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

ENTERED January 27, 2023
Office of Proceedings
January 27, 2023
Part of
Public Record

VIA ELECTRONIC FILING

Re: Finance Docket No. 36664 CWW LLC--Continuance in Control--Yak Rail LLC

Dear Ms. Brown:

Pursuant to the Board's electronic filing Rules, attached for filing is an original **Verified Notice of Exemption of CWW LLC** ("Notice") under 49 C.F.R. § 1180.2(d) in the above captioned proceeding. Applicant has separately submitted the \$1,600 filing fee per 49 C.F.R. § 1002.2(f)(39)(iv).

Pay.gov tracking ID: 273HACSE
Agency Tracking ID number: 76354500772

If there are any questions about this matter, please contact me by telephone at **(908) 361-7097** or by email to **jsavagelaw@aim.com**.

Respectfully submitted,

/s/ James H. M. Savage
[electronically signed]

James H. M. Savage
Counsel for CWW LLC

Attachment

FILED
January 27, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 27, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36664

**CWW LLC
-CONTINUANCE IN CONTROL-
YAK RAIL LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. 1180.2(d)(2)**

CWW LLC ("Applicant") states as follows:

1. Pursuant to **49 C.F.R. §1180** et seq., applicant files this verified notice of exemption to continue in control of Yak Rail LLC ("Yak Rail"), a non-carrier which will become a licensed Class III rail carrier upon the concurrent application for a Modified Certificate of Public Convenience and Necessity taking effect. *See*, Finance Docket No. 36663 Yak Rail LLC--
Modified Rail Certificate, filed January 27, 2023.
2. Upon the Modified Certificate taking effect, applicant will control Yak Rail, which has been formed for the purpose of leasing and operating a line of railroad owned by Yakima County, WA; succeeding to the operations of YCR Corporation ("YCR"), which has been operating the line pursuant to a lease with the County since December 21, 2009.

3. The County-owned rail line originates at the connection with BNSF Railroad Company at BNSF milepost 73.6 at Wesley Junction (Toppenish milepost 0.0) and extends west a distance of 20.56 miles to White Swan, with an additional 1.63 miles of industrial spur near White Swan, for a total distance of 22.19 miles, all within Yakima County, WA.

4. The line was originally constructed by the Northern Pacific Railroad in 1911 and designated as the White Swan Branch. It had formerly been operated by Washington Central Railroad Company, Inc. ("WCRC"). The line was acquired in 1993 by the State of Washington pursuant to an offer of financial assistance, and assigned in a State of Maine transaction to Yakima County after WCRC had been authorized to abandon it.

5. On December 17, 2009, YCR Corp. filed an Amended Application for a Modified Certificate of Public Convenience and Necessity with the Board to provide operations over the line. A Decision publishing the exemption was served January 15, 2010 in STB Finance Docket No. 35336, YCR Corporation--Modified Rail Certificate--in Yakima County, WA. On December 18, 2009, Paul Didelius ("Didelius"), an individual noncarrier, filed a verified notice of exemption to continue in control of YCR upon YCR becoming a Class III rail carrier. A Decision publishing the exemption was served December 31, 2009 in STB Finance Docket No. 35337, Paul Didelius--Continuance in Control--YCR

Corporation.

6. Applicant is likewise under the ownership and control of Mr. Didelius. CWW was organized as a Class III short line rail carrier for the purpose of leasing and operating a line of railroad owned by the Port of Columbia, WA (“the Dayton Line”).

(i) On June 30, 2016 CWW filed a verified notice of exemption to lease and operate an approximately 37.1-mile portion of the Dayton Line, between milepost 33.0 near Walla Walla, WA and milepost CT 70.1 at Dayton, WA, and traversing Walla Walla and Columbia Counties, all within the State of Washington. A Decision publishing the exemption was served July 15, 2016 in Finance Docket No. 36044, CWW LLC--Lease and Operation Exemption--Port of Columbia, WA. Mr. Didelius concurrently filed a verified notice of exemption to continue in control of CWW upon CWW becoming a Class III rail carrier. A Decision publishing the exemption was served July 15, 2016 in Finance Docket No. 36045, Paul Didelius--Continuance in Control Exemption--CWW LLC.

(ii) On March 20, 2019, CWW filed a Verified Notice of Exemption to assume operation of approximately 55.56 miles of rail lines owned by the Union Pacific Railroad Company (“UP”) and leased by the Palouse River & Coulee City Railroad, LLC (“PCC”) located between (1) milepost 3.76, at Zangar Jct., WA, and milepost 33.0 at Walla Walla, WA; and (2) milepost 46.8 at Walla Walla, WA, and

milepost 20.48 at Weston, OR. The lines traverse Walla Walla County, WA, and Umatilla County, OR. A Decision publishing the exemption was served April 5, 2019 in Finance Docket No. 36276, CWW LLC--Change in Operator Exemption Assigning Union Pacific Railroad Company Lease with Interchange Commitment--Palouse River & Coulee City Railroad, L.L.C.

(iii) On May 22, 2019, CWW filed a Verified Notice of Exemption to assume operation of approximately 9.7 miles of interconnected railroad line owned by the BNSF Railway Company (“BNSF”) and leased by PCC located between milepost 0.6 at Walulla, WA and milepost 4.3 at Zangar Jct., WA; and between milepost 62.01 and milepost 68.01 at Walla Walla, WA. The line traverses Walla Walla County, Wash. A Decision publishing the exemption was served June 7, 2019 in Finance Docket No. 36304, CWW LLC--Change in Operator Exemption Assigning BNSF Railway Company Lease with Interchange Commitment--Palouse River & Coulee City Railroad, L.L.C.

7. Mr. Didelius also owns 100% of CCET LLC (“CCET”), a Class III short line rail carrier organized for the purpose of leasing and operating a line of railroad owned by the Norfolk Southern Railway Company (“NSR”) known as the CT Rail Line, traversing Hamilton, Clermont, Brown and Adams Counties, OH.

(i) On March 21, 2014 CCET filed a verified notice of exemption to lease and operate an approximately 24-mile portion of NSR’s Line, originating at

milepost CT 9.0 at Clare Yard, east of Clare, OH, and terminating at milepost CT 32.83, west of Williamsburg, OH. A Decision publishing the exemption was served April 4, 2014 in Finance Docket No. 35810, CCET LLC--Lease and Operation Exemption--Rail Line of Norfolk Southern Railway Company in Hamilton and Clermont Counties, OH.

(ii) On January 22, 2015 CCET filed a verified notice of exemption seeking to amend the CCET-NSR lease agreement to allow CCET to lease and operate an additional 29.37-mile segment of NSR's Line, from milepost CT 32.83 to milepost CT 62.20, east of Seaman, OH¹ under Finance Docket No. 35900, CCET LLC--Lease and Operation Exemption--Rail Line of Norfolk Southern Railway Company in Clermont, Brown and Adams Counties, OH. The exemption took effect February 21, 2015 pursuant to a Board decision served February 6, 2015. Mr. Didelius concurrently filed a verified notice of exemption to continue in control of CCET. A Decision publishing the exemption was served February 6, 2015 in Finance Docket No. 35901, Paul Didelius--Continuance in Control Exemption--CCET, LLC.

¹ The Board issued a decision in Docket No. AB 290 (Sub-No. 370X), Norfolk Southern Railway Company--Discontinuance of Service Exemption--in Clermont, Brown and Adams Counties, OH, (STB served January 15, 2015), authorizing NSR to discontinue its own common carrier obligation including the Line Extension, and the exemption became effective February 14, 2015. However, NSR advised the Board by letter dated January 20, 2015 that it would not effectuate discontinuance. Thus, the Line Extension thus remains within Board jurisdiction.

(iii) On November 21, 2016 CCET filed a verified notice of exemption to amend the NSR lease to operate an additional 16.25 miles of NSR's Line from milepost CT 62.20, east of Seaman, OH to milepost CT 78.45, at Mineral Springs, OH. A Decision publishing the exemption was served December 7, 2016 in Finance Docket No. 36079, CCET LLC--Lease and Operation Exemption--Rail Line of Norfolk Southern Railway Company in Adams County, OH.

(iv) On December 10, 2019 CCET filed a verified notice of exemption to renew its lease of, and to continue to provide railroad common carrier service over the above-described 69.45 route miles of NSR's CT Rail Line. A Decision publishing the exemption was served December 26, 2019 in Finance Docket No. 36370, CCET LLC d/b/a Cincinnati Eastern Railroad--Lease and Operation Exemption--Norfolk Southern Railway Company.

8. Additionally, Mr. Didelius owns and controls 70% of WRL LLC ("WRL"), a Class III short line rail carrier organized for the purpose of leasing and operating a line of railroad owned by the Port of Royal Slope, WA ("PRS"), known as the Royal Slope Rail Line.

(i) On May 6, 2016, WRL filed a verified notice for a modified certificate to lease and operate an approximately 26-mile line of rail originating at milepost 1989.06 near Othello, WA, and continuing west to Royal City Jct. (milepost 2009.0), thence north, terminating at an industrial siding near Royal City, WA

(milepost 5.2). The subject line traverses Adams and Grant Counties, WA. A Decision publishing the notice for a modified certificate was served June 3, 2016 in Finance Docket No. 36002, WRL LLC--Modified Rail Certificate of Public Convenience and Necessity--Adams and Grant Counties, WA. Applicant concurrently filed a verified notice of exemption to continue in control of WRL upon WRL becoming a Class III rail carrier. A Decision publishing the exemption was served May 16, 2016 in Finance Docket No. 36003, Paul Didelius--Continuance in Control Exemption-WRL LLC.

(ii) On September 3, 2016 WRL filed a verified notice of exemption to acquire from the City of Tacoma Department of Public Works d/b/a Tacoma Rail (“Tacoma Rail”) a 34.6-mile rail line between milepost 33 near Rainier, WA and milepost 67.6 near Chehalis, WA, and traversing Lewis and Thurston Counties, WA. A Decision publishing the exemption notice was served October 14, 2016 in Finance Docket No. 36074, WRL LLC--Acquisition Exemption--City of Tacoma, Department of Public Works.

(iii) On June 30, 2017, WRL filed a verified change in operator exemption notice to assume operation over the 34.6-mile rail line previously acquired by WRL from Tacoma Rail, and previously operated by Western Washington Railroad, LLC, pursuant to lease with Tacoma Rail. A Decision publishing the exemption notice was served July 14, 2017 in Finance Docket No.

36132, WRL LLC--Change in Operator Exemption--Western Washington RR, LLC.

(iv) On August 26, 2019, WRL filed a Verified Notice of Exemption to acquire and operate a 4.4-mile rail line previously owned and operated by Tacoma Rail. The line originates at milepost 33C north of Rainier, WA and terminates at milepost 28.6 near McKenna, WA. A Decision publishing the exemption notice was served September 20, 2019 in Finance Docket No. 36341, WRL LLC d/b/a Rainier Rail--Acquisition and Operation Exemption--City of Tacoma, Department of Public Works d/b/a Tacoma Rail.

(v) On August 26, 2021, WRL filed a Verified Notice of Exemption to lease and operate an 0.8-mile segment of rail line owned and previously operated by Tacoma Rail. The segment originates at milepost 28.6 and terminates at milepost 27.8C near McKenna, WA. A Decision publishing the exemption notice was served September 10, 2021 in Finance Docket No. 36539, WRL LLC d/b/a Rainier Rail--Lease and Operation Exemption--City of Tacoma, Department of Public Works d/b/a Tacoma Rail Mountain Division.

9. Additionally, Mr. Didelius owns and controls 100% of RYAL LLC (“RYAL”), a Class III short line rail carrier organized for the purpose of leasing and operating a rail line owned by PRS known as the Royal Slope Rail Line. The line was previously leased and operated by WRL pursuant to a modified certificate issued in Finance Docket No. 36002 (See, paragraph 8 (i) above).

(i) On February 10, 2021 RYAL obtained a Modified Certificate to lease and operate the Royal Slope Line in Finance Docket No. 36476, RYAL LLC--Modified Certificate of Public Convenience and Necessity.

10. Additionally, Mr. Didelius owns and controls 100% of KET LLC (“KET”) a Class III short line rail carrier. On November 21, 2018 KET provided notice of an exemption to operate two industrial rail spurs totaling approximately 1.28 miles of track in Benton County, WA. See, Finance Docket No. 36244, KET LLC—Operation Exemption—Rail lines in Benton County, WA.

11. Under **Section §1180.2(d)(2)** of the Board's consolidation rules certain transactions are automatically exempt from the prior approval requirements for common control under **49 U.S.C. §§ 11323 - 11324**. Specifically, **§ 1180.2(d)(2)** exempts the continuance-in-control of a non-connecting carrier where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I rail carrier.

12. The rail properties operated and controlled by CWW do not physically connect and there are no plans to acquire additional rail lines for the purpose of making a connection. As noted above, each of these railroads have become Class III short line railroads upon consummation of their respective licensing proceedings.

A map depicting the physical separation of these lines is attached as Exhibit A.

13. **49 C.F.R. § 1180.6(a)(1)(i):** Information about the carriers:

Name: YCR Corporation
Address: 709 N. 10th Ave., Walla Walla, WA 99362
Telephone: (509) 540-9499

Name: CCET LLC
Address: 43 W Union St., Liberty IN 47353
Telephone: (888) 280-find8906

Name: CWW LLC
Address: 709 N. 10th Ave., Walla Walla, WA 99362
Telephone: (509) 492-3340

Name: WRL LLC
Address: 709 N. 10th Ave., Walla Walla, WA 99362
Telephone: (509) 492-3340

Name: RYAL LLC
Address: 709 N. 10th Ave., Walla Walla, WA 99362
Telephone: (509) 492-3340

Name: KET LLC
Address: 709 N. 10th Ave., Walla Walla, WA 99362
Telephone: (509) 492-3340

Legal counsel to whom questions should be addressed:

Name: James H. M. Savage
Address: 22 Rockingham Court
Germantown, MD 20874
Telephone: (908) 361-7097

49 C.F.R. § 1180.6(a)(1)(ii): Schedule for Consummation

Consummation of this exemption is scheduled for on or after February 27,

2023, more than 30 days after the filing date of this exemption notice.

49 C.F.R. § 1180.6(a)(1)(iii):

Purpose of transaction

Yak Rail seeks to lease and operate a line of railroad owned by Yakima County, WA to continue local service on a line of railroad that was acquired by the State of Washington to forestall abandonment. Yak Rail management has decided to form a new LLC to insulate Yak Rail from the financial and operating obligations of its affiliates.

49 C.F.R. § 1180.6(a)(5):

Location of operations

Yak Rail's proposed operations will take place in the State Washington.

49 C.F.R. § 1180.6(a)(6):

Map of proposed operations

A map of Yak Rail's proposed operations over the trackage formerly leased by County to YCR is attached as Exhibit B.

49 C.F.R. § 1180.6(a)(7)(ii):

Copy of Agreement

Not applicable. No agreement exists covering the common ownership by Mr. Didelius of CWW, Yak Rail, YCR, CCET, WRL or RYAL.

14. This acquisition of control proceeding is exempt from environmental review under **49 C.F.R. § 1105.6(c)(2)(i)** because the proposed action will not cause any operating changes that exceed the threshold established in **49 C.F.R. § 1105.7(e)(4) or (5)**. In addition, this proceeding is exempt from historic review under **49 C.F.R. § 1105.8(b)(i)** because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Accordingly, no historic report is required.

15. Labor protection required: None. Under **49 U.S.C. § 11326**, transactions between Class III rail carriers are not subject to labor protection.

Submitted By:

/s/ James H. M. Savage
[By electronic signature]

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
Tel. (908) 361-7097
jsavagelaw@aim.com
Counsel for CWW LLC

Dated: January 27, 2023

VERIFICATION

I, Paul Didelius, declare under penalty of perjury that I am the Owner CWW LLC, that I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this notice.

/s/ Paul Didelius
[By electronic signature]

Paul Didelius, Owner
CWW LLC

Dated: January 27, 2023

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this 27th day of January, 2023, by electronic mail a true copy of the within pleading upon the following persons:

Jase Testerman, ROW Manager
Yakima County Roads
138 N. 2nd St. - 4th Floor Courthouse
Yakima, WA 98901
E-mail: jaset@co.yakima.wa.us
Office: (509) 574-2457

Steve Salzman
Director- Short line Development
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
E-mail: Steven.Salzman@BNSF.com
Office: (817) 352-6012

/s/ James H. M. Savage
[By electronic signature]

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Email: jsavagelaw@aim.com

Counsel for CWW LLC

EXHIBIT A

SYSTEM MAP DEPICTING PHYSICAL SEPARATION OF YAK RAIL, CWW, AND AFFILIATES



