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January 17, 2019

Matthew Garrett Director Oregon Department of Transportation 355 Capitol St NE, MS #11 Salem, OR 97301

Chris Harder Director Business Oregon 775 Summer St NE, Suite 200 Salem, OR 97301

RE: MID-WILLAMETTE VALLEY INTERMODAL FACILITY GRANT REVIEW PROCESS

Dear Director Garrett and Director Harder:

I am writing this letter on behalf of Oregon Port of Willamette, LLC to object to recent elements of the review process in regard to the Connect Oregon, Mid-Willamette Valley Intermodal, dedicated project.

This letter is a result of the recent events in the review process which can only be described as Kafkaesque, and not in the Oregon tradition of open government.

It is Kafkaesque for project proponents to receive a "draft" report from the independent reviewer in this process (the Tioga Group) on a Tuesday afternoon, and be given no opportunity to respond before the report became "final" and made public the same day.

It is Kafkaesque that we were given the notice of a public meeting of a Final Review Committee (FRC) set for Friday, January 11 (three days after the Tioga report was issued), but we were told, upon inquiry, that the members of the FRC would not be revealed to us until the FRC met.

It is Kafkaesque that we were allowed to attend the "public meeting" of the FRC and were told to introduce ourselves and our project affiliation, running the risk of political influence, but with no opportunity to make a presentation.

It is Kafkaesque that we could hear the FRC discussion and hear unanswered questions, inaccurate information and inaccurate assumptions, with no chance to provide information or clarification.

It is even more Kafkaesque that the FRC was instructed to make a recommendation that afternoon, as to each of three major proposals, with no opportunity to seek further information. The FRC finished its meeting within two hours and 45 minutes, and made its recommendations. This process has led to substantial errors, which are reflected in the rest of this letter.

The administrative rules promulgated by ODOT for the Connect Oregon Dedicated Projects review process are clear. It is important to note that nothing in these rules prevents project proponents from communicating directly with you, or other parties involved in this review process. Oregon Administrative Rule 731-035-0065(5) provides a list of elements which "shall" be included in Project Plans to be considered for funding to develop a Dedicated Project, including a requirement that project sponsors provide "Evidence of necessary site ownership and control."

The proponents for an intermodal facility to be located in Millersburg presented ODOT with an Amendment, Assignment and Assumption of Purchase and Sale Agreement (Purchase Agreement Amendment) on the September 27, 2018 submission deadline, which provides that the property purchase transaction for necessary site ownership must be closed within 30 days following the end of the Review Period contained in the Purchase Agreement Amendment. That Review Period expired November 30, 2018, or December 30, 2018 if an extension was exercised at the cost of \$100,000.00 in additional non-refundable earnest money. It appears that the closing date has either expired, or will soon expire, which evidences that this proponent does not have necessary site ownership or control. If additional evidence has been presented to ODOT as to this element, that evidence was apparently not presented to the independent third-party reviewer or review committee in this review process. I object to this review process proceeding further as to the Millersburg site without clear evidence of necessary site ownership and control from project proponents, as required by rule.

Oregon Port of Willamette has nine signed option agreements which allow us to acquire all of the property necessary to construct an intermodal facility in Brooks. All of these option agreements were concluded before the September 27, 2018 plan submission deadline, remain valid, and are not subject to further negotiation between the parties.

To be considered for grant funding, OAR 731-035-0065(G) required project proponents to submit "Written concurrence from an authorized agent from the relevant rail entity(s) indicating agreement with the Project Plan and Proposal associated with its concurrence". Oregon Port of Willamette proposes to connect directly to the Portland & Western Railroad in Brooks and has submitted a letter from Kevin Haugh, Vice President of Operations for Portland & Western, dated September 17, 2018. This letter detailed planning efforts conducted in conjunction with the railroad prior to September 17, 2018, including planning as to design, operations, train schedules, freight rates and connections to Class I railroads.

The Millersburg proponents propose to connect directly to the Union Pacific Railroad in Millersburg and tendered a letter from Union Pacific, dated September 26, 2018, which confirms that Union Pacific reviewed a preliminary layout for the Millersburg site, but that review of formal design and examination of commercial opportunities had not yet been evaluated by Union Pacific. Without having reviewed key elements of the Millersburg Project Plan, other than a preliminary schematic, the letter provided by Union Pacific to the Millersburg proponents cannot be considered concurrence which indicates agreement with that Project Plan.

Furthermore, Portland & Western Railroad (PNWR) advised me that no one contacted them on behalf of the Millersburg proponents as to development of the Millersburg Project Plan that was submitted September 27, 2018. Yet reviewers in this process have understood that should the Millersburg proponents fail to negotiate an agreement with Union Pacific, the proponents will still have an opportunity to connect to the PNWR. The Millersburg Proponents have presented no evidence of an ability to connect an intermodal service to PNWR at their proposed location, other than the fact that the PNWR operates on a portion of line that runs through the proposed Millersburg site.

It is important to note that PNWR operates over the portion of rail line in Millersburg under a lease agreement with the owner of that rail line, which is the Burlington Northern Santa Fe Railroad (BNSF). Plans to develop an intermodal facility on that portion of rail line will require BNSF involvement and agreement. PNWR owns the portion of rail line and right of way running through the proposed Oregon Port of Willamette site in Brooks, and extensive planning efforts have occurred to develop a successful intermodal service on that line with PNWR, as evidenced by Kevin Haugh's September 17, 2018 letter.

In our November 15, 2018 response to questions from the Tioga Group, we provided another letter from Kevin Haugh on behalf of PNWR, dated November 9, 2018, addressing specific questions from Tioga and further detailing how a Brooks intermodal operation utilizing the PNWR will work. This letter includes confirmation that "PNWR has all the necessary trackage rights and agreements in place with BNSF and UP to provide service between Brooks and Seattle or Tacoma." This letter is attached. Also attached are the letters from railroads submitted by project proponents prior to the September 27, 2018, submission deadline.

The Millersburg Project Plan should not have been deemed complete under the Connect Oregon administrative rules and permitted to move forward as it did not have the necessary written concurrence required by rule, and I therefore object to that Project Plan being deemed complete by ODOT. As this process has proceeded, reviewers should not have been permitted to consider a connection with the PNWR in Millersburg as part of the Millersburg Project Plan, as that was not the plan proposed or evidenced by the Millersburg Project Plan submission, and I object to the efficacy of the review process on that basis.

The rules also provided for an independent review of Project Plans. ODOT selected the Tioga Group as an independent reviewer in this process. ODOT presented us with questions from Tioga and we responded to those questions on November 15, 2018. There was no opportunity for

interaction with Tioga and we were instructed not to communicate directly with Tioga about their questions, even though the rules did not prevent such interaction.

This process might seem sensible if we were given an opportunity to respond to the report that Tioga drafted, which is being relied on by other reviewers as this review process proceeds. However, this was not the case. A report by Tioga was released in draft form on January 8, 2019. We were given no opportunity to respond to this draft to clarify or correct information presented by Tioga in regard to our Project Plan. Yet the Tioga report was delivered to a Final Review Committee (FRC), which met on Friday, January 11, 2019.

We were advised by ODOT that the FRC would meet on January 11, 2019 at 1:00 PM, but that the identity of the review committee members would be kept secret until we arrived at that meeting. At that meeting, everyone in attendance (including a former legislator, a legislator and a county commissioner) was asked to introduce themselves and to proclaim which project they represented, but were prohibited from making any presentation to the review committee, and were not provided an opportunity to respond to any questions or comments that arose during the committee meeting.

Two committee members declared conflicts of interest at the January 11, 2019 meeting, so the committee was not made up of individuals with "no direct or indirect conflicts of interest in any of the Dedicated Projects" as required by OAR 731-035-0065(8)(c).

The committee relied heavily on the Tioga report and there were many aspects of all Project Plans that were either not considered or were blatantly misunderstood.

There were statements of fact made by committee members that were incorrect, and no opportunity for clarification by project proponents was permitted. For example, one committee member assured the rest of the committee that any environmental clean-up issues existing at the former International Paper Plant in Millersburg would be the financial responsibility of International Paper to mitigate. Yet the Purchase Agreement presented in the Millersburg Project Plan provides for an "As-Is" sale. The committee appeared to accept statements such as these from other committee members as fact, and there was no opportunity for comments from project proponents or the public clarifying or correcting statements made by committee members.

After attending the January 11, 2019 committee meeting, it is clear many of the committee's recommendations will be based on misunderstandings of key elements as to all Project Plans presented. The FRC is charged with making recommendations to other reviewers in this process and it is highly probable that other reviewers in this process will rely on the FRC recommendations. I object to the holding of a public meeting to determine substantial grant award allocations where no project proponents or members of the public are provided with an opportunity to comment. I also made this objection verbally at the January 11, 2019 FRC meeting.

I believe it is important to present these objections directly to you, and to the Oregon Transportation Commission, to make you aware of the significant shortcomings in this review process to date. I do believe that ODOT and the reviewers in this process have proceeded in good faith, but the process under which they are proceeding is severely flawed and threatens to derail informed decision making by other reviewers and the Oregon Transportation Commission.

It is also important to note that the reviewers in this process have identified additional information that is needed or would be helpful to have in making an informed decision as to a grant award. To permit additional evidence to be presented as questions are raised during the review process would allow reviewers to make informed decisions. Project Plans were presented on September 27, 2018 and elements of those Project Plans have continued to evolve.

Had we been given the opportunity to be heard by the FRC (or respond to the Tioga "draft"), we had significant additional update information to provide.

First, we entered into an agreement with Cordele Intermodal Services (CIS) to operate the Brooks intermodal facility, should we receive the grant. CIS has existing relationships with ocean carriers including Maersk, Mediterranean Shipping Company (MSC), CMA-CGM, ZIM, Hyundai Merchant Marine (HMM), Ocean Network Express (ONE) and Evergreen. CIS operates with numerous land-based intermodal providers, including Class 1 railroads, short-line railroads and trucking companies. CIS has also become a member of the Oregon Port of Willamette, investing in the future of the Brooks intermodal facility development.

Second, we are proceeding with our commitment to additional transportation improvements in the Brooks area. On January 7, 2019 (before the Tioga "draft" was issued), we reviewed preliminary plans with our engineers, developed at our own expense, proposing options for roadway improvements to enhance traffic flow on Brooklake Road, River Road and the I-5 interchange at Brooks.

Third, since October 2018, our consultant, Strategic Rail Financing, has been engaged in additional cost modeling analysis so that we are prepared to proceed with negotiating favorable arrangements with railroads and ocean carriers immediately upon a grant award decision.

I respectfully request that you take the information presented in this letter under advisement as you continue to review the Mid-Willamette Valley Intermodal Project Plans and craft your recommendations to the Oregon Transportation Commission. I have drafted a letter to the Oregon Transportation Commission, respectfully recommending that the project proponents be given ample opportunity to be heard in this process before rendering a grant award decision.

Sincerely,

Kevin L. Mannix Executive Director

Oregon Port of Willamette, LLC

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CC: Office of Senate President Peter Courtney; Office of Speaker of the House Tina Kotek

Encls: PNWR Ltr. Dated Nov. 9, 2018; PNWR Ltr. Dated Sept. 17, 2018; UP Ltr. Dated Dec. 15, 2017; UP Ltr. Dated Sept. 26, 2018.



November 9, 2018

Mr. Kevin Mannix Executive Director Oregon Port of Willamette

Re: Proposed Intermodal Facility for Brooks, Oregon

Dear Kevin:

I am writing to review the many elements of our on-going discussions and planning in regard to this project. Most of these discussions have involved the Portland and Western Railroad (PNWR) and its owners, Genesee & Wyoming Inc. I know you have had direct discussions with the Burlington Northern and Santa Fe Railroad (BNSF) and the Union Pacific Railroad (UP). Our discussions with you and your team have been in the context of what we need to do to successfully connect the Brooks Intermodal Facility with the BNSF or UP to provide service to and from the Ports of Seattle and Tacoma.

We have discussed long-term development of service to the interior of the United States (domestic service) but the focus of our discussions has been the import and export service relating to the Ports of Seattle and Tacoma.

As to import and export rail service, we have also had discussions concerning the potential opportunity for PNWR to connect with the Coos Bay Rail Link so as to support the development of the Port of Coos Bay to become a gateway port for Oregon and the Northwest, especially as to container shipping, with the Brooks Intermodal Facility as an interior connection site, located in the Mid-Willamette Valley.

You have shared with me questions posed by Tioga in a technical memorandum, dated October 22, 2018. The following discussion is intended to respond to the railroad operations questions presented in that memorandum. References will be to the pages and concepts raised by Tioga.

- 1. On page 1: The basis for the \$46,000 cost per train. From our perspective, you wish to eventually run 200-container trains from Brooks to Seattle or Tacoma, as well as in the opposite direction. Prices will be based on negotiated rate agreements with BSNF. A cost of \$46,000 for a full unit train (200 containers) is within the ballpark, from our perspective.
- 2. On page 1: Providing fractional trains. The goal is to run full unit trains because it is more cost effective; however, fractional trains can be run if necessary. Rate tariffs can be established for size ranges of trains. PNWR has the capability to run full or partial trains every day of the week in and out of Brooks. Our hours of service connecting with the BNSF would be limited to a window of about 10 hours per day if we run towards Tigard (north on PNWR) because of the passenger corridor we currently operate for the Westside Express (TriMet WES). We also have the option of running rail service from Brooks through Salem (Labish Connection) to connect with the UP and then to run North towards Seattle and Tacoma. Such service is available 24 hours a day, but the present car rate would likely be higher than the BNSF connection. In essence, we can run trains seven days a week on a regular schedule out of the Brooks Facility. It will be up to the Oregon Port of Willamette (OPW) to provide the volume of



service needed to achieve different rate levels and to negotiate these rates with the BNSF. We would not expect BNSF to engage in such negotiations unless and until it knows that an actual project is proceeding in Brooks. The present process is different from the usual *ConnectOregon* process because there are two competitors for a single large grant. The Class 1 carriers will want to wait until a grant is awarded before engaging in detailed rate negotiations.

3. Page 2, at the top: Estimates were put together by other participants in your consulting team. As to train assembly/break-up switching, PNWR will work with OPW to match an open window of time to allow a train to be loaded and ready to haul on to the main line. PNWR sees a 10-hour window, at least, each day. Switching time will not be affected by mainline operations because the train assembly takes place inside the facility.

The PNWR train operation will be based on three to four locomotives at the head of the train if the run is to connect with BNSF heading north. If the run goes through Salem (Labish Connection) to connect with UP, there would likely be two locomotives at the front and two locomotives at the rear while traveling south. This is for a full-unit train. Two locomotives could pull a 20-car train (5-well articulated double-stack cars).

Both PNWR and BNSF have the locomotive capability available to serve the Brooks facility. The preferred arrangement would be a run-through train which would allow use of BNSF equipment for the entire route, with simply a change of crews in Portland or Vancouver from a PNWR crew to a BNSF crew.

It is best to make use of pooled rail cars provided by BNSF. A reasonable cost can be negotiated with BNSF and pooling provides the most flexibility, rather than having OPW acquire or lease its own cars.

4. Page 2, Rail Service and Connection: PNWR has contractual agreements with BNSF, as well as with UP, which can support the rail operations contemplated here, with PNWR as the short line railroad. The details of such arrangements are subject to negotiations once BNSF and UP are aware that a facility is being established in Brooks. Information available to PNWR makes it clear that PNWR can run trains seven days a week in and out of the Brooks facility to connect with the Ports of Seattle and Tacoma. We anticipate that there will be lower train frequency at the beginning of the operation, with more cars and trains as volume is increased. Depending on the needs of the shippers, it is preferable to seek to build 100-well trains (unit trains) that run two or three days a week because of lower costs per unit. But the capability presently exists to run partial trains seven days a week if required (fractional trains). PNWR is prepared to be fully engaged to establish train service from Brooks to and from the Ports of Seattle and Tacoma at the outset, and to other terminals as opportunities arise.

As to written agreements between PNWR and UP or BNSF, these contracts are in place but are generally not public. PNWR will work with OPW to negotiate the necessary rates and schedules for optimum rail services once a grant award is confirmed. PNWR does have interchange agreements with UP and BNSF that cover the proposed trip operations of double-stack trains between Brooks and Seattle or Tacoma, but rates would need to be negotiated.

We know that BNSF and UP, as common carriers, are obligated to haul freight and goods. The real issue is the negotiation of a competitive rate for such service. We want the Brooks



intermodal facility to be successful and we will be engaged in assisting with negotiations for the best possible schedule and rates.

PNWR has all the necessary trackage rights and agreements in place with BNSF and UP to provide service between Brooks and Seattle or Tacoma. This would be established through a manifest interchange agreement which includes negotiation as to the price of operation. PNWR is a handling carrier line so we cannot set rates unless service originates and terminates on our own line. We have negotiated rates as to stations with both BNSF and UP, depending on the line involved. We are prepared to assist in negotiating such rates.

It is our understanding that the entity which will manage and market the proposed service between Brooks and Seattle/Tacoma is OPW. We anticipate that OPW will contract with BNSF or UP for rail service, with PNWR as the short line. We understand that OPW may contract with an operator for the Brooks intermodal facility. Whether OPW directly operates the intermodal facility or contracts with another entity for such operation is a decision for OPW.

As to the cost of clearance improvements, much depends on volume of service. One option is to ask PNWR to invest the money itself, if OPW can demonstrate a volume of goods running through the corridor which justifies PNWR investment in clearance improvements. A preferable approach, which OPW has discussed with PNWR, is for OPW and PNWR to apply together for federal grant funds to pay for the clearance improvements, using a portion of the state intermodal grant as the allocated match for a federal grant. For example, OPW could designate \$2.5 million of the state grant as the equivalent state match for a \$2.5 million federal grant. As a railroad, PNWR is qualified to apply for such federal money, and can do so with OPW as a partner. Finally, we understand that OPW is prepared to seek private financing for such clearance improvements as part of supplemental financing for the entire intermodal project when the grant is awarded.

If the Salem Labish Connection is utilized, there are no current clearance issues that would have to be addressed.

5. Page 3, Train Operations: As noted above, PNWR has sufficient locomotive capability to pull the necessary trains. It is also possible that BNSF could provide the locomotive power if run-through trains are established.

If PNWR runs trains through Salem (Labish Connection), there are no limits to operating windows on this line and there are no clearance improvements necessary. Such trains can be run at any time on any day. If PNWR runs trains through Tigard, the operating windows would be about 10 hours per day because of passenger train service.

The length of time any train remains at the Brooks facility from arrival to departure is variable. Sufficient equipment is available to have a full train pull into the Brooks yard and to remain long enough to be unloaded and loaded. Even with a frequency of one train per day, seven days per week, there is ample time for unloading and loading. This would be developed into the schedule once service is established.

The appropriate cars to handle a mix of international (20' and 40') and domestic (53') containers are available with present BNSF capability to pool cars.



We anticipate that PNWR will run trains to the BNSF/Willbridge yard in Portland, to connect with BNSF trains running from Vancouver to Seattle or Tacoma. Such PNWR trains can also carry service straight through Willbridge to the BNSF yard in Vancouver, Washington, to connect with BNSF trains there. A 100-unit train would likely be BNSF run-through service where the equipment pauses while PNWR crews are exchanged for BNSF crews either at Willbridge or Vancouver.

Service between Brooks and Vancouver should be eight hours or less. Service between Vancouver and Seattle should be another four to six hours. So, our calculation still allows four to six hours of loading and unloading time at each terminal. Logistically, we generally see no issue with some additional hours of loading or unloading at either terminal, especially as to the needs of the terminal facility itself. Our train schedules can accommodate additional loading and unloading hours, even assuming a train run each day, seven days a week.

SUMMARY

We have enjoyed our close working relationship with you, your staff, and your consulting team. We see this working relationship as providing a strong basis for us to move forward with establishment and operation of the intermodal facility in Brooks, initially with service to Seattle and Tacoma, should you achieve the grant award from the Oregon Transportation Commission.

Kevin R. Haugh

Regional VP - Operations



September 17, 2018

Mr. Kevin L. Mannix Mr. Connor J. Harrington Oregon Port of Willamette, LLC 2007 State Street Salem, OR 97301

RE: Proposal for Development of Intermodal Facility in Brooks, Oregon

Dear Kevin and Connor:

I am writing to you concerning our continuing discussions and planning as to the proposed establishment of an intermodal and transload facility in Brooks, OR along the tracks of the Portland & Western Railroad ("PNWR").

The PNWR appreciates the time and effort you both have invested, along with your consultant teams, to work with our railroad in order to develop a collaborative approach to planning and operating such a facility.

We have been impressed with your willingness to work with our railroad staff, to share ideas with them, and to modify your designs to reflect input from our railroad so as to make these designs efficient and effective.

We also appreciate the work you have done with us to evaluate and plan for the operational needs of a successful intermodal facility. This includes discussions as to train schedules and factors to apply in determining appropriate rates.

The two of you and your consulting team have impressed us with your view of this facility as being part of a transportation network to enhance the capability of Oregon businesses and farmers to move their freight by rail, thereby reducing congestion on the highways, reducing CO2 emissions and making more efficient use of fossil fuels.

As part of this transportation network discussion, we have worked with you to develop plans for the PNWR to be able to provide connections to Class I railroads not only to Seattle and Tacoma, but to the interior of the United States.



Furthermore, we appreciate your ideas concerning using the PNWR to connect with the Coos Bay Rail Link so as to enhance the opportunity for the Port of Coos Bay to become a gateway port for Oregon and the Northwest, especially as to container shipping.

We also have noted your sensitivity to ensuring that your facility design does not interfere with the capability to establish additional freight and passenger rail traffic for the future on the PNWR.

Overall, we have enjoyed our close working relationship with both of you, your staff, and your consultant team, and we see this working relationship as providing a strong basis for us to move forward with establishment and operation of the intermodal facility in Brooks should you achieve the grant award from the Oregon Transportation Commission.

Sincerely,

Kevin R. Haugh

Vice President - Operations

UNION PACIFIC RAILROAD COMPANY



Office of Network & Industrial Development Western Region Headquarters - Roseville, CA

Paul F. MacDonald Sr. Director - Western United States Direct: (916) 789-6166

December 15, 2017

Kevin Mannix Oregon Shipping Group 2007 State St Salem, OR 97301

Re: Acknowledgement of discussions for proposed Mid-Willamette Valley facility

Mr. Mannix,

This letter confirms Union Pacific's dialogue with Oregon Shipping Group concerning a proposed rail-served Mid-Willamette Valley facility at or near Brooks, OR.

As you know, Union Pacific's Oregon rail franchise provides a critical link to rail shippers and receivers bringing their products to market. Our route parallels the I-84 and I-5 corridors, providing access to domestic and international markets and a freight transportation option that can remove trucks from Oregon highways.

Moving forward, Union Pacific is willing to be part of further discussions with Oregon Shipping Group and the appropriate local economic development agency regarding a rail-served multimodal transload facility and/or rail-served industrial park at Brooks, OR.

It should be noted that to date, Union Pacific has not been involved in estimating potential project costs to support a Mid-Willamette Valley facility as outlined in the most recent Connect Oregon funding cycle.

Please contact Mr. Jayson Bisbee at (916) 789-6155 to arrange further dialog on this proposal.

Thank you,

Paul F. MacDonald

Union Pacific Railroad Company

CC: Aaron Hunt, Director Public Affairs, Union Pacific Railroad Jayson Bisbee, Lead, Union Pacific Railroad



September 26, 2018

Mr. Greg Smith
Project Manager
Linn Economic Development Group
435 West First Ave.
Albany, OR 97321

RE: Mid-Willamette Valley Transload Project, Millersburg, OR

Mr. Smith,

This letter is in regards to on-going conversations between our teams concerning the proposed Mid-Willamette Valley Transload Project at Millersburg, OR. The Union Pacific Railroad ("UP") has reviewed the preliminary rail layout (Project Schematic) for the Millersburg, OR transload and industrial complex and finds the design conceptually acceptable. While UP cannot make a commitment on any specific commodity type nor level of service at this early stage, the UP looks forward to working with the Linn Economic Development Group to further progress the project into formal design and examine potential commercial opportunities. It goes without saying that the UP is excited by the eagerness of your staff as well as that of the community to develop a highly functional, rail-served complex at the site of the former International Paper Mill.

In the weeks ahead, the UP team desires to again meet with your staff and the community leaders to discuss next steps. We have much to discuss and the UP team is ready to engage your team and support staff immediately.

I look forward to hearing from you very soon.

Sincerely,

Paul F. MacDonald

General Director Network Economic & Industrial Development

Union Pacific Railroad Company

Ref: Project Schematic - Phase 1, RailPros Field Services, 08-23-2018

