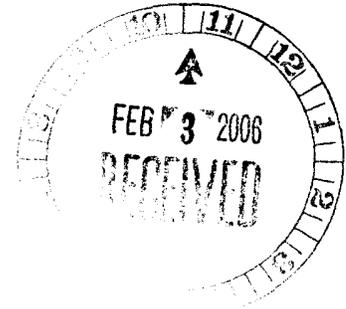


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2 February 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
FEB 3 2006
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Public Record

Re: YILA -- Abandonment Exemption --
Yakima County, WA, AB 600 (Sub-no. 1X)

for filing: Motion to Dismiss/Reject Late-
Filed OFA Pleading

Dear Mr. Williams:

Enclosed for filing please find an original and ten copies of a motion to dismiss or reject a "Notice of Intent to File an OFA" which we understand that Oregon Pacific & Eastern Railroad Company has tendered, or attempted to tender, to this Board for filing, and which was served on YILA under a certificate of service indicating deposit in the U.S. Mail on 30 January. Because we do not wish to see a delay in the proceeding due to uncertainty over a late-filed and out-of-time notice of intent, we request that this motion be placed on file so that the OPER pleading may be promptly dismissed if filed, or rejected for filing if merely tendered.

Thank you for your assistance in this matter.

Very truly,

Charles Montange
for YILA and Yakima County

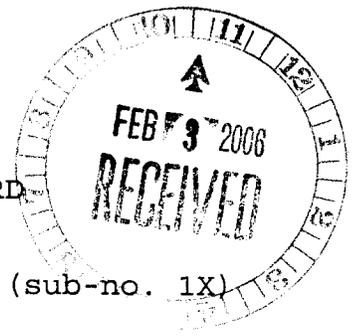
Encls.

cc. Terry Austin, Esq. (for County)
Ray Paoella, Esq. (for City)
Gregory Lighty, Esq. (for Town)
Paul Edmondson, Esq. (for YILA)
Robert Larson, OPER
w/encls.

Office of Proceedings
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BEFORE THE SURFACE TRANSPORTATION BOARD

Yakima Interurban Lines Association,)
-- Abandonment Exemption -- in) AB 600 (sub-no. 1X)
-- Yakima County, WA)



Motion to Dismiss
"Notice of Intent" to File OFA

Yakima Interurban Lines Association moves to dismiss or to reject the "Notice of Intent to File Offer of Financial Assistance" tendered by Oregon Pacific & Eastern Railroad Company (OPER) in this proceeding.

This Board's Notice served January 19, 2006, in this proceeding specified that "notices of intent" to file OFA's "must be filed by January 30, 2006" and must be accompanied by a \$1200 fee. The undated OPER cover letter does not indicate that any fee payment was tendered to this Board, and the OPER filing bears a certificate indicating service by U.S. Mail, postage pre-paid, first class, on 30 January 2006. Presumably OPER did not mail its pleading to STB until 30 January 2006 as well. The pleading thus could not have reached STB until some time after 30 January 2006, nor could the \$1200 fee payment. The pleading does not appear at the STB website e-library under filings as of close of business on 2 February 2006.

Under 49 C.F.R. § 1104.6, timely filing is required: "[d]ocuments must be received for filing at the Board's offices in Washington, DC within the time limits set for filing. The date of receipt at the Board, and not the date of deposit in the mail, determines the timeliness of filing." A "notice of

intent" that is merely deposited in the mail on January 30, or given to an express company on January 30, even if for next day delivery, is not "timely" for purposes of a 30 January deadline.

This Board's precedent prescribes strict enforcement of OFA filing deadlines and procedures unless voluntarily waived by all parties. E.g., Bad Water Line -- Exemption -- in Fremont County, WY, AB 346 X, served April 10, 1991 (late-filed OFA rejected); Roaring Fork Railroad Holding Authority-- Abandonment Exemption -- in Garfield, Eagle and Pitkin Counties, AB 547 X, served Oct. 30, 1998 (incomplete OFA filing rejected). YILA does not waive the deadline. Parties interested in engaging in the OFA process are properly expected to comply with filing deadlines and requirements in order to avoid unwarranted and unnecessary delays in abandonment proceedings, which in general are kept on a strict schedule in order to comply with railroad transportation policies like that in 49 U.S.C. 10101(7), statutory deadlines (like that in 49 U.S.C. 10903), and the intent of exemption procedures to result in even more efficient procedures as applied to abandonments of lines unused by local traffic for two or more years.

This Board's Notice served January 19 is effective on February 18, 2006. YILA does not wish to delay the effective date. If OPER's filing in fact reaches STB and if it is accompanied by the requisite filing fee so it can be filed, it will necessarily be tardy, and should be dismissed per this motion without delay in the effective date of this Board's

January 19 Notice in this proceeding.¹ If the "notice of intent" tendered by OPER was not accompanied by a filing fee, then it should be rejected for filing, and there should be no further delays in this proceeding for further consideration of the pleading.

If the OPER "notice of intent" is rejected or dismissed as late-filed, or is otherwise ignored by this Board, then Yakima Interurban Lines' motion for an exemption from OFA procedures² can be denied as moot, for no party will have properly sought to invoke those procedures.

Conclusion

Since the OPER "notice of intent" is manifestly late-filed, it must be rejected or dismissed.

Yakima County, Town of Naches, and City of Yakima join in this motion.

¹ YILA of course supports issuance of a Notice of Interim Trail Use, but that will not result in any material delays or uncertainties.

² See this Board's Notice served Jan. 19, at p. 1, note 1.

Respectfully submitted,


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Lines Association

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Yakima, WA 98907-2715

Terry Austin, Esq.
Chief Civil Deputy Pros. Atty
Yakima County Courthouse
128 North 2d St., Room 211
Yakima, WA 98901

Certificate of Service

I hereby certify service by US Mail, postage pre-paid first class, upon Robert Larson, Oregon Pacific & Eastern Railroad Company, 161 Millview Lane, Roseburg, OR 97470 on this 21 day of February, 2006.

