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

Re: Finance Docket 35692 (Eastside Community Rail, LLC –
Acquisition and Operation Exemption – GNP RLY, Inc.) and
Finance Docket 35730 (Ballard Terminal Railroad Company, LLC –
Lease Exemption -- Eastside Community Rail, LLC)

Dear Ms. Brown:

This letter is in reply to filings by GNP RLY, Inc., on November 10 in the above captioned proceeding, and is submitted on behalf of Snohomish County (“SnoCo”), WA.

Consistent with SnoCo’s Reply and Request for Sanctions filed November 9, SnoCo supports imposition of civil penalties and other appropriate sanctions against Eastside Community Rail (“ECR”) and Douglas Engle unless they immediately disclaim all title claims to the “BNSF retained freight rail easement” in accordance with this Board’s clarifying order in these proceedings served September 29, 2021. Insofar as GNP RLY, Inc., seeks similar relief by its filings on November 10, SnoCo has no objection.

However, GNP RLY, Inc. annexed to its November 10 filing a document styled as a “First Amended Complaint” by GNP RLY, Inc. (evidently filed October 28, 2021, in Snohomish County Superior Court) against SnoCo and other named defendants. The First Amended Complaint, which was subsequently partially

served on SnoCo on or about November 17, has evidently been supplanted by a Corrected First Amended Complaint, filed November 22 in Snohomish County Superior Court. Because the original Complaint was not served on SnoCo until on or about November 23, because the First Amended Complaint was not served until on or about November 17 and then without exhibits, and because the exhibits and Corrected First Amended Complaint were not served until on or about November 23, no answer is yet due to any of these Complaints. SnoCo accordingly reserves all its rights to Answer, assert defenses, and/or otherwise move to dismiss in accordance with local rules. For purposes of F.D. 35692 and F.D. 35730, SnoCo asserts that all versions of GNP's Complaint are false or misleading as to SnoCo, and does not admit any relevant allegation in any version of the Complaint insofar as it purports to state a claim against SnoCo. Moreover, the version of the Complaint filed with this Board has in any event apparently been supplanted. The Board therefore should not rely upon the complaint as filed by GNP for any purpose.

Unfortunately, the First Amended Complaint and the November 22 Corrected First Amended Complaint fail properly to define the rail easement to which GNP seeks to quiet title. Instead, the First Amended Complaint and its "Corrected" version both provide an unintelligible definition (due to an apparent typographical error) at paragraph 10. Because of this unintelligible definition, it is unlikely that either Complaint could be construed to state a cause of action on which relief can be granted against SnoCo.

In any event, the First Amended Complaint which GNP filed with STB as well as the Corrected version filed on November 21 at paragraph 51 suggests that SnoCo may have a purported interest in an undefined "Freight Easement" and this possible interest "constitutes a cloud on GNP's title..." SnoCo views this allegation as frivolous. SnoCo has never asserted ownership of the "BNSF retained freight rail easement" which was originally transferred by BNSF to GNP RLY, Inc., and subsequently claimed by members of the Engle family and ECR. SnoCo instead asserts ownership of the Snohomish County portion of the assets transferred by BNSF to the Port of Seattle, which excluded the BNSF retained freight rail easement. SnoCo reserves the right to further answer the Complaint, to plead any and all relevant defenses, and to make cross claims and counterclaims, presumably in response to the Corrected First Amended Complaint which GNP apparently intends to supplant earlier versions.

The confusion arising from GNP's First Amended Complaint in no way undercuts the appropriateness of sanctions against ECR and Douglas Engle. SnoCo agrees that ECR and Engle have no lawful title to the "BNSF retained freight rail easement" and should disclaim such title to the Board's licensee (namely, GNP RLY, Inc.).

SnoCo reiterates what it said in its cover letter to its November 9 pleading:

"Snohomish County, which owns the underlying property interests as well as the track and ties [in the corridor that BNSF originally conveyed to the Port of Seattle], requests this Board expeditiously to address the limbo [caused by Engle and ECR's failure to implement the Board's orders] by imposing civil penalties, retroactive to October 29, 2021, upon Engle and ECR if they do not reconvey or disclaim title in the line to GNP RLY within five business days of the Board's order imposing civil penalties."

By my signature below, I certify service by email attachment on or about 30 November 2021 upon all parties (or their counsel) of record in this proceeding as set forth in the current version of the service list in this proceeding, including but not necessarily limited to the following: Joshua Bower (BTRC), Matthew Cohen (Woodinville), Thomas Wilcox (CWalla), Richard Welsh (NARPO), Charles Spitulnik (King County), James Savage (GNP/NW Signal/K. Kucera), Jami Elison (ECR/Engle), Douglas Engle.

Respectfully submitted,



Charles H. Montange

Attorney for Snohomish County (WA)

cc. parties per final paragraph above