



City of Tacoma
Office of the City Attorney

241293

ENTERED
Office of Proceedings
August 15, 2016
Part of
Public Record



June 10, 2016

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E St SW
Washington, D.C. 20423

Re: *STB Docket No. AB -1239 (Sub-No. 2X), City of Tacoma (Tacoma), Discontinuance of Service Exemption – in Thurston County, Washington*

Dear Ms. Brown:

Enclosed are the original and 11 copies of a Petition for Exemption pursuant to 49 U.S.C. 10502 for Tacoma to discontinue service over approximately 10.2 miles of rail lines in Thurston County owned by BNSF Railway Company (“BNSF”) and formerly leased by the Tacoma Municipal Beltline (“TMBL”). The rail lines are located at Milepost 3.27Q at Quadlok to Milepost 0.0Q at St. Clair in Thurston County, Washington (the Quadlok-St. Clair line); and Milepost 16.0B at Belmore to Milepost 9.07B at Olympia in Thurston County, Washington (the Belmore-Olympia line).

In accordance with 49 C.F.R. 1152.60(c), please find a CD containing the draft *Federal Register* notice of this Petition in Word format. For convenience, this disk also contains the text of the Petition for Exemption.

The City of Tacoma is a government entity of the State of Washington and as such requests a waiver of the filing fee.

Please acknowledge receipt and filing of this Petition for Exemption by date stamping the enclosed 11th copy and returning it to my attention in the attached envelope. Please do not hesitate to contact me if you have any questions.

Sincerely,

William Fosbre
Chief Deputy City Attorney

FEE RECEIVED
August 15, 2016
SURFACE

TRANSPORTATION BOARD

FILED
August 15, 2016
SURFACE

TRANSPORTATION BOARD

WCF/dk
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. 10502

William Fosbre
Chief Deputy City Attorney
City of Tacoma
3628 S. 35th St.
Tacoma, WA 98409
(253) 502-8218

Attorney for:
CITY OF TACOMA

Dated: June 10, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. 10502

The City of Tacoma, Department of Public Utilities, Beltline Division, dba Tacoma Rail, Tacoma Municipal Beltline or TMBL (“the CITY”) a first class city of the State of Washington, and a class III carrier, hereby petitions the Surface Transportation Board (the “Board” or “STB”) for exemption, pursuant to 49 U.S.C. 10502 and the regulations of the Board at 49 C.F.R. 1121 and 1152.60, from the prior approval requirements of 49 U.S.C. 10903, to discontinue common carrier service over approximately 10.2 miles of railroad at milepost 3.27Q at Quadlok to milepost 0.0Q at St. Clair in Thurston County, Washington (the Quadlok-St. Clair line); and milepost 16.0B at Belmore to milepost 9.07B at Olympia in Thurston County, Washington (the Belmore-Olympia line) (together referred to as the “Lines”), owned by BNSF Railway Company (“BNSF”).

I. BACKGROUND

In 2004, the City acquired authority from the Board to operate over the 10.2 miles of the Lines through a lease with BNSF. *See* STB Finance Docket No. 34555 (served September 27, 2004). The Lines are located in U.S. Postal Zip Codes 98501 and 98512. A map of the Lines is attached as **Exhibit A**. The CITY’s lease with BNSF expired March 16, 2016, and common

carrier freight service obligations under the expired lease have now reverted back to BNSF. By this petition, the City now proposes to discontinue its freight operations over the Lines.

Freight rail service over the Lines has reverted back to BNSF; consequently, there will be no diversion of traffic from the Lines.

It is the City's understanding that BNSF has entered into a new operating lease over portions of the Lines with Genesee & Wyoming Inc., who has filed with the STB for an Operating Exemption in Docket No. FD 36000 (and related Docket No. FD 35999).

II. BASIS FOR EXEMPTION UNDER SECTION 10502

Pursuant to 40 U.S.C. 10903, a rail common carrier desiring to discontinue rail service must obtain the prior approval of the Board. However, the Board has authority to exempt certain transactions from this approval, pursuant to 49 U.S.C. 10502(a), which provides:

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part –

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either –

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

Regulation of this discontinuance pursuant to section 10903 is unnecessary to carry out the policy set forth at section 10101, the discontinuance is of limited scope, and it will not subject any rail customers to an abuse of market power. Thus, the City's proposed discontinuance satisfies the requirements of section 10502 and should be exempted from the Board's prior approval requirements.

A. The Application of Section 10903 Is Not Necessary To Carry Out The Rail Transportation Policy.

The Board's prior review of the City's proposed discontinuance is unnecessary to carry out the rail transportation policy ("RTP") identified at 49 U.S.C. 10101. None of the objectives of the RTP will be adversely affected by the exemption. In fact, by exempting this transaction, the Board would further certain of the RTP's objectives. Granting the exemption would serve to minimize government regulation in the railroad industry and regulatory barriers (including administrative expenses) associated with exiting the industry, and would result in the efficient handling of this proceeding. *See* 49 U.S.C. 10101(2), (7) and (15). In addition, it would expedite the City receiving Board authority to discontinue rail service over the rail lines that have reverted back to the original owner per the terms of the STB approved lease. Thus, granting the exemption also promotes "sound economic conditions" and efficient railroad management. *See* 49 U.S.C. 10101(5) and (9). *See* Docket No. AB 43 (Sub-No. 190X), *Illinois Central Railroad Company – Discontinuance of Service Exemption – In Sangamon and Montgomery Counties, ILL*, served June 23, 2015.

B. The Transaction Is of Limited Scope.

The proposed discontinuance is of limited scope. The CITY is seeking the discontinuance of service over approximately 10.2 miles of rail lines in Thurston County owned by BNSF and formerly leased by the City. Said operating lease previously approved by the STB

has expired and common carrier obligations have reverted back to the original owner per the terms of the approved lease. BNSF has entered into a new operating lease over portions of the Lines with Genesee & Wyoming Inc., who has in turn filed with the STB for an Operating Exemption in Docket No. FD 36000 (and related Docket No. FD 35999). The expiration of the lease, the reverting of the lease back to BNSF, and BNSF's entering into a new lease with Genesee & Wyoming Inc. demonstrate the limited scope of the proposed discontinuance.

C. This Transaction Will Not Result in an Abuse of Market Power.

If the Board finds that the proposed discontinuance is of limited scope, the Board need not determine whether the proposed discontinuance will result in an abuse of market power. *See* 49 U.S.C. 10502(a)(2). Nevertheless, regulation of the proposed discontinuance is not needed to protect rail customers from an abuse of market power. As noted above, the City's operating lease with BNSF has expired and BNSF has entered into a new operating lease over portions of these lines. Thus, no active rail customer will lose access to rail freight service as a result of this discontinuance.

III. ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

The Board routinely has found that discontinuance proceedings are exempt from environmental and historic reporting requirements. *See e.g.* STB Docket No. AB-331 (Sub-No. 1X), *Bi-State Development Agency of the Missouri-Illinois Metropolitan District – Discontinuance of Service Exemption – In the City of St. Louis, MO*, served Feb. 19, 2010; Docket No. AB-1011 (Sub-No. 1X), *Northern Lines Railway, LLC – Discontinuance of Service Exemption – In Stearns County, Minnesota*, served May 20, 2011; Docket No. AB 933 (Sub-No. 1X), *Dakota, Missouri Valley and Western Railroad, Inc. – Discontinuance of Service Exemption – In Burke County, N.D.*, served Dec. 17, 2014; Docket No. AB 290 (Sub-No. 370X), *Norfolk*

Southern Railway Company – Discontinuance of Service Exemption – In Clermont, Brown, and Adams Counties, Ohio, served Jan. 15, 2015.

In addition as noted above, the City was the lessee of the Lines and will not be salvaging the track and materials on the Lines. Because freight rail service over the Lines has reverted back to BNSF, there will be no diversion of traffic from rail to truck. Therefore, the CITY does not have to prepare or file an Environmental Report. 49 C.F.R. 1105.6(c)(2).

IV. FEDERALLY-GRANTED RIGHT-OF-WAY

The CITY is not the owner of the Lines. As the former lessee, the CITY does not know if the Lines contain federally granted rights-of-way, but any documentation in the railroad's possession will be made available promptly to those requesting it.

V. MAP

A map of the Lines is attached hereto as **Exhibit A**.

VI. DRAFT FEDERAL REGISTER NOTICE

A draft Federal Register Notice is attached hereto as **Exhibit B**.

VII. CERTIFICATE OF SERVICE AND PUBLICATION

A Certificate of Service and Publication is attached hereto as **Exhibit C**.

VIII. LABOR PROTECTION

The interests of railroad employees of the CITY will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

IX. CONCLUSION

Application of the prior approval requirements of 49 U.S.C. 10903 to the proposed discontinuance is not required to carry out the rail transportation policy set forth in 49 U.S.C.

10101. In addition, the proposed discontinuance is of limited scope and will not subject any rail customers to abuse of market power. Accordingly, the CITY requests an exemption for the proposed discontinuance of the Lines.

Respectfully submitted,



William Fosbre
Chief Deputy City Attorney
City of Tacoma-City Attorney's Office
3628 S. 35th St.
Tacoma, WA 98409
(253) 502-8218

Attorney for:
City of Tacoma

Dated: June 10, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

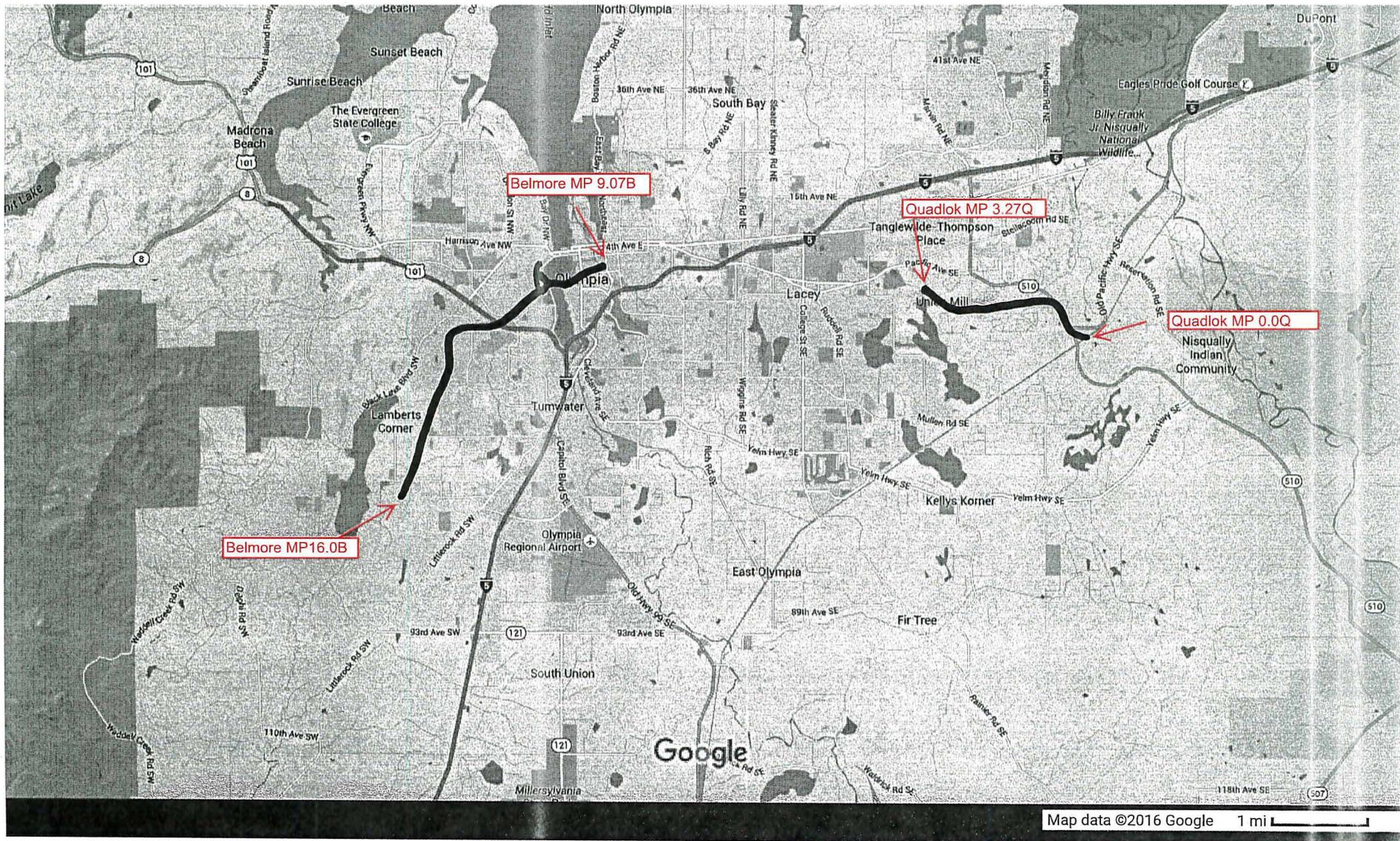
STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
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EXHIBIT A
MAP OF LINES

Google Maps Quadlok-St. Clair and Belmore-Olympia Rail Lines



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C.10502

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

DRAFT FEDERAL REGISTER NOTICE

STB No. AB 1239 (Sub-No. 2x)

Notice of Petition for Exemption to Discontinue Service

On _____, the City of Tacoma, Department of Public Utilities, Beltline Division, dba Tacoma Rail, Tacoma Municipal Beltline or (“the CITY”) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service over approximately 10.2 miles of rail in Thurston County, WA owned by BNSF Railway Company (“BNSF”) and formerly leased by Tacoma. The rail lines are located at Milepost 3.27Q at Quadlok to Milepost 0.0Q at St. Clair in Thurston County, Washington (the Quadlok-St. Clair line); and Milepost 16.0B at Belmore to Milepost 9.07B at Olympia in Thurston County, Washington (the Belmore-Olympia line) (together referred to as the “Lines”). The Lines are located in U.S. Postal Zip Codes 98501 and 98512.

The CITY is not the owner of the Lines. BNSF, the owner of the Lines, has advised the CITY that based on information in BNSF’s possession, the Lines do not contain any federally granted rights-of-way. Any documentation in the CITY’s possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the labor protective conditions set forth in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Any offer for final assistance to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Because this is a discontinuance of service proceeding and not an abandonment, there will be no consideration of requests for trail use/railbanking or public use conditions.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 C.F.R. 1152. Questions concerning environmental issues may be directed to the Board’s Office of Environmental Analysis.

This discontinuance proceeding does not require any environmental or historic documentation.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C.10502

EXHIBIT C

CERTIFICATE OF SERVICE AND PUBLICATION

CERTIFICATION OF SERVICE

Pursuant to 49 C.F.R. 1152.50(d), the undersigned hereby certifies that notice of the proposed discontinuance in STB Docket No. AB 1239 (Sub-No. 2X) was mailed via first class mail on May 27, 2016, to the following parties:

State Public Service Commission

Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Military Traffic Management Command

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225-5357

National Park Service

Chief of National Recreation and Trails
U.S. Dept. of Interior - Nat'l. Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

National Park Service

U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Ave., S.W.
Washington, DC 20250-0003

Dated: June 10, 2016



William Fosbre

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the intent to discontinue rail service in the form prescribed by the Surface Transportation Board for a petition for exemption (49 C.F.R. 1105.12) was published on June 8, 2016, in the Olympian, a newspaper of general circulation in Thurston County, Washington.

Dated: June 10, 2016



William Fosbre

PUBLIC NOTICE

The City of Tacoma, Department of Public Utilities, Beltline Division (“Tacoma”) gives notice that on or about June 10, 2016, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 *et seq.* permitting Tacoma to discontinue rail service over approximately 10.2 miles of rail in Thurston County, WA owned by BNSF Railway Company (“BNSF”) and formerly leased by Tacoma. The rail lines are located at Milepost 3.27Q at Quadlok to Milepost 0.0Q at St. Clair in Thurston County, Washington (the Quadlok-St. Clair line); and Milepost 16.0B at Belmore to Milepost 9.07B at Olympia in Thurston County, Washington (the Belmore-Olympia line) (together referred to as the “Lines”). The Lines are located in U.S. Postal Zip Codes 98501 and 98512, two segments of rail in Thurston County, WA. The proceeding will be docketed as No. AB 1239 (Sub-No. 2X).

Pursuant to the Surface Transportation Board’s decision in Finance Docket No. 34555 (served September 27, 2004), Tacoma was granted authority to operate the Quadlok-St. Clair and Belmore-Olympia lines through its lease with BNSF. Tacoma’s lease with BNSF expired March 16, 2016, and common carrier freight service obligations under the expired lease have now reverted back to BNSF.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at (202) 245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than

environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 20423-0001 [*See* 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [*See* 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Copies of any comments or requests for conditions should be served on the applicant's representative: William Fosbre, Chief Deputy City Attorney, City of Tacoma-City Attorney's Office, P.O. Box 11007, Tacoma, WA 98411 (253) 502-8218.

LEGAL PROOF OF PUBLICATION

Account #	Ad Number	Identification	PO	Amount	Cols	Lines
256117	0002497210	Legal #6467 PUBLIC NOTICE The City of T	Notice - Rail Service	\$363.22	2	47

Attention: Diane Kubicek
TACOMA PUBLIC UTILITIES
PO BOX 1717
TACOMA, WA 984011717

Legal #6467

PUBLIC NOTICE

The City of Tacoma, Department of Public Utilities, Beltline Division ("Tacoma") gives notice that on or about June 10, 2016, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 et seq. permitting Tacoma to discontinue rail service over approximately 10.2 miles of rail in Thurston County, WA owned by BNSF Railway Company ("BNSF") and formerly leased by Tacoma. The rail lines are located at Milepost 3.27Q at Quadlok to Milepost 0.0Q at St. Clair in Thurston County, Washington (the Quadlok-St. Clair line); and Milepost 16.0B at Belmore to Milepost 9.07B at Olympia in Thurston County, Washington (the Belmore-Olympia line) (together referred to as the "Lines"). The Lines are located in U.S. Postal Zip Codes 98501 and 98512, two segments of rail in Thurston County, WA. The proceeding will be docketed as No. AB 1239 (Sub-No. 2X). Pursuant to the Surface Transportation Board's decision in Finance Docket No. 34555 (served September 27, 2004), Tacoma was granted authority to operate the Quadlok-St. Clair and Belmore-Olympia lines through its lease with BNSF. Tacoma's lease with BNSF expired March 16, 2016, and common carrier freight service obligations under the expired lease have now reverted back to BNSF. The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at (202) 245-0295. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423-0001 (See 49 CFR 1.104.1(e) and 1.104.3(a)), and one copy must be served on applicants' representative (See 49 CFR 1.104.12(a)). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Copies of any comments or requests for conditions should be served on the applicant's representative: William Fosbre, Chief Deputy City Attorney, City of Tacoma-City Attorney's Office, P.O. Box 11007, Tacoma, WA 98411 (253) 502-8218.

Publish: June 8, 2016

JANICE WASSENAAR, being duly sworn, deposes and says: That she is the Principal Clerk of The Olympian, a daily newspaper printed and published at Olympia, Thurston County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Olympian in accordance with RCW 65.16.020 and RCW 63.16.040, as amended, for:

1 Insertions

Published On:

June 08, 2016

(Principal Clerk)

Subscribed and sworn on this 8th day of June in the year of 2016 before me, a Notary Public, personally appeared before me, Janice Wassenaar known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.



Kari F Lambert
Notary Public in and for the state of Washington, residing at Olympia, Thurston County, Washington

Note: The above affidavit and fee is in compliance with RCW 63.16.030 and Sec. 3 Chapter 34, Laws of 1977

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN THURSTON COUNTY, WASHINGTON

PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C.10502

VERIFICATION

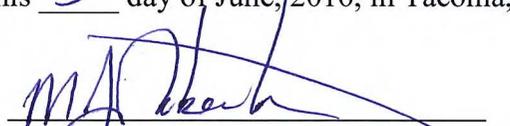
VERIFICATION

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Dale W. King, being duly sworn, depose and state that I am the Superintendent/COO of the City of Tacoma, Department of Public Utilities, Beltline Division; that I have read the foregoing Petition for Exemption, know the facts asserted therein, and verify that the same are true as stated. Further, I verify that I am qualified and authorized to cause this Petition for Exemption to be filed.


DALE W. KING
Superintendent/COO

SUBSCRIBED and SWORN to before me this 3rd day of June, 2016, in Tacoma, Washington.


NOTARY PUBLIC in and for the state
of Washington, residing at Tacoma.
My Commission expires 3-2-19.

