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March 10, 2021

ENTERED
Office of Proceedings
March 10, 2021
Part of
Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36261, Ballard Terminal Railroad Company, L.L.C.—
Petition for Declaratory Order

Dear Ms. Brown:

The City of Seattle is providing an update of developments in the state court litigation related to this matter. The parties have inadvertently failed to provide the Board with these updates within the timeframe specified in the Board's Order served June 27, 2019. We apologize for the inadvertent oversight.

On January 19, 2021, the King County Superior Court issued an "Order Granting the City's Third Motion for Summary Judgment—To Dismiss Remaining Defendant's Claims for Damages and Attorney Fees" ("Court Order"). The Court Order dismissed BTRC's claims for damages and attorney fees, resolving the only remaining claims in the case. Accordingly, the Court also issued a Final Order of Judgment for this most recent Court Order (Jan. 19, 2021); the Order Granting in Part and Denying in Part City of Seattle's Motion for Partial Summary Judgment, and Granting in Part and Denying in Part Ballard Terminal Railroad Company's Cross Motion for Summary Judgment (Nov. 13, 2019); the Order Granting City of Seattle's Second Motion for Partial Summary Judgment (Feb. 11, 2020); the Order Denying Defendant's Motion for Partial Summary Judgment—Specific Performance—and Granting City's Cross Motion (Feb. 11, 2020); and the Order Granting Defendant's Motion for Partial Summary Judgment: Re Preemption (June 25, 2020). A copy of the January 19, 2021 Court Order, which includes the Final Order of Judgment, is attached hereto.

The City of Seattle and Ballard Terminal Railroad Company separately have appealed the entirety of the Superior Court case to the Washington Court of Appeals. The case number for the appeal and cross appeal is 82377-9-I. We will continue to update the Board on developments in this litigation.

Respectfully submitted,

VAN NESS FELDMAN LLP



Tadas Kisielius
Attorneys for the City of Seattle

Enclosure

cc: Via E-mail:
Joshua C. Allen Brower, Esq. (w/enc.)
Patrick J. Schroeder, Esq. (w/enc.)

The Honorable Julie Spector
Friday, January 15, 2021 at 9:00 AM
With Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CITY OF SEATTLE, a Washington municipal
corporation, acting through its Department of
Transportation;

Plaintiff,

v.

BALLARD TERMINAL RAILROAD
COMPANY, L.L.C., a Washington limited
liability company;

Defendant.

NO. 19-2-01794-5 SEA

ORDER GRANTING CITY OF SEATTLE'S
THIRD MOTION FOR SUMMARY
JUDGMENT—TO DISMISS REMAINING
DEFENDANT'S CLAIMS FOR DAMAGES
AND ATTORNEY FEES

~~PROPOSED~~

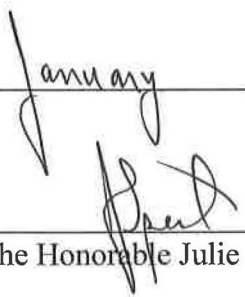
This matter came on before the Court on the City of Seattle's ("City") Third Motion for Summary Judgment—To Dismiss Remaining Defendant's Claims for Damages and Attorney Fees, filed December 18, 2020. This Court considered the pleadings, records, and files in the case. The Court heard argument of counsel for the parties on January 15, 2021, and considered that argument in conjunction with the Motion, evidence, and pleadings referenced above.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

1. The City's Motion for Summary Judgment—To Dismiss Remaining Defendant's Claims for Damages and Attorney Fees is GRANTED.
2. Having resolved the only remaining claims in this case, the Court enters a FINAL ORDER OF JUDGMENT pursuant to this Order and the following orders in this case: Order Granting

1 in Part and Denying in Part City of Seattle's Motion for Partial Summary Judgment, and
2 Granting in Part and Denying in Part Ballard Terminal Railroad Company's Cross Motion
3 for Summary Judgment (Nov. 13, 2019); Order Granting City of Seattle's Second Motion for
4 Partial Summary Judgment (Feb. 11, 2020); Order Denying Defendant's Motion for Partial
5 Summary Judgment—Specific Performance—and Granting City's Cross Motion (Feb. 11,
6 2020); Order Granting Defendant's Motion for Partial Summary Judgment: Re Preemption
7 (June 25, 2020).

8 DATED this 19 day of January, 2021.

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10 
11 _____
12 The Honorable Julie Spector

13 **Presented by:**

14 VAN NESS FELDMAN LLP

15 /s/ Tadas A. Kisielius

16 Dale Johnson, WSBA No. 26629

17 Tadas Kisielius, WSBA No. 28734

18 *Attorneys for the City of Seattle*

19 PETER S. HOLMES

20 Seattle City Attorney

21 s/ Patrick Downs

22 Patrick Downs, WSBA No. 25276

23 Assistant City Attorney

1 **Approved as to Form; Notice of Presentation Waived:**

2 BROWER LAW PS

3 _____
4 Joshua C. Allen Brower, WSBA No. 25092

5 *Attorneys for Ballard Terminal Railroad Company*

6 FOSTER GARVEY PC

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8 Patrick J. Schneider, WSBA No. 11957

9 *Attorneys for Ballard Terminal Railroad Company*