

224453

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ORIGINAL



BY HAND

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JAN 29 2009
SURFACE
TRANSPORTATION BOARD

January 30, 2009

ENTERED
Office of Proceedings
JAN 30 2009
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Public Record

Honorable Anne K. Quinlan
Surface Transportation Board
395 E Street, SW - Suite 1260
Washington, D.C. 20423-0001

RE: STB Docket No. FD 35213, GNP Rly Inc. - Acquisition
and Operation Exemption - BNSF Railway Company

Dear Ms. Quinlan:

On behalf of GNP Rly Inc., I am enclosing for filing
in the above-captioned proceeding an original and ten
copies of its Verified Notice of Acquisition and Operation
of Rail Line under 49 CFR 1150.43.

You will also find a diskette containing the docket
and a check in the amount of \$1800.00

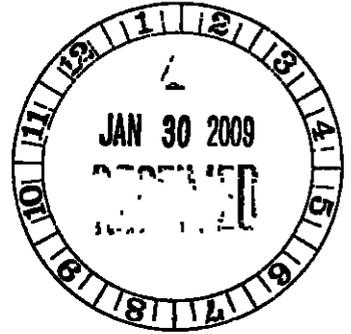
Please date stamp and return one copy for my records.

Sincerely yours,

John D. Heffner

FILED
JAN 29 2009
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. FD 35213

GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
BNSF RAILWAY COMPANY

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TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

NOTICE OF ACQUISITION AND OPERATION OF RAIL LINE
INFORMATION REQUIRED BY 49 CFR 1150.43

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

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STB FINANCE DOCKET NO. FD 35213

GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

NOTICE OF ACQUISITION AND OPERATION OF RAIL LINE

INFORMATION REQUIRED BY 49 CFR 1150.43

Name and Address of Applicant² 49 CFR 1150.43(a)

GNP Rly Inc.
403 Garfield Street, #20
Tacoma, WA 98444

Applicant's Representative 49 CFR 1150.43(b)

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Statement of Agreement(s) 49 CFR 1150.43(c)

GNP Rly Inc. ("GNP") has completed negotiations for an agreement with BNSF Railway Company ("BNSF") for GNP to purchase

² The address for the Seller, BNSF Railway Company, is 2500 Lou Menk Drive, Fort Worth, TX 76131.

and operate certain railroad rights currently owned and operated by BNSF Railway Company. GNP has negotiated two agreements with BNSF, one for the purchase of BNSF's retained exclusive freight rail operating easement and a second for interchange with BNSF. GNP will purchase the exclusive and permanent rail freight operating easement retained by BNSF on a line commonly known as Woodinville Subdivision and extending between approximately milepost 23.8 in Woodinville and approximately milepost 38.25 in Snohomish, a distance of 14.45 miles in King and Snohomish Counties, WA ("the Line"). Both agreements with BNSF shall be signed upon the closing of the purchase of the railroad right-of-way by the Port of Seattle.

GNP plans to commence operations on or about April 1, 2009, more than 30 days from the date of this notice.

Operator of the Property

49 CFR 1150.43(d)

In all cases anticipated by this Notice and as described in the transaction summary provided below, GNP will hold itself out to provide common carrier rail freight service over the Line.

Brief Summary of Transaction

49 CFR 1150.43(e)

GNP is a recently established short line railroad company that has been authorized by the Board to lease and operate a short segment of railroad owned by the County of Snohomish, WA. That segment extends between milepost 39.1 and milepost 39.3 in

the City and County of Snohomish, WA. It will become an active class III short line railroad once it initiates operations over the trackage that is the subject of this class exemption as well as on the right of way owned by Snohomish County that was the subject of a modified certificate of public convenience and necessity.³

This transaction involves the second phase of GNP's rail line acquisition and operation. On October 27, 2008, the Board served a decision⁴ dismissing for lack of jurisdiction a Verified Notice of Exemption by the Port of Seattle ("the Port") to acquire the right-of-way, track, and other physical assets comprising the subject rail line but not the rail freight operating easement or associated common carrier obligation that were retained by BNSF. Simultaneous with the Port's acquisition of those physical assets and pursuant to a Freight Easement Sale Agreement, BNSF will convey the exclusive rail freight operating easement and common carrier obligation to a third party short line carrier (the third party operator or "TPO") selected by BNSF and approved by the Port that will provide the freight and passenger excursion operations over the Line. GNP is the TPO

³ Issued in GNP Rly Inc.--Modified Rail Certificate--In Snohomish, WA, STB Finance Docket No. 35121, served August 13, 2008.

⁴ The Port of Seattle--Acquisition Exemption--Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128.

which has been selected to provide those services and will enter into an Operations and Maintenance Agreement with the Port pursuant to which it will be responsible for providing freight, passenger excursion operations and maintenance of way over the Line for an initial 10-year period.⁵

This transaction qualifies for the class exemption under 49 CFR 1150.41 et seq., because it involves the purchase and operation of an existing rail freight operating easement and common carrier obligation by an entity already authorized by the Board to initiate rail service as a short line rail carrier.

Map 49 CFR 1150.43(f)

A map depicting the rail freight easement to be purchased and operated is attached as Exhibit A

Certificate of Carrier Classification 49 CFR 1150.43(g)

GNP hereby certifies that, with this transaction, its projected annual revenues will be less than \$5,000,000 annually and that GNP will not become a Class I or Class II rail carrier. A certificate complying with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this notice.

Transactions imposing interchange commitments 49 CFR 1150.43(h)

The existence of a provision in the agreement that limits interchange with other railroads and identification of the

⁵ With a ten year renewal option.

interchange points. Not applicable as the Line does not connect with any railroad other than BNSF.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10902.

Caption Summary **49 CFR 1150.44**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data **49 CFR 1105**

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under because the actions proposed herein will not cause any operating changes that exceed the thresholds established in Section 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under Section 1105.8(b) (1). Under this Section, a sale, lease or transfer of a rail line is exempt if rail operations will continue.

Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334
Counsel for Petitioner

Dated: January 30, 2009

EXHIBIT "A"

MAP

Freight Use (MP 23.8 to 38.25)

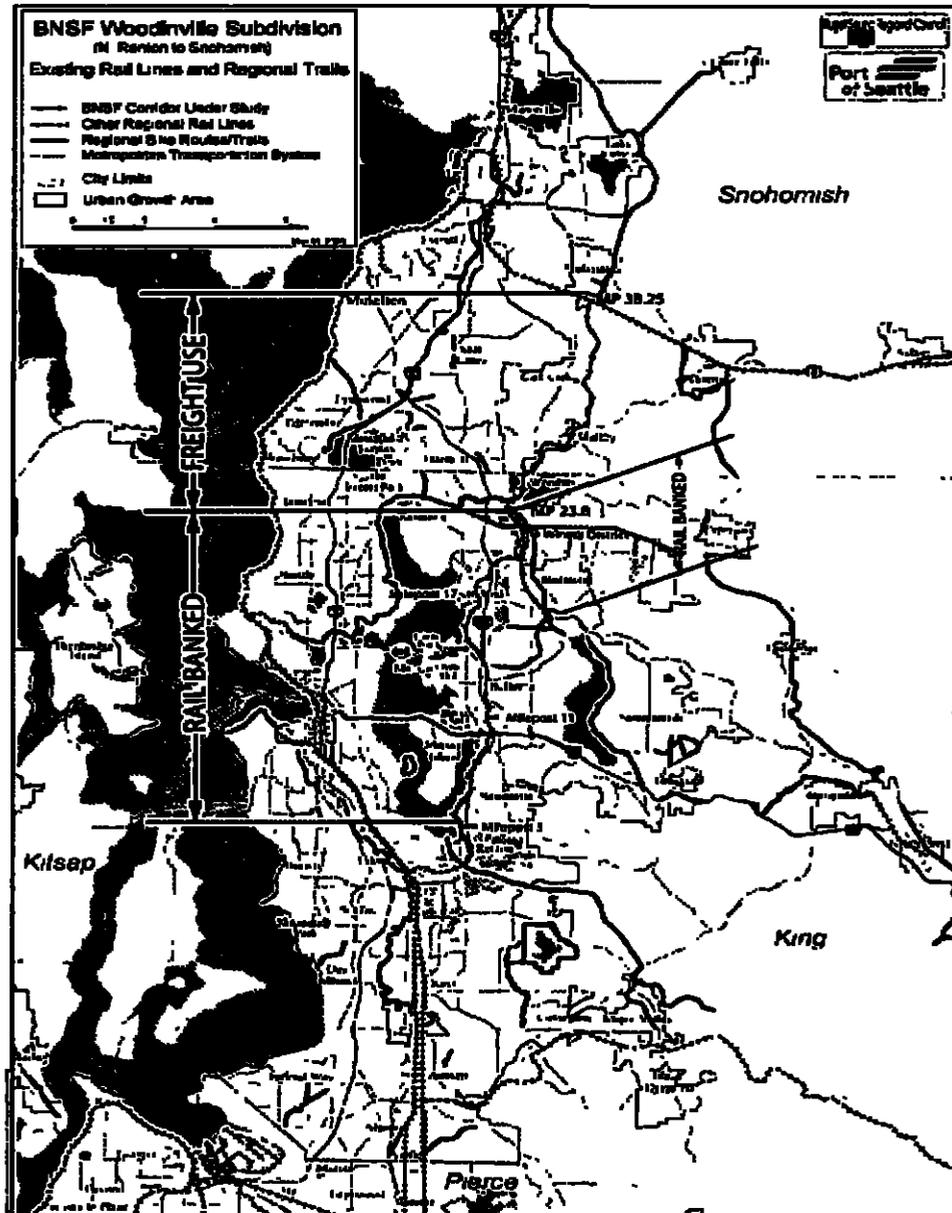


EXHIBIT B

CERTIFICATION

I, Thomas Payne, Chairman and C.O.O. of GNP Rly Inc. ("GNP"), hereby certifies under penalty of perjury that the projected annual railroad operating revenues of GNP in the aggregate, will not exceed \$5,000,000, and GNP will be a Class III rail carrier as set forth at 49 CFR 1201 (1-1) (a). Further, I certify that I am qualified and authorized to make this certification on behalf of GNP.


Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. FD 35213

**GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
BNSF RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41**

**NOTICE OF ACQUISITION AND OPERATION OF RAIL LINE
INFORMATION REQUIRED BY 49 CFR 1150.43**

GNP Rly Inc., an existing class III short line railroad common carrier, has filed a Verified Notice of Exemption under 49 CFR 1150.41 to purchase and operate certain railroad rights currently owned and operated by BNSF Railway Company ("BNSF"). Those rights consist of an exclusive and permanent rail freight operating easement retained by BNSF on a line commonly known as Woodinville Subdivision and extending between approximately milepost 23.8 southwest of Woodinville and approximately milepost 38.25 in Snohomish, a distance of 14.45 miles in King and Snohomish Counties, WA ("the Line").

GNP plans to consummate this transaction on or after April 1, 2009, more than 30 days after the filing of this notice.

Comments must be filed with the Board and served on:

John D. Heffner, Esq.
John D. Heffner, PLLC
1750 K Street, N.W. - Suite 200
Washington, D.C. 20006
Telephone: (202) 296-3334
Counsel for GNP

Janie Sheng, Esq.
K&L Gates
1601 K Street, N.W.
Washington, D.C. 20006-1600
Telephone: (202) 778-9855
Counsel for the Port

and

David Rankin, Esq.
BNSF Railway Company
2500 Lou Menk Drive, AOB 3
Fort Worth, Texas 76131
Telephone: (817) 352-2383
Counsel for BNSF

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.

(seal)

Anne K. Quinlan
Acting Secretary

VERIFICATION

STATE OF WASHINGTON)
)
CITY OF TACOMA) **ss**

Thomas Payne, being duly sworn according to law, hereby deposes and states that (s)he is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her) his knowledge, information, and belief.

Thomas Payne
Thomas Payne

Subscribed to and sworn to before me, a Notary Public, in and for the City of Tacoma in the State of Washington, this 23rd day of January, 2009.

L. Morley
Notary Public

My commission expires: 7-7-11

