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June 8, 2021

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

ENTERED
Office of Proceedings
June 8, 2021
Part of
Public Record

Re: Port of Benton Letter to Surface Transportation Board re: STB Docket No. 36426

Ms. Brown,

Pursuant to *49 CFR 1104.13(a)* I am writing in reply to the Port of Benton's ("POB") letter sent to the Board on May 27, 2021.

Having not withdrawn their *Petition for Declaratory Order, STB Docket No. 36426*, filed on August 14, 2020 with the Board, I am sure the Board is still aware of the POB's desire to have the Board interpret the current Railroad Lease between it and Tri-City Railroad, LLC ("TCRY") which is currently being litigated in *Tri-City Railroad Company, LLC v. Port of Benton County, No. 20-2-00649-03*, filed with the Superior Court for the State of Washington in the County of Benton on April 09, 2020.



At issue in the State of Washington suit, is whether or not the POB violated the duty of good faith and fair dealing by preventing TCRY from collecting the necessary revenue in order for it to carry out its obligations under the Railroad Lease. The Port has counterclaimed that TCRY has failed to maintain the leased trackage to a FRA Class 3 track standard, which is not found in the Railroad Lease. The Railroad Lease specifically requires that “*The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad.*” (Section 8.1 of the Railroad Lease found in Appendix A to the POB’s Petition for Declaratory Order).

The POB used this fictitious standard as a basis for moving the Board in their Adverse Discontinuance Proceeding - AB 1270 (served on October 31, 2019). The Board correctly pointed out in its decision that “*the cases cited by Tri-City explain, the Board does not undertake to interpret or enforce contracts, as such issues are for an appropriate court to decide.*” (*Id.* at 5) The Board went on to say that “*by filing for adverse discontinuance, the Port properly seeks to have the Board remove its exclusive and primary jurisdiction with respect to Tri-City’s operating authority so that it may pursue eviction under state law.*” (*Id.* at 5). TCRY respectfully disagrees with this finding, for it puts the burden of defending against an Adverse Discontinuance proceeding and the fallout from it, on the party that may or may not have violated a contract that the Board does not have jurisdiction to interpret. The point being, if and when the POB fails to show that TCRY has breached the Railroad Lease at issue in Washington State, the entire Adverse Discontinuance proceeding would have been shown to be nothing more than punitive against TCRY.



Also notable in its decision, the Board articulated that it “*makes no findings on those allegations, as claims relating to any party’s contractual right to operate on the Line, contractual obligation to pay maintenance costs, or just compensation for maintenance costs as described by Tri-City can and should be litigated in the appropriate court rather than before the Board*” (*Id.* at 6) which happens to be central to the POB’s current petition for declaratory order whereby it asks the Board to interpret whether or not TCRY’s Miscellaneous Charges Tariff Supplement 1, as approved by the POB, per the terms of the Railroad Lease, is binding. (STB Docket No. 36426).

TCRY thanks the Board for its service and patiently awaits its decision.

Thank you,

A handwritten signature in blue ink, appearing to read 'Rydel Peterson'.

Rydel Peterson

Attorney

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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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Dated: June 8, 2021

/s/ Rydel V. Peterson

A handwritten signature in blue ink, appearing to read "Rydel V. Peterson", is written over a horizontal line.