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June 9, 2020

Via E-File Only

300730

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

ENTERED
Office of Proceedings
June 8, 2020
Part of
Public Record

[REFILED TO UPDATE SERVICE LIST]

Re: STB F.D. 35692: *Eastside Community Rail, LLC-Acq. & Op. Exemption-GNP RLY, Inc.*; and
STB F.D. 35730: *Ballard Terminal Railroad Company, L.L.C.-Lease Exemption—Eastside Community Rail, LLC.*

Dear Ms. Brown:

I represent Ballard Terminal Railroad Company (“BTRC”) with regard to the above-referenced matters.

In light of the recent decision by the United States Court of Appeals, D.C. Circuit, dated March 27, 2020, remanding this matter to the Board for further proceedings consistent therewith, and in anticipation thereof, please accept this letter as BTRC’s statement that it does not oppose Snohomish County’s Petitions in both matters and respectfully requests the Board grant Snohomish County’s remedy, finding Eastside Community Rail’s exemption void *ab initio*.

BTRC reiterates and again certifies it did not make “false or misleading representations in its license application,” because both require a mental proclivity to actively deceive another party, which is absent here.¹ The information and statements BTRC provided to the Board were made in good faith based on information and statements BTRC had received from Mr. Engle, and which BTRC, at that time, had no reason not to believe. The Court acknowledged this and did not question BTRC’s sincerity, saying

Ballard filed a response to the County's petition to revoke its exemption, disclaiming any knowledge of Engle's alleged actions. Ballard stated that it “believed in good-faith that [Eastside] owned the freight easement” and “was unaware that Mr. Engle may have successfully transferred ownership of the easement to his father and now ex-wife.” Ballard also noted its own difficulties dealing with Engle and pledged to operate over the

¹ <https://www.vocabulary.com/dictionary/mislead>.

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line in accordance with whatever arrangement the Board concluded was appropriate.

Snohomish Cty., Washington v. Surface Transportation Bd., 954 F.3d 290, 296–97 (D.C. Cir. 2020).

BTRC agrees with the Court that:

The record before the Board contain[s] ample evidence of potential misleadingness, notably the omissions and inconsistencies in Engle’s account that the County and others flagged.

Id. at 302. Consistent with the Court’s statement, and by way of further example, as BTRC previously informed the Board in its June 2019 letter:

For years, BTRC has been dealing with Mr. Engle’s less than honest behavior. Mr. Engle inappropriately and without legal authority misdirected nearly \$55,000 in revenue owned to BTRC to himself. Under [BTRC’s] Lease, that money was to be paid directly to BTRC. When BTRC learned of Mr. Engle’s actions, it undertook efforts to obtain payment, or, in the alternative, title to the freight easement so BTRC would no longer have to do business with Mr. Engle or ECR. *See* Letter from J. Brower to D. Engle dated February 1, 2018, detailing Mr. Engle’s actions and BTRC’s response. To date, BTRC has been unsuccessful in obtaining remuneration from Mr. Engle.

In sum, BTRC believes the Board has ample information to determine and grant Snohomish County’s requested relief, finding Eastside Community Rail’s exemption void *ab initio*.

Assuming the Board does, BTRC does not object to and would support the Board then finding BTRC’s exemption similarly void *ab initio* because one depends upon the other.

Sincerely,

BROWER LAW PS

/s/ Joshua Brower

JOSHUA C. BROWER

cc: Client

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Certificate of Service

The undersigned certifies service on June 9, 2020 of the foregoing on all parties of record (or their representative) in F.D. 35692 and F.D. 35730 via electronic service pursuant to the Board's Decision, Docket EP 747, dated March 22, 2019.

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/s/ Joshua Brower

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