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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-1316X

**GNP RLY, INC.—ABANDONMENT EXEMPTION—IN
KING COUNTY, WASHINGTON**

APPEAL OF DIRECTOR'S DECISION

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I. STATEMENT OF APPEAL TO THE BOARD OF DIRECTOR'S DECISION

GNP RLY, Inc. (“GNP”) and the City of Woodinville (“City”) appeal the Decision of the Director of the Office of Proceedings (“Director”) in this matter served on September 14, 2022 (“Decision”), pursuant to 49 C.F.R. § 1011.2(a)(7). The Decision unnecessarily and unreasonably holds this matter in abeyance pending final completion of a state court quiet title action that has no bearing on the railbanking of the segment of rail line at issue in this matter.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On March 18, 2022, GNP initiated this matter by filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1152.50 to abandon an approximately 2.58-mile segment of its rail line between mileposts 23.8 and 26.38, all in Woodinville, King County, Washington, together with a spur that extends into Bothell, Washington (the “Line”). In that Notice of Exemption, GNP advised the Board that upon receipt of abandonment

authority, it intended to transfer its property rights in the Line to the City and convert the Line to a trail pursuant to 49 C.F.R. § 1152.29. GNP submitted with its Notice of Exemption an Environmental/Historic Report pursuant to 49 C.F.R. §§ 1105.7 and 1105.8, along with a certificate of compliance with the notice requirements of 49 C.F.R. § 1105.11.

On April 11, 2022, the Director served upon the parties an order holding this proceeding, including environmental review, in abeyance, because of a concern that abandonment of the Line would strand a railbanked segment of track to the south of the Line, and because of uncertainty as to the milepost of the Line's northern endpoint.¹

As directed in the April 11, 2022, Decision, on April 19, 2022, GNP submitted a Supplement to its Verified Notice of Exemption, in which GNP advised the Board:

GNP and the City of Woodinville have reached an agreement to transfer GNP's property rights in the

¹ *GNP RLY, Inc.—Aban. Exemption—in King Cty., Wash.*, AB 1316X, slip op. at 1-2 (STB served Apr. 11, 2022).

Line to the City of Woodinville, and convert the Line to a trail pursuant to 49 CFR § 1152.29, contingent on Board issuance of a Notice of Interim Trail Use covering the Line. Railbanking the Line will preserve the connection between the southerly segment and the interstate rail network. The one limitation on that commitment is that GNP intends to abandon a stub-end spur that extends into Bothell, Washington. That spur ... is not connected to any active or rail banked right-of- way other than the Line itself.²

GNP's Supplement also advised the Board that the northern endpoint of the Line is MP 26.38—and that the rail line north of that milepost, in Snohomish County, remains in active service.³

On May 3, 2022, GNP submitted to the Board a Second Supplement to Verified Notice of Exemption, emphasizing the import of the agreement between GNP and the City referenced in the first Supplement:

Section 2 of that Agreement commits GNP and the City to undertake joint efforts to railbank the Line ... and Section 3 commits the parties to implement railbanking following issuance of a NITU Order. GNP fully intends to meet its portion of those

² GNP Supplement to Verified Notice of Exemption at 2-3 (filed Apr. 19, 2022).

³ *Id.* at 3.

commitments, contingent only on Board issuance of a NITU Order.⁴

The referenced agreement between GNP and the City was submitted with the Supplement⁵ and GNP requested that the Board lift the order holding this proceeding in abeyance.⁶

On May 6, 2022, the City of Woodinville filed a verified statement by Brandon Buchanan, City Manager of the City of Woodinville, confirming GNP's representations in its Supplements.⁷

The Decision served on September 14, 2022, acknowledges these submissions and appears to acknowledge that they adequately addressed the issues that led to the April 11, 2022, abeyance order.⁸ However, the Decision then makes reference to a March 8, 2022, order in Docket No. FD 35692, a

⁴ GNP Second Supplement to Verified Notice of Exemption at 3 (filed May 3, 2022).

⁵ *Id.*, Ex. A.

⁶ *Id.* at 3.

⁷ Verified Statement of Brandon Buchanan In Support of GNP RLY Inc. Verified Notice of Exemption at 2 (filed May 6, 2022) .

⁸ *GNP RLY, Inc.—Aban. Exemption—in King Cty., Wash.*, AB 1316X, slip op. at 1 (STB served Sept. 14, 2022).

proceeding initiated by Snohomish County and joined by the City (the “ECR Exemption Matter”).⁹ By order served December 22, 2020, in the ECR Exemption Matter, the Board vacated as void *ab initio* the acquisition exemption of Eastside Community Rail, LLC (“ECR”) on the basis of ECR’s “materially misleading” notice of exemption.¹⁰ The order provided that “authorization to own and operate the Line reverts to GNP, and, therefore, the Line should be returned to GNP.”¹¹ In an order served September 29, 2021, in the ECR Exemption Matter, the Board directed ECR and its sole officer, Douglas 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

⁹ *Id.* at 2 (citing *Eastside Community Rail, LLC—Acquisition & Operation Exemption—GNP RLY, Inc.*, Docket No. FD 35692 et al.).

¹⁰ *Eastside Community Rail, LLC—Acquisition & Operation Exemption—GNP RLY, Inc.*, Docket No. FD 35692 et al., slip op. at 4, 7-8 (STB served Dec. 22, 2020).

¹¹ *Id.* at 7.

ECR and Douglas Engle make no claim to the contrary...”¹²

Finally, in response to a “Response and/or Petition for Reconsideration” filed by ECR and Engle on September 29, 2021, the Board on March 8, 2022, issued an order in the ECR Exemption Matter holding ECR’s petition in abeyance pending the completion of two “parallel” quiet title actions pending in Washington State Courts.¹³

The first of these actions is *City of Woodinville v. Eastside Community Rail, LLC, et al.*, filed by the City with respect to the segment of the Line located within the City and which is the subject of GNP’s Notice of Exemption seeking abandonment in this matter (“Woodinville Quiet Title Action”). On May 23, 2022, the Washington Court of Appeals affirmed summary judgment finding GNP to be the sole owner of the rail easement associated

¹² *Eastside Community Rail, LLC—Acquisition & Operation Exemption—GNP RLY, Inc.*, Docket No. FD 35692 et al., slip op. at 5 (STB served Sept. 29 2021).

¹³ *Eastside Community Rail, LLC—Acquisition & Operation Exemption—GNP RLY, Inc.*, Docket No. FD 35692 et al., slip op. at 3-4 (STB served Mar. 8, 2022).

with the Line.¹⁴ ECR's petition for review by the Washington Supreme Court is scheduled to be considered by Department One of that Court on October 11, 2022.¹⁵

The second quiet title action is *GNP RLY, Inc. v. Snohomish County et. al*, Snohomish County Superior Court No. 21-2-03931-31 ("Snohomish County Quiet Title Action"). This matter seeks a similar disposition as to ownership of the segment of the line located in Snohomish County, north of the Line that is the subject of GNP's Notice of Exemption seeking abandonment and railbanking in this matter. ECR and Engle, among others, are defendants in the Snohomish County Quiet Title Action, which remains pending in the superior court.

¹⁴ *City of Woodinville v. Eastside Community Rail, LLC*, 22 Wn.App.2d 121, 510 P.3d 355 (2022).

¹⁵ https://www.courts.wa.gov/appellate_trial_courts/supreme/2022/pr221011.pdf (accessed Sept. 20, 2022).

III. LEGAL ARGUMENT

A. This appeal is timely and authorized by 49 C.F.R. § 1011.2.

The Board “reserves to itself for consideration and disposition ... [a]ll appeals of initial decisions issued by the Director of the Office of Proceedings under the authority delegated by § 1011.7(a) Appeals must be filed within 10 days after service of the Director decision” 49 C.F.R. § 1011.2(a)(7).

The authority delegated by the Board to the Director, subject to appeal pursuant to 49 C.F.R. § 1011.2(a)(7), includes the authority “initially to determine ... [w]hether to issue notices of exemption under 49 U.S.C. 10502 ... [f]or abandonments and discontinuances under 49 U.S.C. 10903 and the implementing regulations at 49 C.F.R. 1152.50.” The Director’s Decision holding this matter in abeyance pending the resolution of an unrelated state law matter indefinitely suspends proceedings in this matter, effectively constituting a decision not to issue a notice of exemption authorizing abandonment and railbanking of

the Line. As such, it is subject to appeal, and pursuant to 49 C.F.R. § 1011.2(a)(7) this appeal is timely filed.

B. Standard of Review

Appeal to the entire Board of initial decisions by the Director must be based on one or more of the following grounds:

(1) that a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record; (2) that a necessary legal conclusion or finding is contrary to law, Board precedent, or policy; (3) that an important question of law, policy, or discretion is involved which is without governing precedent; and (4) that prejudicial error has occurred. *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094)A, *et al.* (STB served June 13, 2005).

C. The Director’s abeyance order should be vacated and this matter allowed to proceed.

The abeyance in this matter was originally ordered to clarify the northern terminus of the Line proposed for

abandonment and to consider the effect of abandonment of the Line on a segment of railbanked track to the south of the Line. Those issues have been addressed; it is now clear that fulfillment of GNP's notice of exemption will not strand railbanked track to the south, as the Line in Woodinville will be railbanked upon Board issuance of a Notice of Interim Trail Use covering the Line.

However, the Director has now, in the appealed Decision, effectively shifted focus from railbanked track “downstream” of the Line in Woodinville to active track “upstream” of the Line, in Snohomish County. Yet GNP’s Notice of Exemption in this matter does not propose to abandon any segment of the line in Snohomish County; it is limited to the Line in Woodinville, which is in King County, Washington. The Snohomish segment of the Line remains in active rail service at this time, although no traffic has moved on it in several years.

Railbanking of the Woodinville segment will not impact the Snohomish County segment in any way, and there is no

evidence before the Board that GNP intends to pursue abandonment of the Snohomish County segment. Resolution of the Snohomish County Quiet Title Action is therefore not necessary to the Board's consideration of this exempt abandonment. Unnecessary delay to this proceeding will harm the public's interest in resolution of this matter, including achievement of railbanking of the Line in Woodinville, while serving no countervailing public interest. As such, Board relief from the Director's Decision is appropriate under *Chelsea Property Owners* because the Director's Decision is unsupported by substantial evidence that railbanking of the Woodinville segment will have any impact on the Snohomish County segment, and because holding this proceeding in abeyance pending final resolution of the Snohomish County Quiet Title Action prejudices GNP and the City of Woodinville.

IV. CONCLUSION

For the reasons set forth herein, GNP and the City respectfully request that the Board vacate the Decision served on

September 14, 2022, lift the abeyance imposed on April 11, 2022, upon final decision in the Woodinville Quiet Title Action, and allow this matter, including environmental review, to proceed in a prompt manner.

RESPECTFULLY SUBMITTED this 23rd day of September, 2022.

By: /s/ James H. M. Savage, Esq.
Electronically signed

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CERTIFICATE OF SERVICE

I certify that I have this 23rd day of September, 2022,
electronically served copies of this Appeal of Director's Decision
upon all parties of record in this proceeding; and by First Class
Mail upon the following non-party:

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