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April 11, 2011

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

APR 11 2011
Part of
Public Record

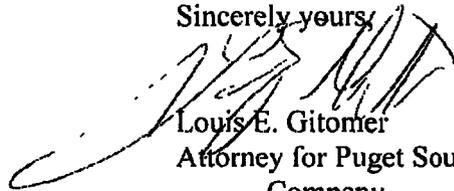
RE: Docket No. AB-1023 (Sub-No. 1X), *Puget Sound & Pacific Railroad
Company—Abandonment Exemption—in Gruys Harbor County, WA*

Dear Ms. Brown:

Enclosed for e-filing is the Reply to the order of the Surface Transportation Board served on April 1, 2011.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



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

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1023 (Sub-No. 1X)

PUGET SOUND & PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN GRAYS HARBOR COUNTY, WA

REPLY

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Attorneys for: PUGET SOUND & PACIFIC
RAILROAD COMPANY

Dated: April 11, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1023 (Sub-No. 1X)

PUGET SOUND & PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN GRAYS HARBOR COUNTY, WA

REPLY

In a decision served on April 1, 2011, the Surface Transportation Board ("Board") directed the Puget Sound & Pacific Railroad Company ("PS&P") to explain why it had not filed a notice of consummation prior to September 14, 2010, 60 days after the Section 106 historic preservation condition was removed. PS&P responds to the Board's request in this pleading.

In a letter to the Board's Office of Environmental Analysis ("OEA") dated April 30, 2009, the State of Washington's Department of Ecology ("WADOE") stated its concerns that: (1) oils, hydraulic fluids, fuels, and other petroleum products and pollutants could be released into neighboring waterways during salvage activities, and that such discharges are a violation of the Federal Pollution Control Act and the Water Quality Standards for Surface Water of the State of Washington; (2) PS&P may be required to install sediment control devices as a means for managing such pollutant-laden runoff; (3) the wood railroad ties within the area of the proposed abandonment could be chemically treated, and therefore should be removed in accordance with the document entitled "Focus on Treated Wood Exclusions" available on WADOE's website at <http://www.ccy.wa.gov/pubs/0304038.pdf>; and (4) WADOE encourages recycling of waste material by providing a hotline number that lists recycling and reuse facilities within the area.

Based on this letter, OEA recommended and the Board imposed a condition requiring PS&P to consult with WADOE “prior to commencement of any salvage activities, to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management, sediment control, and railroad tie recycling requirements are addressed, and to report the results of those consultations in writing”¹ to OEA.

PS&P sent letters to (1) WADOE’s Solid Waste & Financial Assistance Office and (2) WADOE’s Water Quality Program on August 26, 2010. On September 2, 2010, PS&P sent a copy of its August 26 letter to OEA. OEA staff offered to contact WADOE if PS&P did not hear from WADOE. PS&P received a response from the Water Quality Office on January 6, 2011. As of this date, PS&P has not received a response from the Solid Waste & Financial Assistance Office. After a telephone conversation with OEA staff to determine whether additional efforts to reach the Solid Waste & Financial Assistance Office were necessary, PS&P filed a letter dated January 13, 2011 with OEA stating it had concluded consultations with WADOE’s Water Quality Program but had not been able to make contact with anyone from WADOE’s Solid Waste & Financial Assistance Program. In the January 13 letter, PS&P agreed to comply with WADOE’s rules using best management practices and to dispose of treated wood, if found, in accordance with WADOES’s publications.

While consultation with WADOE was a self-executing condition, PS&P needed to conclude consultations and any potential negotiations with WADOE before it could meet the consultation condition set out in the Board’s May Decision, which required reporting the results of consultations to OEA.

¹ *Puget Sound & Pacific Railroad Company—Abandonment Exemption—in Grays Harbor County, WA*, STB Docket No. AB-1023 (Sub-No. 1X), (STB served May 19, 2009)

PS&P waited to consummate its abandonment because it knew it might need OEA's help in contacting WADOE and concluding the consultation. PS&P also waited to consummate the abandonment out of concern that WADOE could have imposed substantial conditions and without Board jurisdiction, PS&P would have limited recourse. If PS&P had consummated its abandonment prior to concluding its consultation with WADOE, PS&P could not seek Board intervention to amend the WADOE conditions. PS&P would be in an untenable situation where the Line was no longer subject to the Board's jurisdiction but the cost, as conditioned to salvage the Line could have outweighed the benefits of abandoning the Line in the first place.

In the alternative, PS&P requests that the Board treat this Reply as a petition to reopen this proceeding under 49 CFR 1152.25(e)(4) and extend the deadline for filing the notice of consummation to January 28, 2011 to allow PS&P to conclude consultation with WADOE.

Under 49 CFR 1152.25(e)(4) "A person may file a petition to reopen any administratively final action of the Board. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances." PS&P maintains that lack of response from WADOE prior to January 2011 is both new evidence and a substantially changed circumstance that would justify reopening this proceeding and extending the consummation deadline beyond the September 14th deadline.

PS&P sought to conclude its consultation condition with WADOE while remaining within the Board's jurisdiction both for the help OEA could offer in moving the consultation forward and for the protection offered by the Board's jurisdiction. The timeline for WADOE's response was beyond PS&P's control and PS&P could not foresee that WADOE would take so long to respond. PS&P needed to conclude consultations and any potential negotiations with

("May Decision") slip op. at 5.

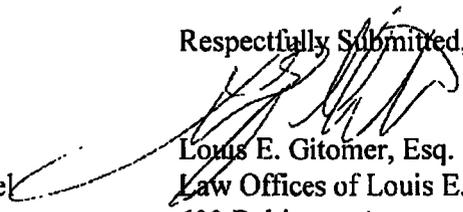
WADOE before it could meet the consultation condition required by the Board but PS&P had no control over when or if WADOE would respond.

CONCLUSION

In conclusion, PS&P asks that the Board accept its January 28, 2011 notification of its January 27, 2011 abandonment consummation or in the alternative, reopen this proceeding and extend the deadline for filing a notice of consummation to January 28, 2011.

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Respectfully Submitted,



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RAILROAD COMPANY

Dated: April 11, 2010