

Jan. 26th, 1911

Mr. R. M. Calkins,
Freight Traffic Manager.

Dear Sir,-

Complying with your request, I will state my views as to our right to go business on that portion of the Columbia & Puget Sound Railroad which we are using under the agreement between this Company and the Columbia & Puget Sound Railroad Company, dated May 21st, 1906, being the portion of said railroad between the north end of Island No. 1 in the city of Seattle and a point near Maple Valley.

The agreement provides that the Milwaukee Company may do all the business of a common carrier on that portion of the railroad, the use of which is granted, except that it shall not transact any local business which it may lawfully refuse

- (1) between Seattle and the point of connection near Maple Valley;
- (2) between any intermediate points, either on the main track or on any spur or industry track.

Provided, however, that the Milwaukee Company may transact such business or transport such traffic

- (1) as may be destined to or from tracks owned or used solely by the Milwaukee Company;
- (2) or, to or from industries located on the tracks of the Milwaukee Company in the city of Seattle;
- (3) the Milwaukee Company, however, has the right to stop its

trains at any point between Seattle and the point of connection near Maple Valley, for the taking on or putting off of passengers or freight, originating at, or destined to, points beyond said point of connection or beyond Seattle.

These provisions of the agreement, in my opinion, give the Milwaukee Company the right to transact business between Seattle and any track between Seattle and Maple Valley, owned or used solely by the Milwaukee Company, and between any industry located on the tracks of the Milwaukee Company in Seattle and any intermediate point between Seattle and Black River.

They also give the Milwaukee Company the right to accept any freight at any such intermediate point, spur or industry track destined to any point beyond Seattle or Maple Valley, or to deliver at any such intermediate point, spur or industry track, any freight originating beyond Seattle or Maple Valley and destined to such intermediate point, spur or industry track. This is clearly implied from the paragraph above referred to, authorizing the Company to stop its trains at any point between Seattle and Maple Valley, for the taking on or putting off of freight originating at, or destined to, points beyond said terminals.

I am also of the opinion that the Milwaukee Company may accept and transport freight from any intermediate point, or from any spur or industry track owned by it, between Seattle and Maple Valley, which freight is destined to a point beyond Seattle or

Maple Valley, upon a connecting line, and, in like manner, to carry to and deliver at any such intermediate point, spur or industry track, freight received from a connecting line at Seattle.

The agreement provides that the Milwaukee Company may at any time construct an industry track at any point on the railroad which it is jointly using, under the agreement, to any industry located adjacent to the right of way for the handling of any business permitted by the terms of the agreement. In such case, the Columbia Company is to build that portion of the track upon the right of way at the expense of the Milwaukee Company, but the Columbia Company has the right, on notice, to pay to the Milwaukee Company the cost of that portion of the track beyond its right of way, and, thereafter, such industry track is to be maintained and used jointly by the two Companies.

A question arises as to whether---after the construction of an industry track for the Milwaukee Company under the foregoing provision---^{if} the Columbia Company should purchase the same and acquire the right to operate it jointly with the Milwaukee Company, the restriction as to the doing of a local business would then apply to such industry track; but I am of the opinion that it was not the intention of the agreement to exclude the Milwaukee Company from the right to accept business to or from such an industry track, and that its right to do so would continue, notwithstanding the taking over of the track by the Columbia Company.

Yours truly,