

SERVICE DATE – MARCH 8, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35692

EASTSIDE COMMUNITY RAIL, LLC—ACQUISITION AND OPERATION
EXEMPTION—GNP RLY INC.

Docket No. FD 35730¹

BALLARD TERMINAL RAILROAD COMPANY, LLC—LEASE EXEMPTION—
EASTSIDE COMMUNITY RAIL, LLC

Digest:² The Board responds to a request that it reopen and reverse its prior rulings that an easement that would facilitate rail service in this matter should be held by GNP RLY Inc., rather than Douglas Engle and Eastside Community Rail, LLC. As the question of ownership is pending before the Washington state courts, which have the authority to rule on such matters, the Board will await the conclusion of the state court proceedings before it determines the most appropriate course of action here.

Decided: March 7, 2022

BACKGROUND

The history of this case has been described in detail in the prior decisions served in the above-named dockets on December 13, 2018; May 17, 2019; December 22, 2020 (2020 Decision); and September 29, 2021 (2021 Decision). Briefly, in 2012, Eastside Community Rail, LLC (ECR), sought and received authority, via the Board's expedited notice-of-exemption process, to acquire in a bankruptcy proceeding the easement of GNP RLY Inc. (GNP) over a rail line that runs from Woodinville, Wash. to Snohomish, Wash., in King and Snohomish Counties, Wash. (the Line).³ Some years later, in 2018, Snohomish County (County)

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

³ Shortly thereafter, in 2013, Ballard Terminal Railroad Co., L.L.C. (Ballard), in Docket No. FD 35730, sought and received authority, also via the Board's notice-of-exemption process, to operate over the Line pursuant to a lease with ECR. Ballard, however, is not involved in the

filed a petition to revoke the exemption as void ab initio. The Board initially denied revocation, the County sought judicial review, and the U.S. Court of Appeals for the District of Columbia Circuit vacated the Board's decision and remanded the case. See Snohomish Cnty. v. STB, 954 F.3d 290 (D.C. Cir. 2020). On remand, at the request of the County, the Board vacated the exemption as void ab initio, concluding that ECR's verified notice was materially misleading because of the several attempts by a principal of both GNP and ECR, Douglas Engle, to transfer the easement prior to and during bankruptcy proceedings without notifying the Board or seeking the required Board authority. 2020 Decision, slip op. at 4-5.

The Board held in the 2020 Decision that, through these and other related actions, Engle and ECR had made materially misleading representations to the Board and flouted the regulatory process. See id. The Board found that "Board authorization to own and operate the Line reverts to GNP, and, therefore, the Line should be returned to GNP," and it directed GNP and Engle to report to the Board on the status of the Line by February 5, 2021. Id. at 7-8. Thereafter, because it appeared that any necessary actions to return the Line's easement to GNP had not occurred, in the 2021 Decision the Board 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 [the 2021 Decision] and to certify to the Board that they have done so." 2021 Decision, slip op. at 5. The Board further stated that it "does not look favorably on ECR and Douglas Engle's apparent disregard for the Board's requirements in these proceedings, including their response to date to the 2020 Decision. ECR and Douglas Engle should be aware that their failure to comply may result in civil monetary penalties." 2021 Decision, slip op. at 4 (citing 49 U.S.C. § 11901).

On November 1, 2021, Engle and ECR filed a pleading, captioned as a "Response and/or Petition for Reconsideration," indicating that ECR and Engle will continue to seek authority to operate the Line's easement, and asserting that the Board exceeded its authority in ordering return of the easement to GNP. (See ECR Response 2-5, Nov. 1, 2021.)⁴ Replies filed by the County, GNP and related parties, and the City of Woodinville (Woodinville) contest Engle and ECR's arguments about the Board's authority and suggest that the Board impose civil monetary penalties. (See County Reply 6-13, Nov. 9, 2021; GNP Reply 2-4, Nov. 10, 2021; Woodinville Reply 2-8, Nov. 12, 2021.) But more significantly for purposes of this decision, the replies inform the Board of two state court actions involving the Line's easement. In the first, the state court has found in a quiet title action that GNP is the sole owner of the portion of the easement that runs through Woodinville and that neither Engle nor ECR has any legal interest in it. (See, e.g., GNP Reply 3 & n.2, Nov. 10, 2021.) ECR has appealed that ruling, arguing that federal preemption strips the state courts of jurisdiction to rule on quiet title cases that involve property subject to a license issued by the Board. (See Woodinville Reply 7, Nov. 12, 2021); see also City of Woodinville v. Eastside Cmty. Rail, LLC, No. 20-2-02815-1 (Wash. Sup. Ct. Apr. 16, 2021), appeal docketed, No. 82660-3 (Wash. Ct. App.). The second state court property law case

current aspect of the litigation, and the circumstances of its exemption proceeding will not be addressed further.

⁴ As that "Response and/or Petition for Reconsideration" was filed more than 20 days after the order it challenged, it will be treated as a petition to reopen. See 49 C.F.R. §§ 1115.3(e), 1115.4.

is a parallel quiet title action pending against ECR and Engle, among others, concerning the portion of the easement that runs through the County. (See GNP Reply 3 & n.3); see also GNP RLY, Inc. v. Snohomish Cnty., No. 21-2-03931-31 (Wash. Sup. Ct. filed Oct. 28, 2021).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of “material error, new evidence, or substantially changed circumstances.” The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected in order for reopening to be granted. See Montezuma Grain v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018).

Here, ECR and Engle essentially argue that the Board committed material error because it lacked authority to interfere with private business negotiations and transactions; that they intend to refile for authority; and that they are entitled to compensation if they do turn over the easement to GNP. Contrary to ECR and Engle’s position, the Board has the authority to take actions necessary to protect its processes and enforce its orders, which is what its prior rulings did. See, e.g., Jefferson Terminal R.R.—Acquis. & Operation Exemption—Crown Enters., Inc., FD 33950, slip op. at 5 (STB served Mar. 19, 2001) (citing ICC v. Am. Trucking Ass’ns, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse)).

Given the pendency of the state court proceedings regarding the ownership of the easement, however, the Board will not decide the request for reopening at this time. ECR has argued in the state appellate court that federal preemption under 49 U.S.C. § 10501(b) bars the state courts from ruling on state property law issues concerning property subject to this agency’s licensing proceedings. That argument is clearly incorrect. Although federal preemption is broad, the Board has consistently held that disputes concerning state contract and property law should be decided by the appropriate courts with expertise in those matters, rather than by the Board. See Gen. Ry.—Exemption for Acquis. of a R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4-5 (STB served June 15, 2007) (denying petition to revoke because a contract dispute involved questions of state contract and property law better determined by state court); V&S Ry.—Pet. for Declaratory Ord.—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 6-7 (STB served July 12, 2012) (declining to address state property law issue because property interest dispute should be decided by a court applying state law).⁵

⁵ See also Ohio River Partners, LLC—Acquis. of Operation Exemption—Hannibal Dev., LLC, FD 35984 et al., slip op. at 6 (STB served Dec. 22, 2017) (state law property and/or contract disputes should be decided by a court applying state law and not the Board); Allied Indus. Dev. Corp.—Pet. for Declaratory Ord., FD 35477, slip op at 5-6 (STB served Sept. 17, 2015) (returning proceeding to state court when there was a dispute over the validity of a land sale under state law); Allegheny Valley R.R.—Pet. for Declaratory Ord.—William Fiore, FD 35388, slip op. at 3-4 (STB served Apr. 25, 2011) (disputes concerning the size, location, and nature of property rights “involve the application of state property law properly before the state court”).

Indeed, as the Board has explained, the acquisition authority that the Board grants is permissive—it allows a party to acquire a rail line that is part of the interstate rail network—but, in order to exercise that authority, the party also must obtain the appropriate rights under state property and contract law to actually acquire the line (through purchase, lease, condemnation, or otherwise). Great Walton R.R.—Pet. for Declaratory Ord., AB 1242 (Sub-No. 1), slip op. at 7-8 (STB served June 23, 2020) (and cases cited therein). Thus, in this case, a determination regarding the ownership of the Line’s easement under state law, which has been a question from the beginning of this proceeding, is appropriately being made in the Washington state courts.⁶

The Board has made various rulings regarding the propriety of Engle’s actions and the need to enable GNP to provide the service that it, and only it, is authorized to provide, yet Engle and ECR have, thus far, failed to abide by the Board’s rulings. After the state court proceedings have been completed, the Board will revisit this matter and issue any further rulings that may be appropriate, potentially including a ruling on the petition for reopening and the possibility of fines or other penalties. The parties are directed to file with the Board a copy of any decisions in the state court proceedings within five days of their issuance, including any decisions that were issued prior to the service date of this decision and were not included with prior filings.

It is ordered:

1. The Board will not decide the request for reopening at this time, as discussed above.
2. The parties shall file a copy of any decisions in the state court proceedings within five days of their issuance, as discussed above.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

⁶ One court has already found that ECR does not own the portion of the easement in Woodinville, and the status of the portion of the easement in the County is under active consideration in another court.