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Via E-File only

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

Re: Finance Docket No. 36261, Ballard Terminal Railroad Company, L.L.C. –
Petition for Declaratory Order

Dear Ms. Brown:

We represent the City of Seattle (“City”) in the above-referenced proceeding. On December 27, 2022, petitioner Ballard Terminal Railroad Company (“Ballard Terminal”) filed herein a pleading in the form of a letter with the Board requesting that the Board dismiss without prejudice its Petition for Declaratory Order filed in STB Finance Docket No. 36261. The City respectfully requests an opportunity to file a reply to Ballard Terminal’s pleading, consistent with 49 C.F.R. § 1104.13.

49 C.F.R. § 1104.13(a) allows a party to file a reply or motion to any pleading within 20 days after a pleading is filed with the Board. The Board’s procedural rules must be construed liberally, 49 C.F.R. § 1100.3, and, together with the City’s due process rights, weigh in favor of allowing the Board to consider the City’s reply to Ballard Terminal’s request to dismiss its Petition. Moreover, Ballard Terminal does not have an automatic right or discretion to dismiss its Petition. *See Conrail Abandonment of a Portion of the W. 30th St. Secondary Track in New York, NY*, AB-167, 1988 WL 225779, at *5 (I.C.C. Jan. 29, 1988).

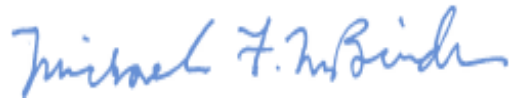
Therefore, the City respectfully requests that the Board refrain from acting on Ballard Terminal’s pleading until the City has had an opportunity to file a reply within 20 days of the filing, or by January 16, 2023. As is relevant here, and contrary to Ballard Terminal’s claims that there is no further relief that the Board can provide, the Board has provided valuable and independent guidance regarding the existing law and reach of the Board’s jurisdiction under 49 U.S.C. § 10501(b) in other proceedings involving concurrent judicial proceedings. *City of Milwaukie—Petition for Declaratory Order*, FD 35625, 2013 WL 1221975, at *3 (S.T.B. Mar.

20, 2013). As will be explained further in the City's reply, such guidance would be especially appropriate in this proceeding. The Washington State courts incorrectly identified the issues raised before the courts and subsequently issued decisions that will impact the Board's jurisdiction, at least in the State of Washington.

The Board was not a party to the litigation below before the Washington State courts, and, therefore, is not bound by the decisions of those courts. Moreover, the Board is entitled to deference in its construction of those statutes whose administration is entrusted to it by Congress. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Thus, the Board is free to address the jurisdictional issue and should conclude that it is important that it do so, lest the erroneous decisions of the Washington State courts interfere with the timely construction of rail-related projects in the State of Washington which are both necessary and in the public interest.

The City will file its reply by January 16, 2023. We thank the Board for its time and consideration. Please do not hesitate to contact the undersigned if there are any questions.

Respectfully submitted,



Michael F. McBride
Attorney for the City of Seattle

Parties of Record via email only:

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