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May 27, 2021

BY E-FILING

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

Re: *Port of Benton, WA – Petition for Declaratory Order*, STB Docket No. 36426

Dear Ms. Brown:

The Port of Benton (the "Port") files this letter to advise the Board of the continuing need for the Board to address the issues raised by the Port's Petition in the above-referenced docket.

The Port is owner of a rail line in Washington state. The Port leases the subject line to the Tri-City Railroad Company, LLC ("TCRY"). BNSF Railway, Inc. and the Union Pacific Railroad Company hold trackage rights to operate over the subject line.

In 2019, the Board granted the Port's application for adverse discontinuance of TCRY's common carrier service that permits the Port to seek ejection of TCRY. *Port of Benton County, Wash. – Adverse Discontinuance of Rail Service – Tri-City Railroad Company, LLC*, AB 1270 (served Oct. 31, 2019). Unfortunately, the state eviction proceedings have been slowed by pandemic court restrictions, and to allow several contractual issues between the Port and TCRY to be resolved by the state courts. Although the Port has prevailed on several key motions within the state eviction proceedings, TCRY remains a common carrier on the rail line subject to the Board's authority.

On August 14, 2020, the Port filed a petition for declaratory order seeking Board resolution of disputes regarding tariffs imposed by TCRY upon shippers not served by TCRY. TCRY submitted a motion to dismiss on October 8, 2020. On October 28, 2020, the Port and other impacted parties filed a reply to the TCRY motion to dismiss.

In summary, the Port's petition for declaratory order asks the Board to determine if a rail carrier such as TCRY has authority to assess charges against entities that are not rail customers of or shippers served by TCRY. The Port further asks the Board to consider whether TCRY is required under 49 CFR Part 1300 to provide copies of its tariffs to any entity it asserts is responsible for the charges, at least 20 days in advance of assessing such charges, and whether an invoice

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assessing charges under a tariff provides sufficient notice of the tariff charges under 49 CFR Part 1300.

The Port has recently been advised that TCRY continues to submit invoices to entities to whom it does not provide rail service. Thus, the questions raised by the Petition remain ripe for Board consideration and resolution.

For the reasons set forth above, the Port respectfully requests the Board proceed to address the questions in the Port's Petition.

Respectfully,



Justin J. Marks
Counsel for the Port of Benton

cc: All persons on the attached service list.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
on the following persons:

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