

**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

300216

FINANCE DOCKET NO. 36261

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Public Record

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. –
PETITION FOR DECLARATORY ORDER**

**JOINT STATUS REPORT OF THE CITY OF SEATTLE, WASHINGTON AND
BALLARD TERMINAL RAILROAD COMPANY, L.L.C. IN RESPONSE TO
DECISION SERVED HEREIN ON JUNE 27, 2019**

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December 24, 2019

**JOINT STATUS REPORT IN RESPONSE TO DECISION SERVED HEREIN ON
JUNE 27, 2019**

Pursuant to ordering paragraph no. 2 of the Board’s Decision served herein on June 27, 2019, the City of Seattle, Washington (“Seattle”) and Ballard Terminal Railroad Company, L.L.C. (“Ballard Terminal”) hereby provide a status report of the litigation in the Superior Court of King County, Washington (“Superior Court litigation”)¹ between the Seattle and Ballard Terminal .

Seattle commenced the Superior Court litigation by filing a Complaint against Ballard Terminal on January 17, 2019. The Complaint seeks declaratory and injunctive relief with respect to issues that had arisen between Seattle and Ballard Terminal concerning completion of a 1.4 mile segment (the “Missing Link”) of the 20-mile Burke-Gilman Trail (“Trail”).² Thereafter, Ballard Terminal filed an Answer and Counterclaim asserting claims for breach of contract, specific performance, seeking injunctive relief, and damages pursuant to RCW 4.24.510 and 42 U.S.C. § 1983. Seattle filed an Answer to Ballard Terminal’s Counterclaims.

After the above-described pleadings were filed, the parties began engaging in discovery, which is ongoing.

An Amended Case Schedule is attached, indicating the expected dates for the remainder of the significant events in the Superior Court litigation, including the conclusion of discovery and a trial date.

¹ King County Superior Court Docket No. 19-2-01794-5 SEA.

² Decision served herein on June 27, 2019 (at 2-3).

On October 4, 2019, Seattle filed a Motion for Partial Summary Judgment (“Motion”) with respect to three legal issues relating to the September 14, 1997 Operating Agreement (“Operating Agreement”) in effect between Seattle and Ballard Terminal. Ballard Terminal filed a Response to Seattle’s Motion, which included a Cross-Motion for partial summary judgment on the issues raised in Seattle’s Motion. Seattle filed a Reply to Ballard Terminal’s Response and Cross-Motion.

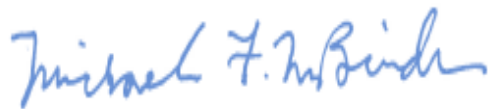
On Friday, November 1, 2019, oral argument by both parties was heard on Seattle’s Motion and Ballard Terminal’s Response and Cross-Motion before Judge Averil Rothrock of the King County Superior Court. On November 13, 2019, the Court granted in part and denied in part both Seattle’s Motion and Ballard Terminal’s Cross-Motion (“November 13, 2019 Order”). In accordance with ordering paragraph no. 2 of the Board’s Decision served herein on June 27, 2019, a copy of the November 13, 2019 Order was submitted herein to the Board on November 27, 2019.

It is Seattle’s position that the November 13, 2019 Order resolves some, but not all, of Seattle’s claims asserted in its Complaint, while it is Ballard Terminal’s position that the November 13, 2019 Order resolves all of Seattle’s asserted claims and only Ballard Terminal’s Counterclaims remain. Accordingly, Seattle intends to file another motion for summary judgment seeking a further ruling from the Court on its claims, and Ballard Terminal intends to file a motion for summary judgment regarding one of the issues raised in its Counterclaims. The parties have set those motions for hearing on January 31, 2020.

A factual issue also remains between the parties – whether completion of the Missing Link would significantly interfere with Ballard Terminal’s rail operations? It is Seattle’s position that unless the parties are able to agree on a resolution of that factual issue, a trial on that issue in the Superior Court litigation likely will be necessary. It is Ballard Terminal’s position that the November 13, 2019 Order resolved Seattle’s State-court contract interpretation issues underpinning the Board’s decision to hold this case in abeyance, thereby enabling the Board to hear and resolve the rail operations issues raised in Ballard Terminal’s Petition filed herein. However, in light of the City’s pending motion for summary judgment, which will again raise contract interpretation issues, the parties agree that this case should remain in abeyance until after the Court rules on the cross-motions set for January 31, 2020.

Counsel will advise the Board when further rulings on the merits of any issues in the Superior Court litigation are issued. The parties agree to file another status report no later than June 27, 2020, consistent with the Board’s Decision.

Respectfully submitted,



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**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

CITY OF SEATTLE
Plaintiff/Petitioner

vs

BALLARD TERMINAL RAILROAD CO
Defendant/Respondent

NO. 19-2-01794-5 SEA

Order Amending Case Schedule

Clerk's Action Required

The trial date is reset, and the Court amends the case schedule as shown below:

Case Events	Amended Due Date
Disclosure of Possible Primary Witnesses	11/4/2019
Disclosure of Possible Additional Witnesses	12/16/2019
Change of Trial Date	12/30/2019
Filing Jury Demand	12/30/2019
Discovery Cutoff	2/17/2020
Deadline for Engaging in Alternative Dispute Resolution	3/9/2020
Exchange of Witness & Exhibit Lists & Documentary Exhibits	3/16/2020
Deadline to file Joint Confirmation of Trial Readiness	3/16/2020
Advise Court on Settlement	3/17/2020
Inspect Exhibits	3/23/2020
Deadline for hearing Dispositive Pretrial Motions	3/23/2020
Joint Statement of Evidence	3/30/2020
Trial Brief	3/30/2020
Jury Instructions	3/30/2020
Proposed Findings of Fact & Conclusions of Law	3/30/2020
Use of Discovery/Depositions at Trial	3/30/2020
Trial	4/6/2020

Pursuant to King County Local Rules, IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in the King County Local Rules, may be imposed for failure to comply.

Dated : _____

Honorable Judge Averil Rothrock

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-01794-5
Case Title: CITY OF SEATTLE vs BALLARD TERMINAL RAILROAD CO

Document Title: ORDER AMENDING CASE SCHEDULE

Signed by: Averil Rothrock
Date: 10/14/2019 9:01:30 AM

A handwritten signature of Averil Rothrock in black ink, enclosed within a rectangular border. The signature is written in a cursive style.

Judge/Commissioner: Averil Rothrock

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 9F855AA0761CA7624EF2BC1ECCD5D60CB03F8EB5
Certificate effective date: 11/5/2018 5:31:37 PM
Certificate expiry date: 11/5/2023 5:31:37 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Averil Rothrock:
njR2SwvS5hGglSP3AFk6yQ=="