

33253

SERVICE DATE – JANUARY 3, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34255]

Portland & Western Railroad, Inc.–Lease and Operation Exemption–The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (P&WR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 76.75 miles of rail line currently owned and operated by The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 64.70 located between Quinaby and Salem, OR, to the End of Track at milepost 141.45 near Eugene, OR.<sup>1</sup> In comments filed December 23, 2002, the Oregon Department of Transportation generally supports the transaction.

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<sup>1</sup> Originally, as part of the transaction, P&WR stated that it intended to grant what it called “incidental” overhead trackage rights to BNSF over the rail line between Bush (milepost 68.6) and Albany (milepost 96.5), and to Central Oregon & Pacific Railroad, Inc. (CORP), between Albany (milepost 96.5) and Eugene (milepost 141.5). Based upon a decision served on December 12, 2002 (December 12 decision), which questioned whether the trackage rights were incidental to the transaction, BNSF, on December 20, 2002, filed a separate trackage rights notice of exemption, accompanied by a motion to dismiss, in STB Finance Docket No. 34304, The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–The Portland & Western Railroad, Inc., and P&WR, on December 23, 2002, withdrew its request to grant trackage rights to CORP. Also on December 23, 2002, John D. Fitzgerald, on behalf of the United Transportation Union-General Committee of Adjustment, filed a petition for stay of both exemptions, which was denied in Portland & Western Railroad, Inc.–Lease and Operation Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34255, et al. (STB served Dec. 26, 2002).

P&WR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. Because P&WR's projected annual revenues will exceed \$5 million, P&WR has certified to the Board on October 28, 2002, that the required notice of the transaction was posted at the workplace of the employees on the affected line on October 25, 2002. See 49 CFR 1150.42(e). The transaction is scheduled to be consummated on or after December 27, 2002 (60 days after the labor certification was filed).

If the verified 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34255, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner St., P.O. Box 796, West Chester, PA 19381-0796.

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Decided: December 27, 2002

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams

Secretary