

LAW OFFICES OF
LOUIS E. GITOMER, LLC.

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2225

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

January 29, 2013

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

**233751
ENTERED
Office of Proceedings
January 29, 2013
Part of
Public Record**

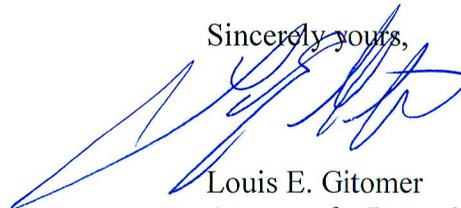
RE: Docket No. FD 35714, *Puget Sound & Pacific Railroad Company-Lease
Exemption—The United States of America*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Petition for Waiver of 49 CFR § 1150.42(e). Enclosed is a computer diskette containing the Notice in Word and pdf format. Please time and date stamp the extra copy of this letter and the Petition and return them with our messenger.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for Puget Sound & Pacific
Railroad Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35714

PUGET SOUND & PACIFIC RAILROAD COMPANY—LEASE EXEMPTION—
THE UNITED STATES OF AMERICA

PETITION FOR WAIVER OF 49 C.F.R. §1150.42(e)

Kenneth G. Charron, Esq.
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: Puget Sound & Pacific
Railroad Company

Dated: January 29, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35714

PUGET SOUND & PACIFIC RAILROAD COMPANY—LEASE EXEMPTION—
THE UNITED STATES OF AMERICA

PETITION FOR WAIVER OF 49 C.F.R. §1150.42(e)

Puget Sound & Pacific Railroad Company (“PSAP”), a Class III carrier, petitions the Surface Transportation Board (the “Board”) for a waiver of the requirements of 49 C.F.R. §1150.42(e) as it relates to the Lease Agreement dated as of January 16, 2013, between PSAP and the United States of America (the “Navy”) covering approximately 48.6 miles of railroad. The line runs between Shelton and Bangor, WA, a distance of approximately 44 miles, and includes a branch line to Bremerton Navy Yard, a distance of approximately 4.6 miles (the “Line”) in Mason and Kitsap Counties, WA, *See PSAP Operating Company, Inc.—Acquisition and Operation—ParkSierra Corp.*, STB Docket No. FD 34200 (STB served May 23, 2002).

PSAP and the Navy have entered into a Lease Agreement which would replace a Transportation Agreement dated December 11, 1944, between the Navy and Northern Pacific Railway Company¹, as amended, covering operations over the Line (“Operating Agreement”). PSAP will continue to operate the Line as it does today but the Lease Agreement will be the governing document instead of the Operating Agreement.

PSAP requests a waiver of the requirements of 49 C.F.R. §1150.42(e), which requires that, “If the projected annual revenue of the rail lines to be acquired or operated, together with

¹ Northern Pacific Railway Company is a predecessor of PSAP.

the acquiring carrier's projected annual revenue, exceeds \$5 million,” the applicant must give 60 days’ advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees’ labor unions. Because PSAP has been, and will continue to be, the exclusive freight operator over the Line, and does not intend to change its operations so that no employees will be affected, PSAP seeks a waiver so that the Lease it seeks to effectuate by exemption can become effective without PSAP providing the full 60-day advance notice.

Concurrently with the filing of the petition for waiver, PSAP, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. §1150.41, to lease and operate the Line owned by the Navy. PSAP or its predecessors have been the exclusive freight operator over the Line since 1944, pursuant to the Operating Agreement. PSAP has posted notice of the proposed transaction at the workplace of the employees on the Line, served the notice on the national office of the potentially affected employees’ labor union (as required under 49 C.F.R. §1150.42(e)), and certified posting and service to the Board.

PSAP seeks waiver of the 60-day labor notice requirement because requiring the full 60-day notice would serve no useful purpose. No employees of PSAP will be affected by this transaction, as PSAP, and its predecessor, have been the exclusive freight carriers on the Line since 1944, and would continue to be the exclusive carrier after the proposed transaction is consummated. No PSAP employees would be affected by the Lease Agreement, because PSAP would continue to provide the same service as it has in the past. PSAP will continue to operate the Line but under the Lease Agreement rather than the Operating Agreement. PSAP does not plan to reduce its employment force or hire any additional employees as a result of the proposed transaction.

The Board has stated that:

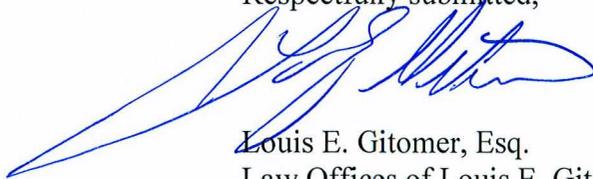
The purpose of our notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case. [internal footnotes omitted]

Austin Western Railroad, L.L.C.—Lease and Operation Exemption—Capital Metropolitan Transportation Authority, Docket No. FD 35456 (STB served April 7, 2011) slip op. at 2.

No employees will be adversely affected by the waiver of the notice requirements. PSAP is currently the freight operator over the Line, and it will continue to be the freight operator over the Line upon consummation of the proposed transaction. Therefore, no employees will be adversely affected by the waiving the 60-day notice period.

For these reasons, PSAP respectfully requests that the Board grant the waiver request.

Respectfully submitted,



Kenneth G. Charron, Esq.
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: Puget Sound & Pacific Railroad
Company

Dated: January 29, 2013