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SERVICE DATE – APRIL 11, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34810

WASHINGTON COUNTY, OR  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

STB Finance Docket No. 34791

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF WASHINGTON COUNTY, OR

Decided: April 9, 2007

After evaluating a supplemental statement filed by Portland & Western Railroad, Inc., the Board concludes that a joint motion to dismiss filed by Washington County, OR, and Tri-County Metropolitan District of Oregon should be granted.

BACKGROUND

On October 25, 2006, Washington County, OR (County), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) certain right-of-way and trackage between approximately Tillamook Branch Subdivision milepost 749.95 in Tigard and approximately Tillamook Branch Subdivision milepost 755.43 in Beaverton, in Washington County (the Northern Segment).<sup>1</sup> Simultaneously with County's

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<sup>1</sup> In the filings, the parties have referred to the trackage and right-of-way between milepost 749.95 in Tigard and milepost 755.43 in Beaverton as “the Subject Line.” However, in both copies of the shared use agreement that we have received, the Subject Line refers to the trackage and right-of-way between Wilsonville (Oregon Electric Subdivision milepost 42.8) and Beaverton (Tillamook Branch Subdivision milepost 755.43). For the purposes of this decision, therefore, the Northern Segment will refer to the trackage and right-of-way between milepost 749.95 in Tigard and milepost 755.43 in Beaverton (approximately 5.5 miles), and the Subject Line will refer to the trackage and right-of-way between milepost 42.8 in Wilsonville and milepost 755.43 in Beaverton (approximately 15.3 miles). The Oregon Department of Transportation owns the right-of-way underlying the portion of the Subject Line between Wilsonville and Tigard, subject to an exclusive rail service easement held by Portland & Western Railroad, Inc. (P&W). P&W owns the track, ties, signaling and road crossing protection

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notice, Tri-County Metropolitan Transportation District of Oregon (TriMet),<sup>2</sup> a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire County's interests in the Northern Segment. Concurrently with their notices, County and TriMet also filed a joint motion to dismiss the notices, asserting that the transactions are not subject to Board jurisdiction because neither of them will become a common carrier as a result of the transactions.

On November 27, 2006, the Board served a decision stating that additional information was needed about current and future service by the line's freight carrier, P&W, to make a determination as to whether, after the transactions, P&W would maintain control of the line and continue to be able to fulfill its common carrier obligation.<sup>3</sup> The Board directed P&W to serve a copy of that decision on all shippers for which it has provided service in the past two years, and to certify that it had done so. The shippers were invited to submit comments regarding a shared use agreement between P&W and TriMet, which intends to offer passenger service on the line in the future. In addition, P&W was directed to submit a statement regarding how it will continue to fulfill its common carrier obligation once the shared use agreement's terms take effect.

On December 13, 2006, P&W filed its statement.<sup>4</sup> No shippers served by P&W filed comments.

#### DISCUSSION AND CONCLUSIONS

As noted in the prior decision, County and TriMet generally stated in their motion to dismiss that these transactions will not have any effect on freight rail operations on the line. However, the record lacked specific information as to whether P&W would continue to be able to fulfill its common carrier obligation once its shared use agreement with TriMet took effect. Consequently, P&W was directed to address that issue in a supplemental statement. P&W has done so, and we will now consider that statement.

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equipment, ballast, buildings, and other improvements needed for rail service on the portion of the Subject Line between Wilsonville and Tigard.

<sup>2</sup> TriMet is a municipal corporation that provides public transportation for three counties in the Portland, OR metropolitan area.

<sup>3</sup> P&W initially provided freight rail service on the Northern Segment pursuant to a lease with UP. On October 27, 2006, P&W filed a notice to acquire UP's easement, which was served on November 24, 2006, and published in the Federal Register on November 27, 2006 (71 FR 68668) in STB Finance Docket No. 34792, Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Union Pacific Railroad Company.

<sup>4</sup> Included with its December 13, 2006 filing, P&W submitted an "execution copy" of the shared use agreement. While the execution copy contained several minor differences from the draft copy, those changes do not affect the merits of the motion to dismiss.

P&W explains in its statement that, while TriMet's commuter trains will have dispatching priority Monday through Friday from 5:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 7:30 p.m., P&W will still be permitted to operate its freight trains during those periods. P&W anticipates that, while waiting for an appropriate time to thread its freight trains in between commuter trains, the freight trains will be delayed approximately 15-20 minutes during the TriMet commuter train priority windows. P&W adds, however, that it does not expect that this arrangement will have any material adverse impact on its rail service. P&W also emphasizes that: (1) although TriMet will be scheduled to operate commuter trains Monday through Friday from 11:30 a.m. to 1:30 p.m., it will not have dispatching priority during those times; and (2) P&W will have exclusive operating rights on the Northern Segment during the evening and weekend periods.

P&W further explains that it currently serves approximately seven customers on the Northern Segment between Tigard and Beaverton, and that these customers account for approximately 4,000 annual carloads of traffic. P&W states that it provides service to these customers, on average, approximately 5 days a week, but that actual service varies between 3 and 6 days a week depending on volume and operating schedules. In order to serve its largest customer, P&W expects to continue operating a rock train during the midday hours due to operating restrictions at the quarry where the aggregate is mined. In addition, P&W expects to continue to serve some other customers during the daytime, depending on operational convenience, shipper requirements, and other factors. P&W further explains that it currently serves some of its customers at night and that it expects to continue to provide nighttime service when the agreement's terms take effect.

P&W expects that the significant capital improvements to the Northern Segment that TriMet must undertake before initiating passenger operations will have direct benefits for P&W's freight service. P&W explains that the improvements will upgrade the trackage, rehabilitate bridges, and improve operating speeds. In addition, P&W states that it plans to use funding obtained from TriMet to construct a new yard facility at Tigard, which will allow P&W to more efficiently consolidate and distribute inbound cars to its customers and block outbound cars for interchange with its Class I connections.

Because P&W will continue to have sufficient access to the Northern Segment to conduct its freight operations, we are satisfied that P&W will be able to continue to fulfill its common carrier obligation once the agreement's terms take effect. We are also satisfied that the agreement will not conflict with our precedent in Maine, DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835, 836-37 (1991). The fact that no shipper submitted comments objecting to the shared use agreement supports these determinations. Therefore, no Board authorization for County's and, subsequently, TriMet's planned purchase of the right-of-way and trackage of the Northern Segment is required. Their joint motion to dismiss the notices will be granted.

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

It is ordered:

1. The joint motion to dismiss the notices filed by County and TriMet is granted and the notices are dismissed.
2. This decision will be effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary