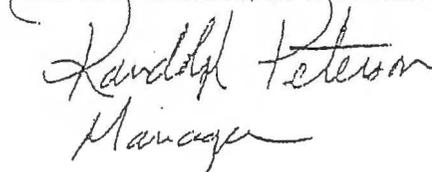
23.12 CONSENT. Whenever the consent or approval of a party to this Lease is required to be given by the terms of this Lease to the other party, such consent or approval shall not be unreasonably withheld or delayed.

DATED this 1<sup>st</sup> day of August, 2002.

PORT OF BENTON

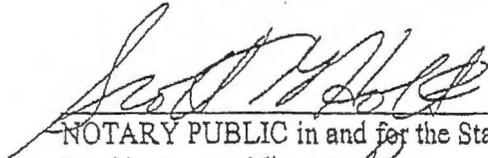


TRI-CITY RAILROAD COMPANY, L.L.C.



Manager



  
NOTARY PUBLIC in and for the State of  
Washington, residing at Pasco, WA  
My commission expires: Jan 25, 2003

**RAILROAD LEASE**

**PORT OF BENTON/TRI-CITY RAILROAD COMPANY**

**ATTACHMENT 1**

**REAL PROPERTY;  
SOUTHERN CONNECTION, 1171 FACILITY,  
OUTBUILDINGS AND LAND**



ALSO, including those portions of Sections 14, 15 and 23, Township 9 North, Range 28 East, W.M. depicted on Exhibit "A" of the United States Army Corps of Engineer's permit to the Washington State Department of Transportation dated 20, August 1980.

ALSO, all that part of Block 153, said Plat of Richland, EXCEPT that portion quitclaimed to the State of Washington in aforementioned quitclaim recorded in Volume 482, page 192, records of Benton County, Washington.

ALSO, all of Blocks 341, 342 and 345 of said Plat of Richland

ALSO, Tract 24-A as recorded in Volume 152, page 204, records of Benton County, Washington.

ALSO, including a "Railroad Easement" as written in the "Dedication and Easements" section of the dedication sheet for said Plat of Richland.

## DEPARTMENT OF ENERGY RAILROAD, SOUTHERN CONNECTION

## LEGAL DESCRIPTION

Beginning at the corner common to sections 29, 30, 31 and 32, Township 9 North, Range 29 East, Willamette Meridian, Benton County, State of Washington; Thence northerly, along the east line of said section 30, 813.0 feet to the centerline of the Union Pacific Railroad; thence S 89°06'31" W, along said centerline, 1066.8 feet to Union Pacific Railroad Engineer's Station 1286+27.6 and the TRUE POINT OF BEGINNING of a strip of land 100 feet wide, 50 feet right and left of the following described centerline;

Thence N 85°10'00" W, 153.4 feet to the point of curvature of a 2292.01 foot radius curve, the radial bearing to center being N 04°50'00" E. Thence along the arc of said curve, to the right, through a central angle of 28°13'00", 1128.00 feet to the point of tangency; thence N 56°57'00" W, 3268.4 feet to the point of curvature of a 2864.93 foot radius curve, the radial bearing to center being N 33°03'00" E. Thence along the arc of said curve, to the right, through a central angle of 14°59'21", 749.50 feet to a point on said curve, said point being the terminus of said 100 foot strip of land and the beginning of a 200 foot strip of land, 100 feet right and left of said centerline. Thence continuing along the arc of said curve, through a central angle of 13°42'39", 685.57 feet, to the point of tangency. Thence N 28°15'00" W, 5592.90 feet to a point; said point being the terminus of said 200 foot strip of land and the beginning of a strip of land of variable width, the right margin being common with the southwest right of way of the Richland-Kennewick Road, as it existed in October, 1943 and the left margin being 100 feet left, measured at right angles, from the following described line; from said point, thence continuing N 28°15'00" W, 630.00 feet to the line of ordinary high water of the right bank of the Yakima River and the terminus of said strip of land.

ALSO, including a easement crossing the Yakima River granted by the State of Washington, Department of Public Lands by Order and Certificate of Right of Way, application No. 20674, executed September 22, 1955 described as follows; Beginning at the northwest corner of Section 24, Township 9 North, Range 28 East, W.M.; thence S 53°21'00" E, 2405.68 feet; thence S 80°00'00" W, 499.85 feet; thence N 28°15'00" W, 165.99 feet; to THE TRUE POINT OF BEGINNING. Thence S 55°45'00" W, 100.55 feet; thence N 28°15'00" W, 349.79 feet; thence N 75°43'45" E, 103.05 feet; thence N 51°42'30" E, 123.83 feet; thence S 32°47'15" E, 336.98; thence S 61°45'00" W, 148.58 feet to the True Point of Beginning.

ALSO, including all of Blocks 570 and 160, Plat of Richland, as recorded in Volumes 6 and 7 of Plats, records of Benton County, Washington, EXCEPT that portion quit claimed to the State of Washington in that certain deed recorded in Volume 482, page 193, records of Benton County, Washington, TOGETHER with all those portions of Sections 13, 14, 15, 23 and 24, Township 9 North, Range 28 East, W.M., shown hachured on Exhibit "A" of Quitclaim Deed recorded in Volume 470, page 690 (Auditor's file No. 86-1411, dated Jan. 31, 11:11 AM '86).



2004-030381

Pg: 4 of 5

08/25/2004 09:17A

23.00 Benton County



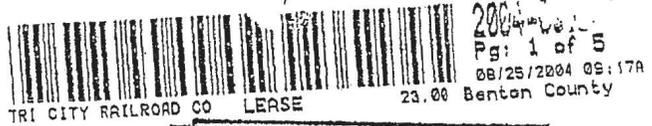
Exhibit A

RAILROAD LEASE

PORT OF BENTON/TRI-CITY RAILROAD COMPANY

ATTACHMENT 1

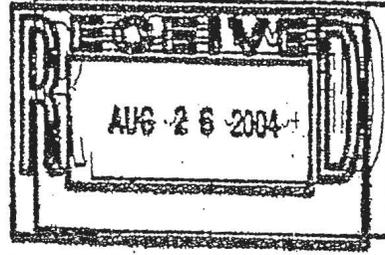
REAL PROPERTY:  
SOUTHERN CONNECTION, 1171 FACILITY,  
OUTBUILDINGS AND LAND



Filed for Record at Request of:

AFTER RECORDING MAIL TO:

Randolph Peterson  
Tri-City Railroad Company, LLC  
2579 Stevens Drive  
Richland, WA 99352



Reference numbers of related documents:

Lessor: Port of Benton, a municipal corporation of the State of Washington

Tenant: Tri-City Railroad Company, LLC, a Washington Limited Liability Company

Legal Description: E 1/2 of the NE 1/4 of Section 24, T10N, R28E, W.M., Benton County

Additional Legal: Attached as Exhibit A

Assessor's Tax Parcel ID Number: 1-27081000002000

### MEMORANDUM OF LEASE

NOTICE IS HEREBY GIVEN that on August 1, 2002, THE PORT OF BENTON, as Lessor, and TRI-CITY RAILROAD COMPANY, LLC, a Washington Limited Liability Company, as Tenant, executed a Railroad Lease; and

NOTICE IS HEREBY GIVEN that the Term of the Railroad Lease is from August 1, 2002 through March 31, 2012, with the Tenant having the option to extend the term of the lease for two additional terms of ten (10) years each after the expiration of the initial term and after the expiration of the first renewal term; and

NOTICE IS HEREBY GIVEN that the Railroad Lease includes those premises described in Exhibit A attached hereto and incorporated herein by this reference.

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DEPARTMENT OF ENERGY RAILROAD, SOUTHERN CONNECTION

LEGAL DESCRIPTION

Beginning at the corner common to sections 29, 30, 31 and 32, Township 9 North, Range 29 East, Willamette Meridian, Benton County, State of Washington; Thence northerly, along the east line of said section 30, 813.0 feet to the centerline of the Union Pacific Railroad; thence S 89°06'31" W, along said centerline, 1066.8 feet to union Pacific Railroad Engineer's Station 1286+27.6 and the TRUE POINT OF BEGINNING of a strip of land 100 feet wide, 50 feet right and left of the following described centerline;

Thence N 85°10'00" W, 153.4 feet to the point of curvature of a 2292.01 foot radius curve, the radial bearing to center being N 04°50'00" E. Thence along the arc of said curve, to the right, through a central angle of 28°13'00", 1128.00 feet to the point of tangency; thence N 56°57'00" W, 3268.4 feet to the point of curvature of a 2864.93 foot radius curve, the radial bearing to center being N 33°03'00" E. Thence along the arc of said curve, to the right, through a central angle of 14°59'21", 749.50 feet to a point on said curve, said point being the terminus of said 100 foot strip of land and the beginning of a 200 foot strip of land, 100 feet right and left of said centerline. Thence continuing along the arc of said curve, through a central angle of 13°42'39", 685.57 feet, to the point of tangency. Thence N 28°15'00" W, 5592.90 feet to a point; said point being the terminus of said 200 foot strip of land and the beginning of a strip of land of variable width, the right margin being common with the southwest right of way of the Richland-Kennewick Road, as it existed in October, 1948 and the left margin being 100 feet left, measured at right angles, from the following described line; from said point, thence continuing N 28°15'00" W, 630.00 feet to the line of ordinary high water of the right bank of the Yakima River and the terminus of said strip of land.

ALSO, including a easement crossing the Yakima River granted by the State of Washington, Department of Public Lands by Order and Certificate of Right of Way, application No. 20674, executed September 22, 1955 described as follows; Beginning at the northwest corner of Section 24, Township 9 North, Range 28 East, W.M.; thence S 58°21'00" E, 2405.68 feet; thence S 80°00'00" W, 499.85 feet; thence N 28°15'00" W, 165.99 feet to THE TRUE POINT OF BEGINNING. Thence S 55°45'00" W, 100.55 feet; thence N 28° 16'30" W, 349.79 feet; thence N 75° 43'45" E, 103.05 feet; thence N 51° 42'30" E, 123.83 feet; thence S 32° 47'15" E, 336.98; thence S 61° 45'00" W, 148.58 feet to the True Point of Beginning.

ALSO, including all of Blocks 570 and 160, Plat of Richland, as recorded in Volumes 6 and 7 of Plats, records of Benton County, Washington, EXCEPT that portion quit claimed to the State of Washington in that certain deed recorded in Volume 482, page 192, records of Benton County, Washington, TOGETHER with all those portions of Sections 13, 14, 15, 23 and 24, Township 9 North, Range 28 East, W.M., shown hachured on Exhibit "A" of Quitclaim Deed recorded in Volume 470, page 690 (Auditor's file No. 86-1411, dated Jan. 31, 11:11AM '86).

RAILROAD LEASE

PORT OF BENTON/TRI-CITY RAILROAD COMPANY

ATTACHMENT 2

RAILROAD EQUIPMENT, TOOLS  
AND MATERIALS

## RAILROAD EQUIPMENT

## 1100 AREA TRANSFER

OCTOBER 1, 1998

PROPERTY	PR NAME	MFGNAME	MFGMODEL	SERIAL NUMBER	EQTYPE	AREA	BLDG	TOTMEM COST
FA23878	CROSSING SIGNAL	SAFETRON			RAILROAD	600	RAIL6	64,625
FA23879	CROSSING SIGNAL	SAFETRON			RAILROAD	600	RAIL6	40,169
FA23880	CROSSING SIGNAL	SAFETRON			RAILROAD	600	RAIL6	37,478
FA23881	CROSSING SIGNAL	WABCO			RAILROAD	600	RAIL6	41,542
FA23882	CROSSING SIGNAL	WABCO			RAILROAD	600	RAIL6	41,542
FA23883	CROSSING SIGNAL	SAFETRON			RAILROAD	600	RAIL6	40,147
FA23885	CROSSING SIGNAL	SAFETRON			RAILROAD	600	RAIL6	34,416
FA23886	CROSSING SIGNAL	SAFETRON			RAILROAD	300	RAIL3	41,916
FA23887	SOLAR PANEL	SOLAREX CORP				300	RAIL3	25,024
FA23892	CROSSING SIGNAL	SAFETRON			RAILROAD	400	RAIL4	64,625
F187235	BRIDGE	RAILROAD			MAIN LINE/PROC	600	HANFORDRSRV	474,091
F187236	BRIDGE	RAILROAD			MAIN LINE/PROC	600	HANFORDRSRV	53,102
F187237	OVERPASS	RAILROAD			MAIN LINE/PROC	600	RAIL6	84,332
F187483	TURNOUT	RAILROAD			INDUSTRIAL/YARD	300	GENERAL	39,558
F187488	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	26,992
F187489	TURNOUT	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	920
F187491	TURNOUT	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	920
F187494	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	73,994
F187496	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	51,463
F187498	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	48,149
F187500	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	45,133
F187502	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	2,988
F187504	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	2,946
F187506	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	22,659
F187508	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	10,281
F187510	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	11,103
F187512	TRACK	RAILROAD			INDUSTRIAL/YARD	1100	1167	19,706
F187514	TRACK	RAILROAD			RAILROAD	600	HANFORDRSRV	16,498
F187515	SCALE	FAIRBANKS			INDUSTRIAL/YARD	1100	RAIL11	26,354
F187517	TRACK	RAILROAD			RAILROAD	600	HANFORDRSRV	1,219
F187518	TURNOUT	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	920
F187534	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	30,858
F187613	TRACK	RAILROAD			INDUSTRIAL/YARD	600	HANFORDRSRV	8,525
F265008	OVERPASS	UNKNOWN			RAILROAD	600	HANFORDR	1,483,335
F265033	TRACK	RAILROAD				600	HANFORDR	387,645
F265034	TURNOUT	RAILROAD				600	HANFORDR	39,558
F265035	TURNOUT	RAILROAD				400	GRNDS4	39,558
F265036	TURNOUT	RAILROAD				600	HANFORDR	920

RAILROAD EQUIPMENT

1100 AREA TRANSFER

OCTOBER 1, 1998

PROPERTY	PR NAME	MFGNAME	MFGMODEL	SERIAL NUMBER	EQTYPE	AREA	BLDG	TOTMEM COST
F265037	TRACK	RAILROAD				600	HANFORDR	1,009,216
F265038	TRACK	RAILROAD				600	HANFORDR	1,061,026
F265039	TURNOUT	RAILROAD				600	HANFORDR	39,558
F265040	TURNOUT	RAILROAD				600	HANFORDR	39,558
F265042	TRACK	RAILROAD				600	HANFORDR	975,798
F265043	TRACK	RAILROAD				600	HANFORDR	99,120
F265044	TURNOUT	RAILROAD				1100	1171	920
F265045	TURNOUT	RAILROAD				1100	1171	920
F265046	TURNOUT	RAILROAD				1100	1171	920
F265047	TURNOUT	RAILROAD				1100	1171	920
F265048	TURNOUT	RAILROAD				1100	1171	920
F265049	TURNOUT	RAILROAD				1100	1171	920
F265050	TURNOUT	RAILROAD				1100	1171	920
F265051	TURNOUT	RAILROAD				1100	1171	12,985
F265052	TURNOUT	RAILROAD				1100	1171	920
F265053	TURNOUT	RAILROAD				1100	1171	920
F265054	TURNOUT	RAILROAD				1100	1171	12,985
F265055	TURNOUT	RAILROAD				1100	1171	920
F265056	TURNOUT	RAILROAD				1100	1171	12,985
F265057	TURNOUT	RAILROAD				1100	1171	920
F265058	TURNOUT	RAILROAD				1100	1171	920
F265059	TURNOUT	RAILROAD				1100	1171	920
F265060	TURNOUT	RAILROAD				1100	1171	920
F265061	TURNOUT	RAILROAD				1100	1171	920
F265062	TURNOUT	RAILROAD				1100	1171	920
F265063	TURNOUT	RAILROAD				1100	1171	920
F265064	TURNOUT	RAILROAD				1100	1171	920
F265065	TURNOUT	RAILROAD				1100	1171	920
F265066	TRACK	RAILROAD				1100	1167	8,496
F265067	TURNOUT	RAILROAD				1100	1167	920
F265068	TURNOUT	RAILROAD				1100	1167	920
F265070	TRACK	RAILROAD				600	HANFORDR	106,200
F265071	TRACK	RAILROAD				600	HANFORDR	1,250,000
F265072	TURNOUT	RAILROAD				600	HANFORDR	24,026
F265073	TURNOUT	HANFORD				600	HANFORDR	24,000
F265074	TRACK	RAILROAD				600	HANFORDR	277,103
F265075	TRACK	RAILROAD				600	HANFORDR	378,935
F265076	TURNOUT	RAILROAD				600	HANFORDR	39,558

Case 2:09-cv-05062-EFS Document 113-4 Filed 03/03/10

RAILROAD EQUIPMENT

1100 AREA TRANSFER

OCTOBER 1, 1998

PROPERTY	PR NAME	MFGNAME	MFGMODEL	SERIAL NUMBER	EQTYPE	AREA	BLDG	TOTMEM COST
F265077	TURNOUT	RAILROAD				600	HANFORDR	39,558
F265131	TRACK	RAILROAD				3000	GRNDS3K	11,329
F291020	TURNOUT	RAILROAD				600	HANFORDR	3,709
10A03623	FLATCAR	UNION PACIFIC	1968	UP258241	RAILROAD	1100	1171	3,500
10A03625	FLATCAR	UNION PACIFIC		UP258362	RAILROAD	1100	1171	3,500
10A03806	FLAT CAR	MAGOR	W248J	38527	RAILROAD	1100	1171	15,284
10C04615	RR CAR	M K	1957	UNKNOWN	BALLAST	1100	1171	5,947
10C04616	RR CAR	M K	1957	UNKNOWN	BALLAST	1100	1171	5,947
10E03660	GANG CAR	FAIRMONT	A6G116702	253837	RAILROAD	1100	1171	19,691
10G04619	TROLLEY CAR	GEISMAR FRANCE	TR16	84127	RAILROAD	1100	1171	11,826
1003680	RAIL LIFTER	FAIRMONT	W86F2	254025	W86-F-2	1100	1171	8,891
1003681	SPIKE DRIVER	TAMPER INC	DMN	1387316	CHAIN DRIVE	1100	1171	20,179
1003682	BALLAST REGULATOR	TAMPER INC	BEB17	1787168	TAMPERAD	1100	1171	113,170
1005031	TIE EXTRACTOR	TAMPER INC	TSR	BM87051	RAILROAD	1100	1171	62,158
1005942	TIE HANDLER	RAILWAY	2181A	559	RAILROAD	1100	1171	48,817
1005944	RR TAMPER & LINER	TAMPER INC	1986	1089966	ESTDAG MARK II	1100	1171	193,211
1304067	COMPRESSOR	KOY	D018FQ121A	167984	AIR ROTARY SC	1100	1171	11,100
1304469	COMPRESSOR	SULLIVAN	D185Q421A1ED	204737	AIR	1100	1171	9,568
1304498	COMPRESSOR	SULLIVAN INDUSTRIES	D185QV	11025	AIR TRAILER MO	1100	1171	12,139
3903727	LOCOMOTIVE	GENERAL MOTORS	MP15AC	836053-1	DIESEL	1100	1171	741,985
3903728	LOCOMOTIVE	GMC ELECTROMOTIVE	MP15AC	816059-1	DIESEL	1100	1171	721,420
7405555	GENERATOR	ONAN	Z.SAJ/11/1	C810557758	GAS POWERED	1100	1171	1,237
7806015	WEED TRIMMER	JOHN DEERE	38U	M0038U011830	PORTABLE	1100	1171	233
7806016	WEED TRIMMER	JOHN DEERE	38U	M0038U011892	PORTABLE	1100	1171	233
	TOTAL ACQUISITION VALUE							10,892,712

Case 2:09-cv-05062-EES Document 113-4 Filed 03/03/10

STOCK NUMBER	EQUIPMENT DESCRIPTION	BALANCE	UNIT	UNIT PRICE	TOTAL PRICE
5900-8433	WASHER; LOCK; FOR 3/4 IN. BOLTS	1400	EA	0.11	154.00
5900-8434	WASHER; LOCK; FOR 7/8 IN. BOLTS	1615	EA	0.17	274.55
5900-8435	WASHER; LOCK; FOR 1 IN. BOLTS	675	EA	0.26	175.50
5910-0410	BALLAST; RR; ROCK, PREWASHED, 3/4" TO 1-1/2"	150	CYD	12.28	1842.00
5910-0415	BAR 5x5 1/2 X 6; 90 RA to 72 C.N.W. HOLE PUNCH 5 IN. X 5 1/2 IN X 6 IN CAST	3	PR	58	174.00
5910-0580	BOLT; GUARD RAIL; 1-1/8" X 7" LONG WITH NUT	27	EA	14.75	398.25
5910-0581	BOLT; GUARD RAIL; 1-1/8" X 8" LONG WITH NUT	12	EA	3.88	46.56
5910-0583	BOLT; TRACK; 3/4" X 4" LONG	175	EA	1.68	294.00
5910-0585	BOLT; TRACK; 7/8" X 5" LONG	300	EA	2.12	636.00
5910-0588	BOLT; TRACK; 1" X 6" LONG	6	EA	165.86	995.16
5910-0589	BOLT; SIZE UNKOWN	240	EA	0.48	115.20
5910-0950	CRANK; CENTURY SWITCH STAND; DOUBLE END	3	EA	3.4	10.20
5910-3321	JOINT; COPROMISE; 112RE-90RA CAST LH	1	PR	36	36.00
5910-3322	JOINT; COPROMISE; 112RE-90RA CAST RH	1	PR	36	36.00
5910-3323	JOINT; COMPROMISE; HOLE PUNCH -5X5X5" LH 90RB-90RA CAST	3	PR	132	396.00
5910-3324	JOINT; COMPROMISE; HOLE PUNCH -6X6X6" RH 90RB-90RA CAST	3	PR	132	396.00
5910-3811	LENS; REFLECTOR UNIT, GREEN	4	EA	2.36	9.44
5910-3812	LENS; REFLECTOR UNIT, RED	5	EA	2.36	11.80
5910-5610	PROTECTORS; SWITCH POINT; 85AS COMPLETE	10	EA	8.76	87.60
5910-5611	PROTECTORS; SWITCH POINT; 90 RA COMPLETE	7	EA	13.75	96.25
5910-5613	PROTECTORS; SWITCH POINT, COMPLETE; 100RE	6	EA	10	60.00
5910-5614	PROTECTORS; SWITCH PINT, PLATES ONLY; 100 RE	1	EA	7.48	7.48
5910-7042	SPIKES; TRACK; 9/16" X 5 -1/2" LONG	5	BOX	136.85	684.25
5910-7051	SPINDEL; NO. 63 SWITCH STAND	3	EA	8.69	26.07
5910-7100	STRINGS; 8" X 17" X 16"	5	EA	135.5	677.50
5910-7561	TIES, CROSS; 8" X 7" X 9", ROUGH CUT, GRADE I DOUGLAS FIR	394	EA	34.67	13659.98
5910-7562	TIES, CROSS; 9" X 7" X 9", ROUGH CUT, GRADE I DOUGLAS FIR	368	EA	21.27	7827.36
5910-7563	TIES, SWITCH; 7" X 9" X 10", ROUGH CUT, GRADE I DOUGLAS FIR	3	EA	38.5	115.50
5910-7565	TIES, SWITCH; 7" X 9" X 12", ROUGH CUT, GRADE I DOUGLAS FIR	9	EA	44.16	397.44

STOCK NUMBER	EQUIPMENT DESCRIPTION	BALANCE	UNIT	UNIT PRICE	TOTAL PRICE
5910-7566	TIES; SWITCH; 7"X9"X11', ROUGH CUT, GRADE I DOUGLAS FIR	5	EA	40.08	200.40
5910-7567	TIES; SWITCH; 7"X9"X13', ROUGH CUT, GRADE I DOUGLAS FIR	15	EA	47.39	710.85
5910-7569	TIES; SWITCH; 7"X9"X14', ROUGH CUT, GRADE I DOUGLAS FIR	13	EA	52.6	683.80
5910-7570	TIES; SWITCH; 7"X9"X16', ROUGH CUT, GRADE I DOUGLAS FIR	16	EA	61.49	983.84
5910-7571	TIE; BRIDGE TIMBER; 8"X8"X9', ROUGH CUT, GRADE I DOUGLAS FIR	3	EA	31.35	94.05
5910-7572	TIE; BRIDGE TIMBER; 8"X8"X10', ROUGH CUT, GRADE I DOUGLAS FIR	41	EA	34.83	1428.03
5910-7573	TIE; BRIDGE TIMBER; 10"X12"X10', ROUGH CUT, GRADE I DOUGLAS FIR	39	EA	66.85	2607.15
5910-7575	TIES; SWITCH; 7"X9"X21', ROUGH CUT, GRADE I DOUGLAS FIR	0	EA	56.23	0.00
5910-7576	TIE; BRIDGE TIMBER; 14"X12"X14', ROUGH CUT, GRADE I DOUGLAS FIR	3	EA	212	636.00
5910-7577	TIE; BRIDGE TIMBER; 14"X12"X12', ROUGH CUT, GRADE I DOUGLAS FIR	2	EA	182	364.00
5910-7578	TIE; BRIDGE TIMBER; 12"X12"X18', ROUGH CUT, GRADE I DOUGLAS FIR	1	EA	234	234.00
5910-7579	TIE; BRIDGE TIMBER; 14"X12"X12', ROUGH CUT, GRADE I DOUGLAS FIR	1	EA	182	182.00
5910-7580	TIE; BRIDGE TIMBER; 4"X8"X20', ROUGH CUT, GRADE I DOUGLAS FIR	4	EA	75.4	301.60
5915-0005	SHOE; BRAKE; COBRA NO. V-139, 2.00"	19	EA	10.24	194.56
5915-0012	SHOE; BRAKE; TRUCK ASSY., ABEX NO. G4811CR, EMD	16	EA	11.67	186.72
6196-5915-0023	PLATE; CENTER; CAST BODY; PAACCAR 54226	7	EA	466	3262.00
5915-0024	PLATE; CENTER; TRUCK BOLSTER; PAACCAR 54226	10	EA	430.2	4302.00
5915-026	BRUSH; CARBON; MAIN GENERATOR, EMD 6307806	48	EA	3.67	176.16
5915-0028	SHOE; BRAKE; Y754559-001, FOR TAMPER	4	EA	59.41	237.64
5915-0029	PHOTOCELL; LEAD-SULFIDE, L4141284, FOR TAMPER	2	EA	140.73	281.46
5915-0041	BRAKE; HEAD	4	EA	0	0.00
5915-0042	BRAKE; HEAD; PACIFIC CAR NO. GS6257-1	4	EA	15.84	63.36
5915-0044	SHAFT; DRIVE, FLEXIBLE POWER	1	EA	248.06	248.06
5915-0045	PHOTOCELL; SILICONE	1	EA	190.24	190.24
5915-0049	PLUG; APPLETON API6034	6	EA	52.55	315.30
5915-0050	RECEPTACLE, APPLETON AR16034	6	EA	58.25	349.50

STOCK NUMBER	EQUIPMENT DESCRIPTION	BALANCE	UNIT	UNIT PRICE	TOTAL PRICE
5915-0066	WICK; JOURNAL; 7"X14"	14	EA	31.95	447.30
5915-0068	WICK; JOURNAL; 6"X11"	13	EA	22	286.00
5915-0069	WICK; JOURNAL; 5-1/2"X10"	9	EA	18.35	165.15
5915-0071	PLATE; CENTER; 14", BOWL 1-1/4", FLANGE 18"X20-3/8"	2	ea	190	380.00
5915-0072	PLATE; CENTER; 14", BOWL 3/4", FLANGE 18"X20"	4	EA	132	528.00
5915-0073	PLATE; CENTER 14; BOWL 1"; FLANGE 20-3/4" SQUARE	2	EA	182	364.00
5915-0113	WICK; LUBRICATOR	8	EA	23.61	188.88
5915-0125	VALVE PART; INSERT, HOOK REWORK	2	EA	85.57	171.14
5915-0126	SWITCH; SHADOW BOARD LIMIT	1	EA	83.2	83.20
5915-0128	JOYSTICK; L426050	1	EA	101.18	101.18
5915-0130	SWITCH; PUSHBUTTON; L422428	1	EA	7913	7913.00
5915-0134	BELT; V-BELT; L40930	8	EA	14.79	118.32
5915-0136	BUSING; INSULATING	8	EA	13.3	106.40
5915-0137	GUIDE; SPING MOUNTING	4	EA	151.1	604.40
5915-0141	BOARD; OUTPUT; 115VAC	1	EA	391.01	391.01
5915-0142	BOARD; INPUT; 115VAC	1	EA	295.08	295.08
5915-0143	TAMPER, HEAD, FIBER OPTICS SCANNER	1	EA	96.5	96.50
5915-0144	BLOCK; PHOTOCELL LAMP	1	EA	152.96	152.96
5915-0146	CYLINDER; SQUEEZE; X68297	1	EA	591.5	591.50
5915-0152	TRAVERSE VALVE	2	EA	60.72	121.44
5915-0153	VALVE; RELIEF	1	EA	115.51	115.51
5915-0154	SWITCH; LIMIT; L422907	4	EA	106.84	427.36
5915-0157	PLUG; CABLE; L421259	6	EA	12.92	77.52
5915-0158	RECPTACLE; CABLE; L421261	6	EA	19.41	116.46
5915-0169	VALVE; SECTION, Y766689-001	2	EA	247.68	495.36
	TOTAL VALUE OF SPARE PARTS				62210.48

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MISCELLANEOUS RAIL ROAD TOOLS FOR SOUTHERN CONNECTION LIST 1

REV. O - 4/1/98

Property Name	Quantity	Acquisition Value	Total Value
Rubber Roll	1	\$10/Ea.	\$ 10.00
Adze	2	\$20/Ea.	\$ 40.00
Air Hose	50'	\$200/Ea.	\$ 200.00
Air Spiker	3	\$10/Ea.	\$ 30.00
Air Wrench	3	\$50/Ea.	\$ 150.00
Bander	2	\$150/Ea.	\$ 300.00
Banding Rolls	4	\$200/Ea.	\$ 800.00
Bridge Tools (Misc.)	1 Lot	\$2,000/LOT	\$ 2,000.00
Bullpricks	12	\$10/Ea.	\$ 120.00
Cadweld	22 Boxes	\$15/Ea.	\$ 330.00
Cadweld Rail Mold	4 Joint	\$25/Ea.	\$ 100.00
Cadweld Rail Mold	6 Web	\$10/Ea.	\$ 60.00
Cadweld Wires	50	\$25/Ea.	\$ 1,250.00
Caulking Gun	4	\$10/Ea.	\$ 40.00
Chain Saw	1	\$600/Ea.	\$ 600.00
Claw Bar	15	\$25/Ea.	\$ 325.00
Clevis	11	\$20/Ea.	\$ 220.00
Cold Cuts	5	\$15/Ea.	\$ 75.00
Como-A-Long	1	\$75/Ea.	\$ 75.00
Crescent Wrench	10	\$25/Ea.	\$ 250.00
Crimper (Bander)	2	\$20/Ea.	\$ 40.00
Crossing Cleaner	10	\$10/Ea.	\$ 100.00
Crow Bars	6	\$25/Ea.	\$ 150.00
Dolleys	2	\$50/Ea.	\$ 100.00
Drill (Electric)	1	\$75/Ea.	\$ 75.00
Drill Bits (Bridge)	4	\$10/Ea.	\$ 40.00
Extension Cords	3	\$15/Ea.	\$ 45.00
Ferdinand	5	\$15/Ea.	\$ 75.00
Fire Extinguisher	6	\$50/Ea.	\$ 300.00
Flammable Storage Cabinet	3	\$450/Ea.	\$ 1,350.00

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MISCELLANEOUS RAIL ROAD TOOLS FOR SOUTHERN CONNECTION LIST 1

REV. O - 4/1/98

Funnels	6	\$40/Ea.	\$ 240.00
Gas Cans	12	\$20/Ea.	\$ 240.00
Grease Guns	6	\$45/Ea.	\$ 270.00
Grind Wheels	8 Boxes	\$25/Box	\$ 200.00
Grinder (Electric Hand)	1	\$250/Ea.	\$ 250.00
Hand Pump	2	\$150/Ea.	\$ 300.00
Hand Saw	2	\$20/Ea.	\$ 40.00
Harness	9	\$15/Ea.	\$ 135.00
Insulated Joint Bar Kits for 902	7	\$40/Ea.	\$ 280.00
Jack Hammer	1	\$150/Ea.	\$ 150.00
Jack Hammer Bits	15	\$50/Ea.	\$ 750.00
Ladder	2	\$100/Ea.	\$ 200.00
Level Board	10	\$20/Ea.	\$ 200.00
Life Vest	2	\$50/Ea.	\$ 100.00
Lining Bar	6	\$75/Ea.	\$ 450.00
Magic Melt	19 Barrels	\$50/Ea.	\$ 950.00
Metal Targets	6	\$20/Ea.	\$ 120.00
Misc. Signs	1 Lot	\$500/Lot	\$ 500.00
Monday Maul	10	\$10/Ea.	\$ 100.00
Nipping Bar	8	\$25/Ea.	\$ 200.00
Nolan Carts	2	\$250/Ea.	\$ 500.00
Pick	15	\$75/Ea.	\$ 1,125.00
Pitchfork	6	\$40/Ea.	\$ 240.00
Plastic Targets	2 Boxes	\$5/Box	\$ 10.00
Pliers	6	\$10/Ea.	\$ 60.00
Plug Sitter	2	\$10/Ea.	\$ 20.00
Post Hole Digger	2	\$45/Ea.	\$ 90.00
Post Pounder	3	\$10/Ea.	\$ 30.00
Rail Drill Bits (Assorted Sizes)	12 Boxes	\$200/Box	\$ 2,400.00
Rail Expander	4	\$400/Ea.	\$ 1,600.00
Rail Sliders	5	\$100/Ea.	\$ 500.00

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MISCELLANEOUS RAIL ROAD TOOLS FOR SOUTHERN CONNECTION LIST 1

REV. 0 - 4/1/98

Rail Tongs	2	\$150/Ea.	\$ 300.00
Rail Turner	5	\$50/Ea.	\$ 250.00
Ratchet Tie Downs	3	\$50/Ea.	\$ 150.00
Ratchet's (Bander)	2	\$25/Ea.	\$ 50.00
Road Master	5	\$50/Ea.	\$ 250.00
Rope	50'	\$200/Lot	\$ 200.00
Scaffolding Platform	3	\$100/Ea.	\$ 300.00
Screwdriver	12	\$10/Ea.	\$ 120.00
Shovel (Longhandle)	15	\$25/Ea.	\$ 325.00
Shovel (Shorhandle)	12	\$25/Ea.	\$ 300.00
Shovel (Snow)	11	\$20/Ea.	\$ 220.00
Sight Tubing (spayer)	20'	\$100/Lot	\$ 100.00
Sockets for 1" Drive	25	\$2/Ea.	\$ 50.00
Sockets for Ratchet	10	\$5/Ea.	\$ 50.00
Spiko Maul	25	\$15/Ea.	\$ 325.00
Spike Maul Handles	1 Box	\$20/Box	\$ 20.00
Spill Container	3	\$10/Ea.	\$ 30.00
Tamping Gun	0	\$250/Ea.	\$ 2,000.00
Tie Tongs	6	\$50/Ea.	\$ 300.00
Tin Snips	2	\$15/Ea.	\$ 30.00
Track Ratchet	3	\$25/Ea.	\$ 75.00
Track Broom	12	\$40/Ea.	\$ 480.00
Track Clamp	6	\$50/Ea.	\$ 300.00
Track Gauge	9	\$40/Ea.	\$ 360.00
Track Jacks	11	\$100/Ea.	\$ 1,100.00
Track Ratchet Wrench	3	\$200/Ea.	\$ 600.00
Track Wrench	30	\$50/Ea.	\$ 1,500.00
Wheelslops	1 Pair	\$200/Pr.	\$ 200.00
Welding Shields (yellow)	2	\$50/Ea.	\$ 100.00
Total cost			\$ 31,585.00

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L-3

RAIL EQUIPMENT FOR SOUTHERN CONNECTION

REV. 0 - 4/1/98

Property Name	Description	Size	Quantity	Location	Notes	Acquisition Value	Total Value
Frog	115	#8	2	B320	3.5 X 6 X 6	\$15,000/Ea.	\$ 30,000.00
Frog	115RE	#10	3	6194		\$15,000/Ea.	\$ 45,000.00
Frog	90AS	#10	1	6194		#10,000/Ea.	\$ 10,000.00
Gauge Plates	115RE		3	6194		\$200/Ea.	\$ 600.00
Guard Rail	90 Lb. & up		3	6194	SW Point Guard Rails	\$100/Ea.	\$ 300.00
Heel Blocks	90RA		8	6194		\$50/Ea.	\$ 400.00
High Rail Equipment			2		For Converting Pickups	\$7,000/Set	\$ 14,000.00
Joint Bar	9020		35	6194	5 X 5 X 5	\$40/Pr.	\$ 700.00
Joint Bar	9036		18	6194	6 X 5 X 6	\$40/Pr.	\$ 360.00
Joint Bar	115RE		18 Pair	6194	Insulated	\$40/Pr.	\$ 720.00
Joint Bar	115RE		20 Pair	B468	6 X 6 X 7 X 6 X 6	\$40/Pr.	\$ 800.00
Joint Bar	902RA		60	6194	5 X 5 X 5	\$40/Pr.	\$ 1,200.00
Joint Bar	90AS		24	6194	5 X 5 X 5	\$40/Pr.	\$ 480.00
Joint Bar	90RA		14	6194	6 X 6 X 6	\$40/Pr.	\$ 280.00
Joint Bar	90RA		85	6194	5.5 X 5.5 X 5.5	\$40/Pr.	\$ 1,700.00
Plates	115		10	B468	5.5" Insulated Plates	\$50/Ea.	\$ 500.00
Plates	115RE		50	B468	Double Shoulder	\$35/Ea.	\$ 1,750.00
Plates	902 to 110 Lb.		30	B468	5.25 to 6.25" (Portac Poly-plates) (Insulated)	\$20/Ea.	\$ 600.00
Push Car			5			\$945/Ea.	\$ 4,725.00
Rail	9010		1	6194	Short	\$100/Ea.	\$ 100.00
Rail	9010		8	6194	Long	\$300/Ea.	\$ 2,400.00
Rail	9030		3	6194	Long	\$300/Ea.	\$ 900.00
Rail	9030		2	6194	Short	\$100/Ea.	\$ 200.00
Rail	9040		6	6194		\$100/Ea.	\$ 600.00

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RAIL EQUIPMENT FOR SOUTHERN CONNECTION

REV. 0 - 4/1/98

Rail	115RE	6	B468	80' Sticks	\$900/Ea.	\$ 5,400.00
Rail	9020RA	12	6194	Long	\$300/Ea.	\$ 3,600.00
Rail	9020RA	2	6194	Short	\$100/Ea.	\$ 200.00
Rail	902RA	11	6194	Short	\$100/Ea.	\$ 1,100.00
Rail	902RA	4	6194	Long	\$300/Ea.	\$ 1,200.00
Rail	9036ill	1	6194	Short	\$100/Ea.	\$ 100.00
Rail	90GN	6	6194	33'	\$100/Ea.	\$ 600.00
Rail Anchors	90 Lb.	2 Bins	6194		\$200/Bin	\$ 400.00
Rail Drill		1			\$1,295/Ea.	\$ 1,295.00
Rail Saw		2			\$1,295/Ea.	\$ 2,590.00
Rail Spikes	115 LB.	2 Kegs	B468	5/8 X 6 (spikes for 115 Lb. Rail)	\$200/Keg	\$ 400.00
Re-Railers		2 Sets	6194		\$100/Set	\$ 200.00
Spiko Puller		1			\$4,601/Ea.	\$ 4,601.00
Switch Components	115RE	1 Pallet	6194	Rail Braces, Heel Blocks #1 & #2 Rods.	\$1,100/Ea.	\$ 1,100.00
Switch Components	90 Lb.	3 Pallets	6194	Rail Braces, Switch Plates.	\$800/Ea.	\$ 2,400.00
Switch Grinder		1			\$4,950/Ea.	\$ 4,950.00
Switch Plates	115RE	30	6194	Switch and Guard Rail Plates	\$50/Ea.	\$ 1,500.00
Switch Point	115	1	B320	3.5 X 6 X 6 RH	\$200/Ea.	\$ 200.00
Switch Point	115RE	4	6194	2 RH/2 LH	\$200/Ea.	\$ 800.00
Switch Point	115RE	2	B320	RH switch point 16'6"	\$200/Ea.	\$ 400.00
Switch Point	90AS	23	6194		\$100/Ea.	\$ 2,300.00
Switch Point Braces	115 Lb.	2 Barrels	6194	Mud Rail Braces	\$100/Ea.	\$ 200.00
Switch Stand		6	OTM	Racor 36D Low Banner	\$400/Ea.	\$ 2,400.00
Tie Plugs	115 Lb.	22 Bundles	6194	Creasode	\$10/Ea.	\$ 220.00

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**EXHIBIT 8**



[https://www.dropbox.com/sh/f5w343dgtzw6rka/AABC6SY6tXOhVzEfZ61\\_\\_tHVa?dl=0](https://www.dropbox.com/sh/f5w343dgtzw6rka/AABC6SY6tXOhVzEfZ61__tHVa?dl=0)

**EXHIBIT 9**

**CERTIFICATE OF COMPLIANCE**

State of Washington        )  
  )ss:  
County of Benton            )

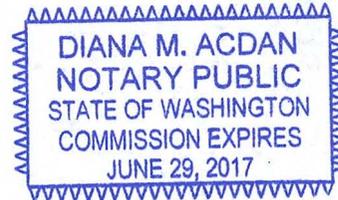
I, Lisa Anderson, being duly sworn do depose and state that I am the Executive Vice President for the Tri City Railroad Company LLC; that I am authorized to make this verification; and that the projected revenues of the Tri City Railroad Company LLC would not exceed those that would make it other than a Class III carrier.

*Lisa Anderson*  
Lisa Anderson

Subscribed and sworn this 9th day of September, 2016

*Diana M. Acdan*  
Notary Public

(SEAL)



My Commission Expires: 6/29/17

**EXHIBIT 10**

**BEFORE THE SURFACE TRANSPORTATION BOARD**

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DOCKET NO. 33888

TRI-CITY RAILROAD COMPANY, LLC – MOTION TO AMEND NOTICE OF  
EXEMPTION – CHANGES IN OPERATOR

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**VERIFIED NOTICE TO AMEND EXEMPTION**  
**49 C.F.R. § 1150.31 *et seq.***

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Tri-City Railroad Company LLC (“TCRY”), a Class III rail carrier, has filed a Verified Notice to Amend Exemption under 49 C.F.R. § 1150.31 to amend its existing notice of exemption, *Tri-City Railroad Company, L.L.C. – Lease and Operation Exemption – Rail Line of the Port of Benton in Richland, WA*, FD 33888 (served June 23, 2000), concerning its operations on a rail line owned by the Port of Benton of approximately 17 miles of its leased rail line, known as the Hanford Site Rail System, Southern Connection, extending from milepost 46.6 at the junction with the Union Pacific rail line in Richland, Washington, to milepost 28.3 at the border of the U.S. Department of Energy’s Hanford Site, connecting with the Hanford Site Rail System, Northern Connection (north of the City of Richland).

Since the time of the original notice of exemption, circumstances have changed significantly necessitating the instant amendment. TCRY operates as a Class III rail carrier pursuant to a non-exclusive trackage right with oversight and control over operations and tariffs being reserved to the rail line owner, Port of Benton.

Comments must be filed with the Board and served upon:

William C. Schroeder  
Anne K. Schroeder  
Paine Hamblen LLP  
717 W. Sprague Suite 1200

Spokane WA, 99301  
509-455-6000

The notice is filed under § 1150.31. 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.