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November 10, 2021
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November 10, 2021

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

By electronic filing

Re: STB FINANCE DOCKET NO. 35692
Eastside Community Rail, LLC – Acquisition and Operation Exemption–GNP
RLY, Inc

STB FINANCE DOCKET NO. 35730
Ballard Terminal Railroad Company, LLC -- Lease Exemption — Eastside
Community Rail, LLC

Dear Ms. Brown:

Please accept this letter brief filed on behalf of GNP RLY, LLC; NW Signal Maintenance, LLC; and Kevin Kucera (collectively “GNP”) in opposition to the recent letter of Douglas Engle (“Engle”), accepted for filing on November 1, 2021.

This is not a matter of first impression to the Board. This matter pertains to a line of railroad formerly owned by BNSF Railway Company (“BNSF”) and originating from approximately milepost 23.8 in the City of Woodinville and extending in a northerly direction to approximately milepost 38.25 in the City of Snohomish, a distance of 14.45 miles in King and Snohomish Counties, WA (the “Line”).

The Line was the subject of a previous Notice of Acquisition and Operation in STB Finance Docket No. 35213 in February, 2009. In that proceeding, GNP RLY, Inc. acquired from BNSF an exclusive freight rail operating easement for the Line. In 2012, under this Docket No. FD 35692, ECR, sought and received Board authority to acquire from GNP’s Bankruptcy Trustee, the GNP easement over the Line in King and Snohomish Counties, WA as a non-operating common carrier.¹

¹ In 2013, in Docket No. FD 35730, Ballard Terminal Railroad Company, L.L.C. (“Ballard”) obtained Board authority to operate the Line as ECR’s agent or lessee.

On or about July 29, 2020, ECR embargoed the Line due to unsafe track conditions. See Snohomish County's August 17, 2020 filing in these matters. On December 22, 2020 the Board found ECR's verified exemption notice had contained materially misleading information and that the easement was consequently void *ab initio*. Because ECR's exemption was void, Ballard's derivative exemption was likewise found void.

Engle filing is submitted on behalf of Eastside Community Rail, LLC ("ECR"). As a limited liability company ("LLC"), ECR is a formal business organization. As a formal business organization, the Board's regulations indicate ECR should be represented by an STB practitioner or by an attorney. 49 CFR 1104.4 (a).

Moreover, a pleading, document or paper containing allegations of fact must either:

Be signed by a practitioner or attorney. 49 CFR 1104.4(a); or else

be verified under oath by a duly authorized officer of the person or business organization in whose behalf it is filed. 49 CFR 1104.4(b).

The Board has long held that a person or party failing to comply with the foregoing requirement runs the risk of the Board according no weight to unverified, disputed factual allegations contained in the party's submission. See *Bar Ale v. California Northern Railroad Company and Southern Pacific Transportation Company*, Finance Docket No. 32821 (STB Served April 13, 2001). GNP accordingly so moves, on the basis that an unverified statement containing disputed factual allegations is inherently unreliable.

Several disputed factual allegations are contained in Engle's unverified November 1, 2021 filing. GNP disputes each of the following:

Engle claims "that the parties have respected" the Board's December 22, 2020 Decision. GNP responds that Engle failed to comply with his obligation to report on the status of the Line by February 5, 2021. Engle's three sentence letter to the Board disclosed no new material or relevant information.

Engle claims "no one except ECR/Engle is proposing to continue rail operations" over the Line. GNP responds that neither Engle nor ECR have produced any evidence that they possess the necessary means to continue rail operations over the Line.

Engle complains that extreme burdens have been placed on himself and ECR by having to defend this and other litigation. GNP respectfully points out that Engle had no hesitation throwing GNP into involuntary bankruptcy proceedings in 2011, thus essentially creating the very situation Engle now terms extremely burdensome.

Engle claims that it is arbitrary and capricious for the Board to gift the rail easement to GNP. For its part, GNP responds that the Board found substantial evidence that ECR's 2012

verified exemption notice contained materially misleading information. Consequently, the easement was void *ab initio*.

On September 29, 2021 the Board clarified its December 22 Decision, ordering ECR and Engle to take any action necessary to convey the Line's easement to GNP and certify to the Board that they have done so, or to acknowledge to the Board, in writing, that, as of the date of such acknowledgment, GNP has title to the Line's easement and that ECR and Engle make no claim to the contrary, by October 29, 2021. [Emphasis supplied.]

Ignoring the Board's clear and unambiguous directive, and stridently refusing to comply with the Board's September 29th Order, Engle/ECR filed a grossly untimely, legally and factually unsupported, and unverified "request" for reconsideration on November 1st. Advancing no new arguments, the request merely recasts Engle's claims asserting the July 30, 2020 letter filed in support of Engle/ECR by Jim Jensen ("Jensen letter"), cited at 7 of the Board's December 22, 2020 Decision.

On October 7, 2021, GNP counsel David Rossmiller issued Engle's attorney of record in this proceeding, Jami K. Elison, a certified letter (Exhibit A) demanding an executed Quit Claim Deed for the ERC freight easement (Exhibit B) by October 22, 2021. Mr. Rossmiller's office followed up with Mr. Elison several additional times through email and fax after the October 22 passed, but received no response whatsoever.

Engle asserts that GNP, in 2011, received \$175,000 to "convey away its rights". GNP responds that Engle is either confused or mistaken on this point. In fact, this Board has found that Engle in 2011 misappropriated GNP assets, including the subject freight rail easement, for his own benefit and for the benefit of his relatives. See the Board's December 22, 2020 Decision. As a remedy for Engle's misappropriation, the Board has ordered Engle and ECR to reconvey the freight easement to GNP. There is nothing improper about the Board imposing an equitable remedy to restore the *status quo ante*.

Engle next argues that he and ECR "own" the freight rail easement, a conclusion having no legal basis as addressed in the Board's previous decisions in these matters. A Washington state court recently held that GNP possesses sole legal ownership and title to the Woodinville segment of the easement, and that ECR and Douglas Engle possess no legal interest in the easement.² A separate Quiet Title action pertaining to the Snohomish County segment of the easement is pending against ECR in Snohomish County Superior court.³

² Order Granting Summary Judgment at 2 and 4, *City of Woodinville v. Eastside Community Rail et al.*, No. 20-2-02815-1 SEA (King County Superior Court, entered April 16, 2021). Exhibit C to this letter brief.

³ First Amended Complaint for Quiet Title, *GNP RLY, INC. v. Eastside Community Rail et al.*, No. 21-2-03931-31 (Snohomish County Superior Court, filed Oct. 28, 2021. Exhibit D to this letter brief.

The foregoing aligns entirely with this Board's finding in the December 22, 2020 Decision, that GNP was the sole and exclusive owner of the easement. The Board's supplemental September 29, 2021 Decision clarifies the earlier Order and sets out a template for Engle/ECR to follow in reconveying the freight easement to GNP.

Finally, it's worth noting that the Board did not merely "revoke" ECR and Engle's acquisition and operating exemptions on December 20, 2020. The Board voided the exemptions *ab initio*. In other words, the exemptions never existed in a legal sense. Thus, no rights ever accrued to Respondents, much less rights in perpetuity, as these entities would urge this Board.

The Board's September 29, 2021 order directed ECR and Engle to "take any action necessary to convey the Line's easement to GNP and to certify to the Board that they have done so" by October 29, 2021. The Board warned that "failure to comply may result in civil monetary penalties." *ID.* at 4, citing 49 U.S.C. § 11901. The current maximum civil penalty for knowing violation of a Board order is \$8224 for each day of violation. See 49 CFR § 1022.4 (2021).

ECR/Engle having explicitly failed to comply with the Board's September 29, 2021 Decision, GNP now requests that the Board assess a civil penalty of \$8224 per day of violation against Engle and ECR, commencing October 29, 2021 and continuing until Engle/ECR comply with the September 29 Order.

GNP thanks the Board for its consideration with regard to the foregoing matters. Should the Board have any questions, kindly contact me directly, either by telephone (908) 361-7097 or by email jsavagelaw@aim.com.

Respectfully submitted,

James H. M. Savage

J. James H. M. Savage

by electronic signature

James H. M. Savage

*Counsel for **GNP RLY, LLC***

NW Signal Maintenance, LLC and

Kevin Kucera

Att.

cc: service list

Certificate of Service

I certify that I have this day served copies of this documents upon all parties of record in this proceeding, by electronic mail.

James H. M. Savage, Esq.

S/James H. M. Savage

by electronic signature

James H. M. Savage

Counsel for GNP RLY, LLC

*NW Signal Maintenance, LLC and
Kevin Kucera*

Service List:

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Eastside Community Rail, LLC

Douglas Engle

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Jami K. Elison,
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David P. Rossmiller

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drossmiller@chartwelllaw.com

Reply to: Portland Office

1050 SW 6th Avenue, Ste. 1100
Portland, OR 97204
Direct: (503) 886-8146
Facsimile (503) 961-7864

October 7, 2021

VIA CERTIFIED MAIL & EMAIL

Douglas Engle
c/o Jami K. Elison
98 NE Gilman Blvd Ste 201
Issaquah, WA 98027-2515

**Re: *Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP
Rly, Inc.***
STB Docket No.: FD 35692

Mr. Elison:

As you are aware, on September 29, 2021, the Surface Transportation Board (“the Board”) issued an Order in the above-referenced matter, which unequivocally voided all previous transfers by Douglas Engle and/or Eastside Community Rail, LLC (“ECR”) of the subject freight rail easement covering all that portion of BNSF Railway Company’s Snohomish (MP 38.25) to Woodinville (MP 23.8), Washington Branch Line right-of-way.

In relevant part, the Board clarified its 2020 Order “that, regardless of whether the unauthorized transfers of the Line’s easement by Douglas Engle actually took place or were valid under state law, any such transfers of the Line’s easement by Douglas Engle are void. The transfers were all undertaken without the required Board authority” Further, the Board clarified that:

its statements in the 2020 Decision that “Board authorization to own and operate the Line reverts to GNP” and that “the Line should be returned to GNP” meant that the Line’s easement was to be conveyed to GNP, if any such conveyance was necessary in order to ensure that GNP owns the Line’s easement. Because it appears that any necessary actions have not happened, the Board will now order ECR and Douglas Engle to take any action needed to constitute an effective

Jami K. Elison
October 7, 2021
Page 2

conveyance of the Line's easement to GNP within 30 days of the service date of this decision and to certify to the Board that they have done so. . . . In the alternative, in light of GNP's argument that it still owns the Line's easement, (see GNP Status Report 1, Feb. 5, 2021), ECR and Douglas Engle may acknowledge to the Board, in writing, within 30 days of the service date of this decision, that, as of the date of such acknowledgment, GNP has title to the Line's easement and that ECR and Douglas Engle make no claim to the contrary.

In closing, the Board Ordered that "ECR and Douglas Engle are directed to take any action necessary to convey the Line's easement to GNP and certify to the Board that they have done so, or to acknowledge to the Board, in writing, that, as of the date of such acknowledgement, GNP has title to the Line's easement and that ECR and Douglas Engle make no claim to the contrary, **by October 29, 2021.**" (Emphasis added).

In accordance with the Board's directive, and to the extent that ECR and/or Douglas Engle have any remaining interest in the subject freight rail easement, we request that Douglas Engle sign and return the attached Quit Claim Deed to our office by **October 22, 2021.**

To the extent that Douglas Engle refuses to comply with the Board's express orders, we will report his noncompliance and request that civil monetary penalties be assessed.

We look forward to receiving the deed very soon.

Yours very truly,



David P. Rossmiller

cc: Kevin Kucera
James Savage

Encls. September 29, 2021 STB Order
Quit Claim Deed

After Recording Return To:
Kevin Kucera,
GNP Rly, Inc.
c/o David P. Rossmiller
1050 SW 6th Avenue, Suite 1100
Portland, Oregon 97204

QUIT CLAIM DEED
Woodinville Freight Easement

Grantors: Eastside Community Rail, LLC and Douglas Engle

Grantee: GNP Rly, Inc.

Abbreviated Legal Description:

SW 1/4 18-28-6
Lot 4 and 5 Block 2 Snohomish City Eastern Part Vol. 1 page 7
Govt Lots 1 and 2, and the NW 1/4 of 19-28-6
NE and SE 24-28-5
NW 25-28-5
Govt 1, 2, 3, 5 and 6 of 30-28-6
Govt 3, 4, 8 and SW 1/4 and NW 1/4 31-28-6
Pnt Lot 139 Cathcart 9X39
Govt 4, 5, 6, 7 of 6-27-6
Govt 1, 2, 3, 4 and the SW 1/4 of 7-27-6
Govt 2, 3, 4 and NW 1/4 of 18-27-6
Govt 1, 2 of 19-27-6
NE of 12-27-5
NE, SW, SE of 24-27-5
Govt 4 of 31-27-5
NW, SW of 25-27-5, NE, NW, SW of 26-27-5
NW of 35-27-5
NE, SE, SW of 34-27-5
In Snohomish County, WA

After Recording Return To:
Kevin Kucera,
GNP Rly, Inc.
c/o David P. Rossmiller
1050 SW 6th Avenue, Suite 1100
Portland, Oregon 97204

QUIT CLAIM DEED
Woodinville Freight Easement

Grantors: Eastside Community Rail, LLC and Douglas Engle

Grantee: GNP Rly, Inc.

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property").

RECITALS

1. WHEREAS, by Quit Claim Deeds dated December 18, 2009 and recorded under King County AFN 20091218001536 and Snohomish County AFN 200912210438, BNSF Railway Company conveyed certain real property located in King and Snohomish Counties to the Port of Seattle while reserving unto itself, BNSF, an exclusive easement for freight rail purposes over portions of the real property legally described in said Quit Claim Deeds (the "Reserved Freight Easement"); and

2. WHEREAS, BNSF, for consideration therein, agreed to convey and quit claim to GNP Rly, Inc. all BNSF's rights, title and interest in and to the Reserved Freight Easement, together with all after acquired title of BNSF therein; and

3. WHEREAS, by Quit Claim Deed dated December 18, 2009 and recorded under Snohomish County AFN 200912210439, BNSF conveyed the Reserved Freight Easement to GNP; and

4. WHEREAS, BNSF and GNP were parties to a Freight Easement Sale Agreement in and to the Property that was attached as Exhibit B to the BNSF-GNP quit claim. Therein, GNP and BNSF for themselves and their respective successors and assigns covenanted and agreed that the provisions of Sections 6 and 7 of said Agreement are incorporated by reference and shall be covenants running with the land that are enforceable by GNP, BNSF and their respective successors and assigns; and

5. WHEREAS, by Quit Claim Deed dated January 24, 2011, and recorded under King County AFN 2011012400613, Doug Engle, purporting to act on behalf of GNP Rly, Inc., purported to convey to Earl L. Engle and Joanne M. Engle the Reserved Freight Easement; and

6. WHEREAS, on or about September 27, 2012, Eastside Community Rail, LLC purported to acquire certain assets from GNP Rly, Inc. including the Reserved Freight Easement pursuant to an Order signed by U.S. Bankruptcy Judge B. Lynch in United States Bankruptcy Court, Western District of Washington, Case No. 11-40829-BDL; and

7. WHEREAS, Earl Engle has no current interest in the Reserved Freight Easement; and

8. WHEREAS, Joanne Engle (now Joanne Skievaski) has no current interest in the Reserved Freight Easement; and

9. WHEREAS, on December 21, 2020, the Federal Surface Transportation Board in Docket No. FD 35692 vacated the acquisition exemption of Eastside Community Rail, LLC as void and stated that “Board authorization to own and operate the Line reverts to GNP, and, therefore, the Line should be returned to GNP”; and

10. WHEREAS, on September 29, 2021, the Federal Surface Transportation Board in Docket No. FD 35692 clarified its December 21, 2020 Order to state that the Reserved Freight Easement “was to be conveyed to GNP, if any such conveyance was necessary in order to ensure the GNP owns the Line’s easement” and that it now ordered “ECR and Douglas Engle to take any action needed to constitute an effective conveyance of the Line’s easement to GNP within 30 days of the service date of this decision and to certify to the Board that they have done so”; and

11. WHEREAS, Eastside Community Rail, LLC is an inactive Washington limited liability company and Douglas Engle was its sole member (collectively “Grantors”); and

12. WHEREAS, Grantors hereby convey the Reserved Freight Easement to GNP Rly, Inc. (“Grantee”); and

NOW THEREFORE, based on the above Recitals, which are hereby incorporated into this Quit Claim Deed, and pursuant to the September 29, 2021 Federal Surface Transportation Board Order in Docket No. 35692, Grantors convey and quit claim to Grantee all of their right, title and interest, including all after-acquired property, if any, in the:

Reserved Freight Easement legally described in Quit Claim Deeds dated December 18, 2009 and recorded under King County AFN 20091218001536 and Snohomish County AFN 200912210438.

Situated in King and Snohomish Counties, State of Washington

DATED this ___ of October, 2021.

GRANTORS:

Eastside Community Rail, LLC

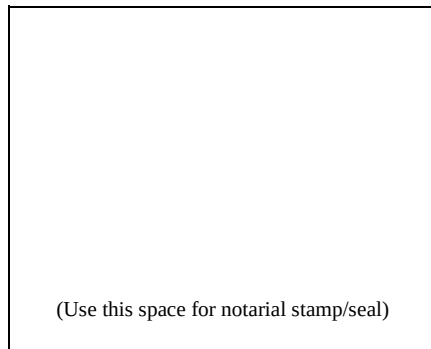
By: _____
Douglas Engle, Its: Member and Manager

Douglas Engle

By: _____
Douglas Engle, on behalf of himself.

STATE OF WASHINGTON }
COUNTY OF _____ } ss.

On this day personally appeared before me Douglas Engle, the sole Member of Eastside Community Rail, LLC, executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company and for himself, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.



Printed Name: _____
Notary Public in and for the State of Washington,
residing at _____
My commission expires: _____

1
2
3
4
5
6
7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9
10 CITY OF WOODINVILLE, a municipal
corporation,

11 Plaintiff,

12 v.

13
14 EASTSIDE COMMUNITY RAIL, LLC, a
Washington Corporation; TELEGRAPH
15 HILL INVESTMENTS, LLC, a Wyoming
corporation; DOUGLAS ENGLE, an
16 individual; BALLARD TERMINAL
RAILROAD COMPANY, LLC, a
17 Washington corporation; GNP RLY INC., a
Washington corporation; NW SIGNAL
18 MAINTENANCE, LLC, a Washington
corporation; KEVIN KUCERA, an
19 individual; JOANNE SKIEVASKI, an
individual; EARL ENGLE, an individual;
20 and ALL OTHER PERSONS OR PARTIES
21 UNKNOWN CLAIMING ANY RIGHT,
TITLE, ESTATE, LIEN, OR INTEREST IN
22 THE REAL PROPERTY DESCRIBED IN
THIS COMPLAINT,

23
24 Defendants.

NO. 20-2-02815-1 SEA

[PROPOSED]
ORDER GRANTING
SUMMARY JUDGMENT

25
26 This matter came before the Court on motion of plaintiff City of Woodinville ("City")
and defendants GNP RLY Inc. ("GNP"), NW Signal Maintenance, LLC ("NW Signal") and

[PROPOSED]
ORDER GRANTING
SUMMARY JUDGMENT — 1

Haggard & Ganson LLP
19125 North Creek Pkwy., Suite 120, PMB 337
Bothell, Washington 98011
haggardganson.com • 425.329.2611

ORIGINAL

1 Kevin Kucera ("Kucera") for summary judgment adjudging that GNP alone possesses title to
2 the freight rail easement the ownership of which is the subject of this quiet title action—
3 specifically, that freight rail easement over the Snohomish to Renton, Washington Branch Line
4 right of way that traverses the City of Woodinville in King County, Washington, between
5 approximate mileposts 23.8 and 26.38, reserved by BNSF Railway Company when it conveyed
6 such right of way to the Port of Seattle on December 18, 2009; such easement having been
7 separately conveyed by BNSF Railway Company to GNP by quit claim deed on December 19,
8 2009 ("the Easement").
9

10 The Court considered the pleadings filed in this action, the declarations supporting the
11 joint motion, and the following:
12

13 _____
14 _____
15 _____
16 _____

17 Based on the arguments of counsel, the pleadings, and evidence presented, the Court
18 finds:

- 19 1. The Court has previously ordered that it is taken as established for purposes of
20 this action that defendants Eastside Community Rail, LLC ("ECR") and Douglas
21 Engle each possesses no legal interest in the Easement and are barred from
22 presenting contrary evidence. The federal Surface Transportation Board has
23 similarly stripped ECR of legal authorization to own or operate the railroad
24 associated with the Easement. Thus there is no genuine issue of material fact as
25 to ECR's and Douglas Engle's lack of legal interest in the Easement.
26

- 1 2. In its December 14, 2020, Order Finding Eastside Community Rail, LLC and
2 Douglas Engle in Continued Contempt of Court, the Court ordered remedial
3 sanctions against ECR in the form of forfeiture of \$1000 per day for each day
4 that it was in contempt of court from September 18, 2020 through October 7,
5 2020 (20 days); \$1000 per day from November 16, 2020 through December 14,
6 2020 (29 days); and \$2000 per day for each additional day that ECR remains in
7 contempt of court. ECR never cured its contempt of court. ____ days elapsed
8 from December 15, 2020 through the date of this Order.
9
- 10 3. The Court has previously ordered that defendant Earl Engle is in default. Further,
11 Earl Engle has executed a declaration disclaiming any interest in the Easement.
12 Thus there is no genuine issue of material fact as to his lack of legal interest in
13 the Easement.
14
- 15 4. Joanne Skievaski has executed a declaration disclaiming any interest in the
16 Easement. Thus there is no genuine issue of material fact as to her lack of legal
17 interest in the Easement.
- 18 5. The Court has previously ordered that defendant Telegraph Hill Investments,
19 LLC ("THI") is in default. Further, in a purported answer to the City's complaint
20 executed by Douglas Engle, he asserted that THI "has no ownership interest in
21 the Easement." Thus there is no genuine issue of material fact as to THI's lack of
22 legal interest in the Easement.
23
- 24 6. Ballard Terminal Railroad Company, LLC has executed a declaration disclaiming
25 any interest in the Easement. Thus there is no genuine issue of material fact as to
26 its lack of legal interest in the Easement.

1 7. NW Signal and Kucera stipulate that they each have no legal interest in the
2 Easement. Thus there is no genuine issue of material fact as to their lack of legal
3 interest in the Easement.

4
5 8. GNP was the last clear owner of unclouded title to the Easement. Given the
6 findings set forth above, GNP is also the only party to this case with a colorable
7 claim to title to the Easement. The federal Surface Transportation Board has
8 ordered that authorization to own and operate the railroad associated with the
9 Easement has reverted to GNP, and that the rail line should be returned to GNP.

10 9. Accordingly, GNP is the sole owner of title to the Easement.

11 10. _____
12 _____
13 _____
14 _____
15 _____

16 Based on the above findings,

17 IT IS ORDERED AND ADJUDGED THAT:

18 1. Defendant GNP RLY, Inc possesses sole legal ownership and title to the
19 Easement. No other party possesses any legal interest in the Easement.

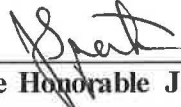
20 2. Judgment is hereby granted to plaintiff City of Woodinville against defendants
21 Eastside Community Rail, LLC and Douglas Engle in the amount of five
22 thousand eight hundred sixty-one dollars and twenty cents (\$5,861.20). Such
23 judgment shall bear post-judgment interest at the rate of 18% per annum.

24 3. Defendant Eastside Community Rail, LLC shall forfeit the sum of
25 \$ 122 days x \$2000 = \$244,000 to the Court pursuant to the Court's
26

December 14, 2020, Order Finding Eastside Community Rail, LLC and Douglas
Engle in Continued Contempt of Court.

4.

ORDERED AND ADJUDGED this 16th day of April, 2021.

By: 
The Honorable Julie Spector

Presented by:

HAGGARD & GANSON LLP

BETTS, PATTERSON & MINES, P.S.

Jeffrey Ganson, WSBA #26469
Attorneys for City of Woodinville

David P. Rossmiller, WSBA #36491
Andrew T. Gust, WSBA # 56454
Attorneys for GNP RLY Inc.,
NW Signal Maintenance, LLC and
Kevin Kucera

*Signed pursuant to emailed
authorization.*

SNOHOMISH COUNTY SUPERIOR COURT, EVERETT DIVISION
IN THE STATE OF WASHINGTON

GNP RLY, INC., a Washington corporation,
NW SIGNAL MAINTENANCE, LLC, a
Washington limited liability company,

Plaintiff,

vs.

SNOHOMISH COUNTY, a municipal
corporation, EASTSIDE COMMUNITY
RAIL, LLC, a Washington limited liability
company, TELEGRAPH HILL
INVESTMENTS, LLC, a Wyoming limited
liability company; DOUGLAS ENGLE, an
individual; BALLARD TERMINAL
RAILROAD COMPANY, LLC, a
Washington limited liability company;
JOANNE SKIEVASKI, an individual; EARL
ENGLE, an individual; and ALL OTHER
PERSONS OR PARTIES UNKNOWN
CLAIMING ANY RIGHT, TITLE, ESTATE,
LIEN, OR INTEREST IN THE REAL
PROPERTY DESCRIBED IN THIS
COMPLAINT,

Defendants.

NO. 21-2-03931-31

FIRST AMENDED COMPLAINT FOR
QUIET TITLE

///

///

FIRST AMENDED COMPLAINT FOR
QUIET TITLE

1 **I. PARTIES, JURISDICTION AND VENUE**

2 1.

3 Plaintiff GNP RLY, Inc. (hereinafter “GNP”) is a Washington corporation. The sole owner
4 of GNP is Kevin Kucera. GNP is the sole and exclusive owner of the Freight Easement that is the
5 subject of this Complaint.

6 2.

7 Plaintiff NW Signal Maintenance, LLC (hereinafter “NW Signal”) is a Washington limited
8 liability company. The sole owner of NW Signal is Kevin Kucera. NW Signal does not assert a
9 property interest in the Freight Easement that is the subject of this Complaint, but it is included in
10 this quiet title action because it was previously involved in certain proceedings related to the
11 Freight Easement before the Federal Surface Transportation Board, as discussed in further
12 detail below.

13 3.

14 Defendant Snohomish County is a municipal corporation organized under the laws of the
15 state of Washington and located in Snohomish County, Washington. Upon information and belief,
16 Snohomish County owns fee title to the underlying property that is the subject of this Complaint.

17 4.

18 Defendant Eastside Community Rail, LLC (hereinafter, “ECR”) is an administratively
19 dissolved Washington limited liability company. ECR, upon information and belief, may attempt
20 to assert a property interest in the Freight Easement that is the subject of this Complaint.

21 5.

22 Defendant Telegraph Hill Investments, LLC (hereinafter, “Telegraph Hill”) is a Wyoming
23 limited liability company which had its principal office in Kirkland, Washington and which, by
24 information and belief, may attempt to assert a purported property interest in the Freight Easement
25 that is the subject of this Complaint.

1 6.

2 Defendant Douglas Engle is an individual who is a former 50 percent shareholder,
3 Treasurer and Chief Financial Officer for GNP, and later the registered agent and one of two
4 governing persons for Defendant ECR. Douglas Engle also served as the registered agent for
5 Telegraph Hill until its Washington state and Wyoming business registrations became inactive
6 in 2012.

7 7.

8 Defendant Ballard Terminal Railroad Company, LLC (hereinafter, "Ballard") is a
9 Washington limited liability company doing business in King County and Snohomish County,
10 Washington. Ballard was a freight rail lessee/operator for GNP, and subsequently a purported
11 lessee from and/or operator for ECR. Ballard, upon information and belief, may attempt to assert
12 a property interest in the Freight Easement that is the subject of this Complaint.

13 8.

14 Defendant Joanne Skievaski (formerly Joanne Engle) is the former wife of Douglas Engle
15 and, upon information and belief, may attempt to assert a property interest in the freight easement
16 that is the subject of this Complaint.

17 9.

18 Defendant Earl Engle is the father of Douglas Engle, and upon information and belief, may
19 attempt to assert a property interest in the freight easement that is the subject of this Complaint.

20 10.

21 As mentioned above, this quiet title action concerns a length of railroad right of way
22 commonly referred to as the Eastside Rail Corridor, a portion of BNSF Railway Company's
23 (hereinafter, "BNSF") Snohomish to Renton, Washington Branch right of way traversing
24 Snohomish County from approximately mileposts 38.25 to 26.38 (hereinafter, the "Snohomish a
25

1 quit claim deed that was recorded on or about March 25, 2016. A copy of the Port of Seattle-
2 Snohomish County quit claim deed is attached as Exhibit A to this Complaint.

3 11.

4 Jurisdiction and venue in Snohomish County Superior Court are proper pursuant to
5 RCW 7.28.010 and RCW 4.12.010(1). This Complaint is brought pursuant to 7.28 RCW.

6 **II. FACTS**

7 12.

8 The Northern Pacific Railway took ownership and possession of the Snohomish County
9 Line through deeds that were originally recorded in 1887 and 1890.

10 13.

11 BNSF is the corporate successor to the Northern Pacific railway. As such, BNSF owned
12 the Snohomish County Line and operated freight rail upon it until selling the Snohomish County
13 Line to the Port in 2009.

14 14.

15 On or about December 18, 2009, the Port acquired from BNSF via quit claim deed the
16 Snohomish County Line. In the BNSF deed, BNSF retained a Freight Easement to continue to
17 operate as a common carrier on the Snohomish County Line after conveyance of fee title to the
18 Port. A copy of the BNSF-Port of Seattle quit claim deed is attached to this Complaint as Exhibit B.

19 15.

20 On December 18, 2009, BNSF conveyed its reserved Freight Easement to GNP via quit
21 claim deed. A copy of the BSNF-GNP quit claim deed is attached in Exhibit C to this Complaint.

22 16.

23 On December 18, 2009, GNP and the Port entered into an operations and maintenance
24 agreement. A copy of the Port-GNP operations and maintenance agreement is attached in
25 Exhibit D to this Complaint.

17.

On or about December 18, 2009, GNP entered into a lease agreement with Ballard whereby Ballard agreed to operate the line under the Freight Easement conveyed to GNP by BNSF.

18.

On or about January 24, 2011, Douglas Engle, purporting to act on behalf of GNP as its CFO, quit claimed the Freight Easement to his then wife, Joanne Engle (now Skievaski), and his father, Earl Engle. Douglas Engle never informed GNP and/or its other 50 percent shareholder of GNP, Chief Operations Officer Thomas Payne, that he had alienated the freight easement from GNP. All of the foregoing acts constitute unauthorized *ultra vires* acts on the part of Douglas Engle. A copy of the Douglas Engle-Joanne Engle/Earl Engle quit claim deed is attached as Exhibit E to this Complaint.

19.

On January 26, 2011, a GNP Board meeting was convened. Douglas Engle was also terminated from his position with GNP.

20.

Upon information and belief, or about February 2, 2011, Engle induced some of GNP's creditors to institute an involuntary bankruptcy proceeding against GNP in the United States Bankruptcy Court for the Western District of Washington at Tacoma, under Case No. 11-40829-BDL, in retaliation for having been dismissed by GNP. Shortly before the involuntary bankruptcy proceeding was instituted, GNP had entered into a memorandum of understanding with a third-party financier by which GNP would have become fully capitalized.

21.

On or about October 6, 2011 the Bankruptcy Court issued its order declaring GNP insolvent and directing the entry of an order of relief under Chapter 11 of the Bankruptcy Code.

///

22.

On or about October 24, 2011, Joanne Engle (now Skievaski) and Earl Engle purportedly reconveyed the Freight Easement back to GNP via quit claim deed. The Joanne Engle and Earl Engle quit claim deed to GNP was unsigned by GNP and was not recorded.

23.

On or about November 7, 2012, ECR filed a Notice of Exemption with the STB under 49 C.F.R. § 1150.31, stating that it had agreed to “purchase the assets of GNP RLY, Inc. in a bankruptcy proceeding,” including the freight rail operating easement over “a line of railroad formerly owned by BNSF[] and extending from approximately milepost 23.8 in Woodinville to approximately milepost 38.25 in Snohomish.” ECR’s Notice explained that Ballard would “continue to operate the Line in the same fashion that it was operating the Line for GNP RLY.”

24.

Douglas Engle submitted a Verified Statement along with the November 7, 2012 Notice of Exemption whereby he affirmed that the facts stated in the Notice of Exemption were true. The STB published a notice of the transaction that included a standard warning that “[i]f the verified notice contains false or misleading information, the exemption is void *ab initio*.” ECR’s exemption became effective.

25.

On December 13, 2011, Thomas Payne, an officer of GNP, submitted to the Bankruptcy Court, under a Declaration, a purported accounting of GNP’s assets, which included the subject Freight Easement.

26.

On December 17, 2012, GNP’s bankruptcy trustee and Douglas Engle, who was acting on behalf of Defendant Eastside Community Rail, LLC, executed a Record of Transfer documenting ECR’s purchase of GNP’s assets – purportedly the Freight Easement.

1 27.

2 Douglas Engle, and thereby ECR, knew that GNP was unaware the Engles had actually
3 divested or attempted to divest the Freight Easement from GNP.

4 28.

5 On or about April 26, 2013 ECR entered in a lease agreement with Ballard, which
6 purported to lease the Freight Easement to Ballard. The ECR-Ballard Lease incorporates the Port-
7 GNP OMA into its terms, and BTRC agreed to be bound by and comply with terms and obligations
8 of the OMA. A copy of the ECR-Ballard Lease is attached as Exhibit F to this Complaint.

9 29.

10 In April 2013, Ballard filed a Notice of Exemption under 49 C.F.R. § 1150.41, seeking
11 STB authorization to operate over the Freight Easement through its lease with ECR. This second
12 notice explained that the “Line was the subject of a previous Notice of Acquisition and Operation
13 . . . in which [ECR] acquired a permanent freight operating easement on the Line pursuant to an
14 Asset Purchase Agreement with the Bankruptcy Trustee for the bankrupt GNP RLY, Inc.” The
15 STB published the required notice, including the same warning that “[i]f the verified notice
16 contains false or misleading information, the exemption is void *ab initio*.” Ballard’s exemption
17 became effective.

18 30.

19 On or about March 17, 2016, the Port conveyed its ownership interest in the underlying
20 property to Snohomish County by quit claim deed, subject to the Freight Easement and
21 other encumbrances.

22 31.

23 On July 12, 2018, Snohomish County filed petitions to revoke the exemption of ECR, to
24 acquire and operate, and the exemption of Ballard to lease a 14.45-mile line of railroad known as
25 the Eastside Corridor, which extends from milepost 23.80 in Woodinville, WA to milepost 38.25

1 in Snohomish, WA. *See* STB Docket Finance Docket Nos. 35692, 35730. Snohomish County
2 claimed that the verified notices of ECR and Ballard contained materially false and misleading
3 information about ECR’s property interests in an easement over the Line and were therefore void
4 *ab initio*.

5 32.

6 On December 13, 2018, the STB issued its Initial Order denying Snohomish County’s
7 petitions. The STB explained that the “questions that must be resolved to determine whether the
8 notices of exemption were false or misleading involve questions of ownership, which in turn
9 involve issues of state property and contract law” The STB concluded that those questions
10 regarding ownership “should be decided by appropriate courts.”

11 33.

12 On February 4, 2019, Snohomish County petitioned the STB to reconsider its Initial Order.
13 Then, on February 7, 2019, Snohomish County filed a petition for review with the United States
14 Court of Appeals for the District of Columbia Circuit. The petition to the District of Columbia
15 Circuit was held in abeyance pending the STB’s decision on the motion for reconsideration.

16 34.

17 On May 17, 2019, the STB denied Snohomish County’s motion for reconsideration and
18 largely reiterated the grounds stated in its Initial Order. Snohomish County timely filed a second
19 petition for review of the STB’s Reconsideration Order with the District of Columbia Circuit.

20 35.

21 On or about December 18, 2019, the Operating and Maintenance Agreement expired.

22 36.

23 On March 27, 2020, the United States Court of Appeals for the District of Columbia Circuit
24 issued its order. *Snohomish Cty. v. Surface Transp. Bd.*, 954 F.3d 290, 301 (D.C. Cir. 2020). The
25 Court concluded that the STB’s failure to consider whether the notices of exemption were

misleading, even if not demonstrably false as a matter of state or federal law, was arbitrary and capricious. The Court concluded that the record contained ample evidence of potential misleadingness, notably omissions and inconsistencies in Douglas Engle's account. Accordingly, the Court vacated the STB's decision denying revocation and remanded to the STB for further determination.

37.

On June 8, 2020, Ballard submitted a letter to the STB supporting Snohomish County's request that the STB find ECR's exemption void *ab initio*.

38.

On June 11, 2020, Snohomish County filed a reply to Ballard's letter and a notice of recent developments with the STB. Therein, Snohomish County reaffirmed its request that the STB "revoke *ab initio* (1) the acquisition and operation exemption license in F.D. 35692 which STB granted to [ECR] pursuant to 49 C.F.R. 1150.31, et seq., and (2) the lease exemption license in F.D. 35730 which STB granted [Ballard] pursuant to 49 C.F.R. 1150.41, et seq."

39.

On June 11, 2020, Snohomish County also filed a Motion with the STB, requesting the STB reconvey the Freight Easement to the originating railroad (GNP) once ECR's acquisition license was revoked.

40.

Upon information and belief, Ballard embargoed the line effective August 1, 2020 – citing track conditions as the reason for doing so. On or about August 17, 2020, Ballard completely vacated the Snohomish County Line.

41.

On December 21, 2020, the STB issued its decision vacating ECR's authorization to operate a railroad on the Snohomish County Segment. In relevant part, the STB concluded:

1 Because the Board now finds that ECR's verified notice at issue in this case was
2 materially misleading, the exemption will be vacated. In its verified notice of
3 exemption, ECR and its principal Engle made a simple and straightforward
4 assertion: that ECR was acquiring, as part of a bankruptcy proceeding, rail assets
5 and a rail easement owned by GNP, which would continue to be operated by
6 Ballard. But as the court recognized, the facts surrounding the assertion were hardly
7 simple or straightforward. Approximately one week before GNP went into
8 bankruptcy, Engle, who at the time was a principal of GNP, purportedly deeded the
9 easement at issue here to his wife and father (Joanne Engle and Earl Engle), ...
10 thereby raising serious doubts about whether GNP even owned the easement that
11 ECR claimed it was buying. In his August 2018 reply to the County, Engle
12 conceded that he had indeed transferred GNP's easement to his relatives just days
13 before the bankruptcy proceeding was instituted. But he then asserted that the
14 easement had been transferred back to GNP during the bankruptcy proceeding (in
15 which Joanne and Earl Engle identified themselves as creditors of GNP rather than
16 owners of the easement). It is not clear whether that retransfer ever became
17 effective; during the Board's proceedings, Engle included copies of certain
18 transaction documents, but the deed (from Earl and Joanne Engle to GNP) did not
19 appear to have been signed by all the relevant parties. What is clear is that the failure
20 by Engle and ECR to inform the Board of these activities—all undertaken without
21 appropriate authority and in the face of a bankruptcy proceeding—flouted the
22 regulatory process in general and, in particular, undermined the notice of exemption
23 process in this case.

14 The Board cannot confirm that all (or any) of these unauthorized transfers
15 retransfers, and further transfers of the easement actually took place or were valid.
16 But after reviewing the record and the post-remand submissions in light of the
17 court's remand, the Board can confirm this much: ECR's verified assertion in its
18 notice of exemption that this was just an ordinary transfer from one entity to another
19 was materially misleading. Given the purpose of the class exemptions at
20 § 1150.31—to permit routine and uncontroversial transactions to proceed with
21 minimal regulatory supervision—the Board finds that it would not have permitted
22 ECR's exemption to go forward had it known the full extent of Engle's dealings
23 with respect to the Line.

21 42.

22 The STB further concluded: "Because ECR's notice of exemption contained misleading
23 information, it is vacated as void *ab initio*. . . . **Thus, Board authorization to own and operate the**
24 **Line reverts to GNP, and, therefore, the Line should be returned to GNP** (whose new owner says
25 the company is willing to operate the Line)." (emphasis added).

1 43.

2 No party, including Douglas Engle and ECR, timely appealed the STB's decision.

3 44.

4 On February 5, 2021, GNP and Douglas Engle/ECR submitted separate status reports to
5 the STB pursuant to its order.

6 45.

7 On February 18, 2021, Snohomish County renewed its Reconveyance Motion and
8 requesting that the STB void the January 2011 deed from Douglas Engle, purporting to act on
9 behalf of GNP, to Joanne Engle (now Skievaski) and Earl Engle.

10 46.

11 On March 17, 2021, the City of Woodinville filed its Reply in Support of Snohomish
12 County's Motion Concerning Reconveyance.

13 47.

14 On September 29, 2021, the STB issued an Order in STB Docket Finance Docket
15 No. 35692 clarifying its 2020 Order "that, regardless of whether the unauthorized transfers of the
16 Line's easement by Douglas Engle actually took place or were valid under state law, any such
17 transfers of the Line's easement by Douglas Engle are void. The transfers were all undertaken
18 without the required Board authority" Further, the Board clarified that:

19 its statements in the 2020 Decision that "Board authorization to own and operate
20 the Line reverts to GNP" and that "the Line should be returned to GNP" meant that
21 the Line's easement was to be conveyed to GNP, if any such conveyance was
22 necessary in order to ensure that GNP owns the Line's easement. Because it appears
23 that any necessary actions have not happened, the Board will now order ECR and
24 Douglas Engle to take any action needed to constitute an effective conveyance of
25 the Line's easement to GNP within 30 days of the service date of this decision and
to certify to the Board that they have done so. . . . In the alternative, in light of
GNP's argument that it still owns the Line's easement, (see GNP Status Report 1,
Feb. 5, 2021), ECR and Douglas Engle may acknowledge to the Board, in writing,
within 30 days of the service date of this decision, that, as of the date of such

acknowledgment, GNP has title to the Line's easement and that ECR and Douglas Engle make no claim to the contrary.

48.

In closing, the Board Ordered that "ECR and Douglas Engle are directed to take any action necessary to convey the Line's easement to GNP and certify to the Board that they have done so, or to acknowledge to the Board, in writing, that, as of the date of such acknowledgement, GNP has title to the Line's easement and that ECR and Douglas Engle make no claim to the contrary, by October 29, 2021."

III. CAUSE OF ACTION: QUIET TITLE

49.

GNP realleges and incorporates its allegations set forth in paragraphs 1 to 48.

50.

The federal Surface Transportation Board (STB) has preemptive regulatory authority over railroad acquisition and operation in interstate commerce. Accordingly, the STB has revoked ECR's and Ballard's authority to own and operate the line and directed that the line be returned to GNP. The Board has suggested that the determination of ownership of the Freight Easement falls under Washington property law.

51.

Snohomish County's purported interest, if any, in the Freight Easement constitutes a cloud on GNP's title to the freight easement.

52.

Telegraph Hill's purported interest, if any, in the Freight Easement constitutes a cloud on GNP's title to the freight easement.

53.

Douglas Engle's purported interest, if any, in the Freight Easement constitutes a cloud on GNP's title to the freight easement.

1 54.

2 ECR's purported interest, if any, in the Freight Easement constitutes a cloud on GNP's title
3 to the freight easement.

4 55.

5 Ballard's purported interest, if any, in the Freight Easement constitutes a cloud on GNP's
6 title to the freight easement.

7 56.

8 Joanne Skievaski's purported interest, if any, in the Freight Easement constitutes a cloud
9 on GNP's title to the freight easement.

10 57.

11 Earl Engle's purported interest, if any, in the Freight Easement constitutes a cloud on
12 GNP's title to the freight easement.

13 58.

14 GNP is entitled to a judgment of quiet title extinguishing any claims of property interests
15 in the Freight Easement that may be asserted by Snohomish County, Telegraph Hill, Douglas
16 Engle, ECR, Ballard, Joanne Skievaski and/or Earl Engle.

17 **IV. RELIEF REQUESTED**

18 WHEREFORE, GNP RLY, Inc. and NW Signal Maintenance, LLC request the
19 following relief:

20 1. That the Court enter an order declaring that GNP is the sole and exclusive owner
21 of the Freight Easement.

22 2. That the Court enter an order declaring that NW Signal, Snohomish County,
23 Telegraph Hill, Douglas Engle, ECR, Ballard, Joanne Skievaski and Earl Engle each have no
24 property interest in the Freight Easement.

25 ///

CERTIFICATE OF SERVICE

I, Jennifer Blades, declare as follows:

1) I am a citizen of the United States and a resident of the State of Oregon. I am over the age of 18 years and not a party to the within entitled cause. I am employed by Chartwell Law Offices, LLP, whose address is 1050 SW 6th Avenue, Suite 1100, Portland, OR 97204.

2) On October 28, 2021, I caused to be served upon counsel of record via First Class U.S. Mail at the addresses listed below, the following document(s): **FIRST AMENDED COMPLAINT FOR QUIET TITLE.**

Joanne Skievaski
832 Lake St. S Kirkland
WA 98033-6456

Douglas Engle
4117 S Lamonte St.
Spokane, WA 99203

Earl Engle
4117 S Lamonte St.
Spokane, WA 99203

Eastside Community Rail
4117 S Lamonte St.
Spokane, WA 99203

Telegraph Hill Investments
4117 S Lamonte St.
Spokane, WA 99203

Ballard Terminal Railroad
c/o Josh Brower
Brower Law PS
111 Third Avenue, Ste. 3000
Seattle, WA 98101

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED this 28th day of October, 2021.

/s/ Jennifer Blades