

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 17, 2020
Part of
Public Record

Eastside Community Rail, LLC –)
Acquisition and Operation Exemption –) F.D. 35692
GNP RLY, Inc.)

Ballard Terminal Railroad Company, LLC)
-- Lease Exemption --) F.D. 35730
Eastside Community Rail, LLC)

Motion for Leave to File Notice
and Notice of Recent Development (Embargo)

Snohomish County (“SnoCo”) hereby moves for leave to file this Notice, which sets forth factual information which counsel for SnoCo received from counsel for Ballard Terminal Railroad Company LLC (“BTRC”) by email on August 13. The information indicates that the current rail operator (BTRC) has imposed an embargo on the line. The embargo suspends service on the line for (at least) one year. BTRC also indicated it intended to withdraw its equipment from the line as early as August 14, 2020. The embargo and withdrawal of equipment are potentially germane to issues that have arisen or may arise in connection with SnoCo’s pending petitions to revoke the BTRC and Eastside Community Rail, LLC licenses.

Notice

On Thursday, August 13, counsel (the undersigned) for SnoCo received an email (time marked approximately 4 PM) from counsel for BTRC (Mr. Brower) indicating that BTRC had embargoed the line at issue in this proceeding effective August 1, 2020. Counsel for BTRC furnished the attached document (entitled “Embargo Details”).

Counsel for BTRC additionally indicated that BTRC was removing all of its equipment from the line the following day (August 14). Based on reports at the “Supporters of the Eastside Freight Railroad” railfan Facebook page, BNSF has now removed all relevant BTRC equipment (as of August 17).

Using the Railinc search engine for AAR embargoes, SnoCo confirmed that an embargo had been imposed (ostensibly by Eastside Community Railroad (ECYR)) due to “track conditions.” See attached document entitled “AAR Embargo” (retrieved August 17).

The Operating and Maintenance Agreement (Stowe Dec. exhibit 14 at para 3.1, attached to SnoCo Pet. Rev. in F.D. 35692, filed 7/12/18) for this line provides for the “TPO” (Eastside Community Rail) to maintain track and facilities. BTRC assumed this responsibility as lessee to ECYR. ECYR terminated the Operating and Maintenance Agreement on December 18, 2019.

SnoCo views as false or misleading BTRC’s assertion (in the document entitled “Embargo Details”) that tracks or trestles are “unsafe due to track owners’ failure

to perform long-term deferred capital repairs” to the extent BTRC intends to suggest that SnoCo bears any responsibility for the embargo. SnoCo has long noted lack of maintenance of the track and related structures by the current operators. However, SnoCo did not seek an embargo and was unaware of the embargo until advised by BTRC on August 13.

In sum, per BTRC’s counsel and Railinc, ECYR and BTRC have embargoed freight rail service on the line for safety reasons. Because the Board has not provided for additional pleadings, SnoCo will not comment further at this time.

Respectfully submitted,

/s/ Charles Montange

Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
Attorney for Snohomish County

Certificate of Service

By my signature below, I certify service in accordance with 49 C.F.R. 1104.12 upon all parties of record or their attorneys of record at their addresses of record by USPS first class, and electronically by courtesy email attachment, on or by 17 August 2020, including but not necessarily limited to the following: Joshua Bower (BTRC), Matthew Cohen (Woodinville), Thomas Wilcox (CWallA), Richard Welsh (NARPO), Charles Spitulnik (King County), James Savage (GNP/NW Signal/K. Kucera), Jami Elison (ECR); Douglas Engle (for himself); James Jensen (for himself).

s/
Charles H. Montange

Embargo Details

General Embargo Information

Embargo No: ECYR000120			
Request Date: 07-29-2020	Expiration Date: 07-29-2021	Effective Immediately: No	
Status: Effective	Issuing Road: ECYR - EASTSIDE COMMUNITY RAIL, LLC		
Allow Permits: Yes	Bypass Local Waybills: Yes	Effective Date: 08-01-2020	
Include Empty Revenue Cars: Yes	Include All Empty Cars: No	Min Car Allowed:	Max Car Allowed:
Permit Officer:	Email:	Phone Number:	
Original Requester: james forgette	Email: jr.forgette@bdtlrr.com	Phone Number: 2067991245	
Roads Invited to Participate:			

Commodity

Target All Commodities

Cause

Cause:	Track Conditions
Cause Detail:	Track and trestles are unsafe due to track owners' failure to perform long-term deferred capital repairs.

Geography

Target All Locations

[View Stations List]

Equipment

UMLER Equipment Types: Target All UMLER Equipment Types
Total Weight on Rail: No Weight Restrictions
Clearance Code: No Clearance Code

Waybill Parties

Target All Waybill Parties



AAR Embargo

Search Embargo Results

Embargoes that are highlighted in yellow are AAR Security Level 4 Embargoes.

Results found: 1

<u>Issuing Road</u>	<u>Embargo No</u>	<u>Amendment No</u>	<u>Request Date</u>	<u>Expiration Date</u>	<u>Allow Permits</u>	<u>Status</u>	<u>Last Amended Date</u>	<u>Cancelled Date</u>	<u>Op Station Notice</u>	<u>Roads Invited to Participate</u>	<u>Cause</u>
ECYR	ECYR000120	0	07/29/2020	07/29/2021	YES	Effective			NO		Track Conditions

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