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SERVICE DATE - MAY 14, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33734]

Portland & Western Railroad, Inc.—Lease and Operation Exemption—Port of Tillamook Bay
Railroad

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 3.5 miles of rail line (rail line) currently owned and operated by Port of Tillamook Bay Railroad (POTB) between Banks (milepost 774.0) and Schefflin (milepost 770.5), in Washington County, OR. In addition, the notice states that POTB will retain “incidental” trackage rights over the rail line and will continue to serve all of its current customers through a grant back of trackage rights by PNWR to POTB.¹

¹ PNWR currently operates over the rail line pursuant to trackage rights. See Portland & Western Railroad, Inc.--Lease and Operation Exemption--Burlington Northern Railroad Company, Finance Docket No. 32766 (STB served Jan. 5, 1996). PNWR states that it has an opportunity to route certain traffic in a more efficient manner to Portland, OR, over two of its lines and the rail line between points south of Schefflin and Portland. PNWR further states that, before substantial amounts of traffic can be routed in this way, the rail line must be substantially rehabilitated and brought up to Federal Railway Administration Class 2 condition. Because of POTB’s relatively light density of its traffic over the rail line, it is unwilling to incur the costs to rehabilitate the rail line. PNWR is unwilling to incur the cost of rehabilitation under the current operating arrangement. Thus, PNWR and POTB have entered into an agreement whereby PNWR will lease and rehabilitate the rail line and POTB will retain trackage rights over the rail line. It should be noted, however, that the grant back of trackage rights by POTB to PNWR cannot properly be termed “incidental” to the lease transaction. The term “incidental” trackage rights (as it relates to a lease transaction) pertains to simultaneous rights being obtained by a lessee to operate over other lines of a lessor or lines of another carrier. POTB thus requires separate approval for the trackage rights. On May 3,
(continued...)

Because PNWR's projected annual revenues will exceed \$5 million, PNWR has certified to the Board on April 16, 1999, that the required notice of the transaction was posted at the workplace of the employees on the affected lines on April 2, 1999. See 49 CFR 1150.42(e).² The transaction was scheduled to be consummated on or about April 19, 1999, or as soon thereafter as possible, depending upon the Board's action on PNWR's waiver request.

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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33734, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit,

¹(...continued)

1999, POTB made a separate filing to invoke the class exemption at 49 CFR 1180.2(d)(7) for the trackage rights. See Port of Tillamook Bay Railroad—Trackage Rights Exemption—Portland & Western Railroad, Inc., STB Finance Docket No. 33741 (STB served May 14, 1999).

² Under 49 CFR 1150.42(e), the exemption would not normally take effect until 60 days after certification to the Board that the requisite notice had been given. PNWR initially sought waiver of the notice requirements itself. Subsequently, notice was given to employees of POTB and the certification was made. As a result, the waiver request was modified to one seeking relief that would permit the exemption to take effect without having to wait for the full 60 days after the April 16 certification to run. In the absence of a waiver, the earliest the lease could be consummated would be June 15, 1999. In a decision in this proceeding served on May 10, 1999, the Board has waived, in part, the 60-day notice period, thus allowing consummation to occur as early as May 10, 1999.

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1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381-0796.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: May 10, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary