



Surface Transportation Board
Washington, D.C. 20423-0001

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Office of the General Counsel

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Meeting under Section 5, STB Reauthorization Act

Office of Proceedings

December 30, 2020

April 2, 2020

Part of

Public Record

Present: Members Begeman, Fuchs, and Oberman
Staff Rachel Campbell, Allison Davis, Ellen Erichsen, Amanda Gorski,
Theodore Hunt, Craig Keats, Barbara Miller, Lisa Novins, Valerie Quinn,
Vincent Scalfani, Amy Ziehm, Scott Zimmerman

Topic: Finance Docket No. 35692, Eastside Cmty. Rail, LLC – Acquisition &
Operation Exemption – GNP Rly, Inc., and
Finance Docket No. 35739, Ballard Terminal R.R. Co., L.L.C. – Lease
Exemption – Eastside Cmty. Rail, LLC

Summary of the Matters Discussed, Prepared by General Counsel Craig Keats:

At this meeting, staff briefed the Board on the March 27, 2020 opinion of the U.S. Court of Appeals for the District of Columbia Circuit in *Snohomish County, Wash. v. STB*, Case Nos. 19-1030 and 19-1136, in which the court reviewed Board decisions in the two referenced dockets. In those decisions, the Board denied petitions by Snohomish County (the County) to revoke acquisition and operation authority for a rail line in Snohomish, Wash. The County alleged that the request for authority had been based on false and misleading information regarding ownership of the underlying property easement. The Board found that resolution of the ownership issue – and hence the claim regarding false and misleading information – would require adjudicating the question of easement ownership under state property, contract, and possibly federal bankruptcy law. On review, the D.C. Circuit set aside the Board's ruling on the ground that the Board should have considered separately, without resolving the state-law issue, whether the information presented in support of the requests for authority was misleading under the Board's regulations.

Staff and Board Members discussed the following issues:

1. The D.C. Circuit opinion.
2. The Board's prior decisions in the proceedings.
3. Next steps.