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Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Transportation & Public Construction Division
PO Box 40113 • Olympia WA 98504-0113 • (360) 753-6126

By Federal Express Overnight Mail

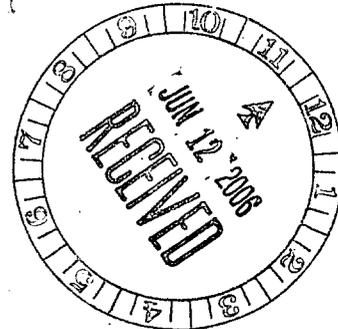
June 8, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

FILED

JUN 26 2006

SURFACE
TRANSPORTATION BOARD



RE: STB Finance Docket No. 34892
State of Washington v. Palouse River and Coulee City Railroad, Inc.

Dear Mr. Williams:

Enclosed please find an original and 10 copies of a Formal Complaint for filing with the Board in the above-referenced matter.

The State of Washington requests waiver of the filing fee pursuant to 49 C.F.R. § 1002.2(e).

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return it in the self-addressed stamped envelope provided.

Sincerely,

MARK S. LYON
Assistant Attorney General
Attorney for State of Washington - Department of Transportation

FILING FEE WAIVED

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Enclosures

ENTERED
Office of Proceedings

JUN 26 2006

Part of
Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STATE OF WASHINGTON,)
DEPARTMENT OF TRANSPORTATION)

Complainant.)

v.)

PALOUSE RIVER AND COULEE)
CITY RAILROAD, INC.)

Defendant.)

FINANCE DOCKET
NO. 34892

FORMAL COMPLAINT

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION
310 MAPLE PARK
P.O. BOX 47316
OLYMPIA, WA 98501

Complainant.

MARK S. LYON
L. SCOTT LOCKWOOD
ASSISTANT ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DRIVE S.W.
P.O. BOX 40113
OLYMPIA, WASHINGTON 98504-0113
TELEPHONE: (360) 586-0641
FACSIMILE: (360) 586-6847

Attorneys for Complainant

DATE FILED: June 8, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STATE OF WASHINGTON,)	
DEPARTMENT OF TRANSPORTATION)	
)	
<u>Complainant.</u>)	
v.)	FINANCE DOCKET
)	NO. 34892
PALOUSE RIVER AND COULEE)	
CITY RAILROAD, INC.)	
)	
<u>Defendant.</u>)	

FORMAL COMPLAINT

I. INTRODUCTION

1.1. Pursuant to 49 U.S.C. §11701(b) and 49 C.F.R. Part 1111, The STATE OF WASHINGTON hereby files this formal complaint against the PALOUSE RIVER & COULEE CITY RAILROAD (PCC), charging that the PCC has violated the common carrier obligation under 49 U.S.C. §11101 and discontinued operations between Cheney, Washington and Coulee City, Washington without authorization under 49 U.S.C. §10903 and 49 C.F.R. Part 1152.

II. IDENTIFICATION OF PARTIES

2.1. The State of Washington is a State of the United States as defined by 49 U.S.C. §10102(8). The State of Washington is a “state or local government agency” for purposes of 49 C.F.R. §1002.2(e)(1).

2.2. Defendant Palouse River & Coulee City Railroad, Inc. (PCC), is a Washington corporation with principle offices located at: 315 West 3rd Street, Pittsburg,

Kansas 66762. PCC is a rail freight carrier involved in interstate commerce subject to the jurisdiction of the Surface Transportation Board. 49 U.S.C. §10101.

2.3. Until November 2005 the PCC operated freight rail service between Cheney, Washington and Coulee City, Washington on the Central Washington Branch (CW Line). The CW Line is one of four branches operated by the PCC in Washington State.

2.4. The PCC is a subsidiary of Watco Companies, Inc (WATCO). WATCO, a Kansas corporation, is a noncarrier that currently controls 16 Class III rail carriers.

Watco Companies, Inc. – Continuance in Control Exemption – Vicksburg Southern Railroad, Inc., STB Finance Docket No. 34766 (STB Service: January 13, 2006)

2.5. The business operations of the PCC and WATCO are closely integrated, and the officers and agents of WATCO effectively manage the business decisions of the PCC. Business communications regarding the PCC regularly and routinely come under WATCO letterhead. Ed McKechnie is WATCO Chief Commercial Officer, and also acts as Executive Vice President and Assistant Secretary for the PCC. Mark Blazer is WATCO Senior Vice President – Marketing West Region and also serves in a similar capacity for the PCC. Craig Richey, WATCO General Counsel is also General Counsel and Assistant Secretary for the PCC. Offices for McKechnie and Richey are located at the WATCO corporate Headquarters in Pittsburg, Kansas. The PCC shares the same principle address with WATCO.

III. STANDING

3.1. The State of Washington has standing to bring this complaint on behalf of itself and its citizens pursuant to 49 U.S.C. §11701(b). See United States v. New York Central Railroad Company, 272 U.S. 457, 47 S.Ct. 130, 71 L.Ed. 350 (1926).

3.2. Under Washington Laws of 2006, ch.370 §308(c) the Washington Legislature has directed the State of Washington to acquire ownership of the CW Line and to return freight rail service to the line. In addition, the Washington State Department of Transportation is the agency of the State of Washington designated as responsible for the State's rail plan pursuant to RCW 47.76.210 and RCW 47.76.240, including the obligations to seek alternatives to rail abandonment and to maintain and improve the freight rail system within the state.

IV. FACTS RELEVANT TO COMPLAINT

4.1. The Central Washington or "CW" Line (CW Subdivision) runs between Milepost 1.00, at Cheney, and Milepost 108.8, at Coulee City, in Washington State.

4.2. In 2003, the Washington State Legislature authorized \$7.028 million to purchase right of way and track structure, and \$21.089 million to rehabilitate three PCC branch lines, including the CW Line. The other two branch lines involved are known as the P&L line and the PV-Hooper line. Under the plan the PCC would retain the operating rights on the line. In November 2004, WSDOT finalized purchase of the P&L and PV-Hooper lines for \$6.486 million. State of Washington, Department of Transportation – Acquisition Exemption – Palouse River And Coulee City Railroad, Inc., STB Finance Docket No. 34609 (Service Date: May 3, 2005).

4.3. The Washington Legislature allocated the remaining \$1.208 million for the purchase of the CW line in its 2004-2007 biennium appropriation and \$322,000 for track rehabilitation projects upon completion of the sale. Funds became available to complete the purchase of the CW Line on July 1, 2005. Discussions to complete the sale of the CW Line for the previously agreed price and on terms similar to those for the P&L and PV-Hooper branches commenced.

4.4. On September 13, 2005, Mark Blazer and other WATCO representatives met with representatives of the Washington State Department of Transportation and provided them with a written assessment of the CW Line. The report cited worsening business economics of the CW Line, and stated: "Our recommendation, therefore, will be to withdraw from the impending sale to the State of Washington and seek abandonment of the CW branch line, along with our recommendation for rationalization of the remaining branch lines."

4.5. On or around October 5, 2005, WATCO marketing representatives notified shippers that the PCC would be imposing a \$250 per car surcharge on the line.

4.6. On October 25, 2005, the PCC posted a new Tariff, effective the same day, imposing a \$250 per car surcharge on the CW Line.

4.7. The new \$250 surcharge resulted in intense discussion between WATCO employees and shippers on a solution that was reasonable and would allow shippers to continue to ship rail cars on the CW Line.

4.8. For example, on November 1, 2005, Central Washington Grain Growers (CWGG), historically the largest shipper on the CW Line, received a new carload agreement (on WATCO letterhead) by fax that would replace the \$250 freight surcharge.

The agreement set out minimum car shipping requirements and rates. Accompanying the agreement was a memo from Ted Kadau, a WATCO marketing representative, stating in part "It is my understanding that beginning this week and next week if the minimum car counts cannot be met we will have to begin moving our crews and engines off the CW rail line." On November 3, 2005, before the new agreement could be signed and returned, CWGG was notified by WATCO that the carload agreement would not be signed by PCC and any cars loaded on the CW Line would be charged the \$250 surcharge.

4.9. On November 4, 2005, CWGG was informed by the PCC that they were pulling their power equipment off of the CW Line and would no longer provide service to customers. The PCC immediately followed through and ceased operations.

4.10. CWGG was forced to divert 152 pre-ordered cars to other locations because PCC "pulled the power" off the CW Line. The Burlington Northern-Santa Fe Railroad (BNSF) charged CWGG \$30.00 per car for the diversion, totaling \$4,560.00.

4.11. On December 30, 2005, the PCC posted a notice of embargo on the Association of American Railroads website, stating that all stations between Cheney and Coulee City were embargoed due to unspecified "track conditions, sub-grade and surface conditions." No additional notice of the embargo or the nature of the embargo were provided to the shippers or the State of Washington.

4.12. On or around May 5, 2006, CWGG ordered car service for its facility at Coulee City. Service was refused because of the embargo.

4.13. On May 25, 2006, representatives from the State of Washington inspected the CW Line by high rail between Coulee City (approximately milepost 108.5) to the

vicinity of Reardon, Washington (approximately milepost 30) in the company of PCC employee Bill Ward. While significant portions of the track are in excepted condition and require some maintenance, track conditions do not support an embargo of service.

4.14. Representatives from the State of Washington were unable to hi-rail the remainder of the line because the segment between approximately milepost 30 and Cheney, Washington (also subject to the December 30, 2005 embargo) is fouled by five to ten miles of stored cars in various length groupings along the main line. Subsequent inspection of this segment without hi-rail did not reveal any impassable track conditions.

4.15. Rail service on the CW Line continues to be embargoed as of the date of filing of this complaint.

4.16. Since service was discontinued in November 2005 and the filing of this Complaint, shippers, their representatives and representatives of the State of Washington have made numerous requests to negotiate the reopening of freight service on the CW Line. The PCC has refused all requests.

4.17. Discontinuance of rail operations by PCC in November 2005 because it could not obtain desired economic commitments from shippers is a violation of the common carrier obligation under 49 U.S.C. §11101.

4.18. From its inception, the December 30, 2005 embargo of all stations on the CW Line was not justified by the alleged unsafe track conditions. At most, rail service could have been restored safely to its pre-existing excepted condition by means of a minimal expenditure for minor repairs and routine maintenance.

4.19. The continued application of the December 30, 2005 embargo to refuse service in May 2006 and to continue to refuse service to all stations on the CW Line as of

the filing of this complaint is not justified by the alleged unsafe track conditions. At most, rail service can be restored safely by means of a reasonable expenditure for minor repairs and routine maintenance.

4.20. PCC and its owner affiliate WATCO are, and at all relevant times have been, physically and financially able to resume rail service on the CW line.

4.21. By discontinuing service in November 2005, and by subsequently imposing and maintaining an embargo on all stations on the line for unspecified "track conditions" for a period of six months, the PCC intends to carry out its declared intent to discontinue service rail service, rather than to suspend rail service temporarily for operational reasons related to track conditions.

4.22. PCC's discontinuance of rail service without permission of the Surface Transportation Board is unlawful under 49 U.S.C. §10903 and 49 C.F.R. Part 1152.

4.23. The continued refusal of rail service by PCC, despite requests to resume service, because of the continued December 30, 2005 embargo is a violation of the common carrier obligation under 49 U.S.C. §11101.

V. REQUEST FOR RELIEF

5.1. For the reasons stated above, the Surface Transportation Board should find that on and after November 4, 2005, when the PCC removed its equipment and discontinued service on the CW Line, PCC has failed to provide transportation and service to shippers on reasonable request in violation of 49 U.S.C. § 11101(a) and illegally discontinued operations on the line. Based upon that finding, the Board should order that the PCC (1) cease and desist from such violations; (2) lift the December 30,

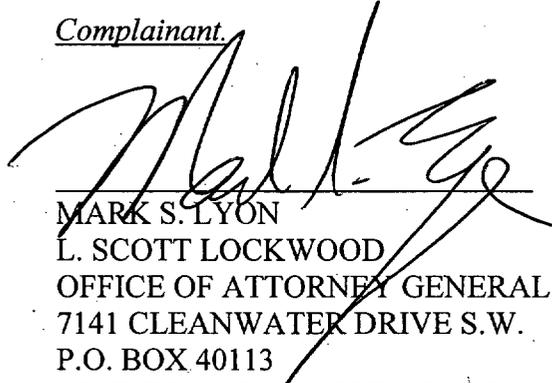
2005 embargo; (3) remove stored rail cars and other impediments to operations on the CW line; and (4) pay CWGG and other shippers damages in an amount to be determined plus interest to be calculated pursuant to 49 C.F.R. §1141.1.

5.2. The State of Washington requests waiver of any filing fees pursuant to 49 C.F.R. §1002.2(e)(1).

Respectfully submitted,

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION
310 MAPLE PARK
P.O. BOX 47316
OLYMPIA, WA 98501

Complainant



MARK S. LYON
L. SCOTT LOCKWOOD
OFFICE OF ATTORNEY GENERAL
7141 CLEANWATER DRIVE S.W.
P.O. BOX 40113
OLYMPIA, WASHINGTON 98504-0113
TELEPHONE: (360) 753-6126
FACSIMILE: (360) 586-6847

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2006, I served the foregoing document, Complaint by facsimile and Federal Express overnight mail on the General Counsel to the PCC (WATCO) Craig Richey, 315 W. 3rd St, Pittsburg, KS 66762.


Audrey L. Hayes, Legal Assistant