

SERVICE DATE – JUNE 27, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36261

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.—PETITION FOR
DECLARATORY ORDER

Digest:¹ The Board grants a motion filed by Ballard Terminal Railroad Company, L.L.C. to withdraw its petition for declaratory order.

Decided: June 26, 2023

On December 12, 2018, Ballard Terminal Railroad Company, L.L.C. (BTRC), petitioned the Board for a declaratory order holding that the preemption provision in 49 U.S.C. § 10501(b) bars the City of Seattle (City) from proceeding with trail construction that would “remov[e] or reconfigur[e] track actively used by [BTRC],” “relocat[e] an active drive-lane of a City street so that it is directly on top of an active rail line,” or “mak[e] roadway improvements adjacent to the active rail line.” (Pet. 3.) The City replied on January 28, 2019,² arguing that BTRC’s claims reflected a dispute over the implementation of a September 14, 1997, Operating Agreement (Operating Agreement) between BTRC and the City. (City Reply 2.) Among other things, the City commented that the Board should dismiss BTRC’s petition—or alternatively, hold the proceeding in abeyance—to allow resolution of the parties’ contractual dispute in a related state court proceeding. (See *id.* at 3-4, 27.)

By decision served on June 27, 2019, the Board held this proceeding in abeyance pending resolution of the related state court action. Ballard Terminal R.R.—Pet. for Declaratory Order, FD 36261, slip op. at 1-2, 5 (STB served June 27, 2019). The Board noted that the court’s resolution of the contractual claims could possibly moot or allow for a more complete analysis of BTRC’s preemption claims, whether that analysis ultimately is performed by the court or by the Board. *Id.* The parties were directed to provide status reports concerning the state court litigation every six months, starting on December 27, 2019, and to submit to the Board any merits decision by the court within 15 days of its issuance. *Id.* at 5.

¹ 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).

² See Ballard Terminal R.R.—Pet. for Declaratory Ord., FD 36261 (STB served Jan. 30, 2019) (explaining that the reply deadline was tolled during the partial shutdown of the Federal government).

On December 27, 2022, BTRC filed a motion to withdraw its petition without prejudice, asserting that the Washington State courts have “fully and finally” resolved the parties’ state law contract claims and the preemption issues raised in BTRC’s petition. On January 17, 2023, the City replied to BTRC’s motion and requested that the Board retain jurisdiction for the limited purpose of providing its “views and guidance” on certain issues addressed by the Washington State courts. For the reasons discussed below, the Board will grant BTRC’s motion to withdraw and deny the relief requested by the City.

BACKGROUND

The rail line at issue consists of a 1.4-mile portion of the Ballard Line, which extends between milepost 0.09 and the end of the line at milepost 2.70, approximately 2.6 miles, in the Ballard District of Seattle, King County, Wash. (Pet. 3, 8.) During the 1990s, the Ballard Line had been embargoed by its then-owner, Burlington Northern and Santa Fe Railway Company (BNSF). See Sea Lion R.R.—Aban. Exemption—in King Cty., Wash., AB 544X et al., slip op. at 4 (STB served Aug. 11, 1998). Around that time, BNSF, the City, and other interested parties agreed upon a plan to address certain goals regarding the Ballard Line. See id. at 2; (City Reply 7).

Pursuant to the plan, BNSF sold the Ballard Line to Sea Lion Railroad (Sea Lion) in 1997, and two shippers formed BTRC to become the new operator on the line. Sea Lion R.R., AB 544X, slip op. at 3. BTRC then engaged a contractor to rehabilitate the Ballard Line in early 1998 and thereafter began providing service. Id. According to the parties’ plan, BTRC would provide freight rail service over a portion of the corridor, while at the same time the City would build and maintain a parallel trail on a portion of the corridor. Sea Lion R.R., AB 544X, slip op. at 3.

In August of 1998, Sea Lion obtained Board authority to abandon the Ballard Line. Id. at 8.³ Subsequently, Sea Lion transferred the track and related assets to BTRC and transferred the real estate to the City under Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 363 I.C.C. 132 (1980). See City Notice, Jan. 5, 1999, Sea Lion R.R., AB 544X. Sea Lion assigned the Operating Agreement between it and BTRC to the City, see Sea Lion R.R., AB 544X, slip op. at 3, and BTRC filed with the Board a notice to operate the Ballard Line under a modified certificate of public convenience and necessity, see Ballard Terminal R.R.—Modified Rail Certificate, FD 33594 (STB served Feb. 26, 1999).

In its petition for declaratory order in this docket, BTRC states that, after more than two decades, the City now seeks to construct the remainder of its trail—a 1.4-mile portion that the parties refer to as the “Missing Link.” Among other things, BTRC argues that the Operating Agreement establishes an agreed-upon location for the Missing Link, approximately two blocks away from the corridor used by BTRC’s line. (Pet. 10-11.) BTRC states, however, that the City’s current proposal, by contrast, would build the trail directly adjacent to BTRC’s line. (See

³ On January 19, 1999, Sea Lion filed in Docket No. AB 544X a notice of consummation for interim trail use/railbanking pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.

id. at 14-15.) BTRC argues that the City’s planned configuration would unreasonably and materially impede BTRC’s ability to operate its railroad and would create unsafe conditions for doing so in a number of respects. (See id. at 24, 30, 34-36.) In its reply to BTRC’s petition for declaratory order, the City disagrees with BTRC’s interpretation of the Operating Agreement and argues that the parties’ dispute is a contractual one. It filed a civil complaint against BTRC in King County Superior Court to interpret and enforce the Operating Agreement, and had originally asked the Board to “follow its precedent and dismiss the Petition without prejudice,” or alternatively hold the proceeding in abeyance in favor of that proceeding. (City Reply 2, 27.) According to the City, dismissal or abeyance would “allow the King County Superior Court to adjudicate the case brought by the City before determining whether anything remains to be decided by the Board, to avoid any conflict with the Court’s rulings.” (Id. at 27.)

Since the Board’s 2019 abeyance decision, the parties have submitted seven joint status reports to the Board. According to the parties, the King County Superior Court (Superior Court) ruled on the merits of several motions for summary judgment filed by the parties and issued a “Final Order,” finding, among other things, that certain efforts by the City to forcibly relocate and reconstruct BTRC’s track are preempted by 49 U.S.C. § 10501(b). (Parties Joint Status Report 3, June 29, 2020; see also City of Seattle v. Ballard Terminal R.R., No. 19-2-01794-5 SEA (June 12, 2020).) The parties state that the City and BTRC separately appealed and cross-appealed portions of the Final Order to Division I of the Washington State Court of Appeals (Court of Appeals), and the Court of Appeals subsequently affirmed the lower court’s ruling. (Parties Joint Status Report 2, Dec. 27, 2022; see also City Letter 1, May 31, 2022.) According to the parties, the City sought review of the Court of Appeals’ opinion before the Washington Supreme Court, and the Court issued an order on October 12, 2022, denying both the City’s petition for discretionary review and BTRC’s cross-petition. (Parties Joint Status Report 2, Dec. 27, 2022.)

On December 27, 2022, BTRC filed with the Board a motion to withdraw its petition for declaratory order without prejudice, asserting that the Washington State courts have now fully and finally resolved the parties’ “state law contract claims” and also determined the preemption issues raised in BTRC’s petition. (BTRC Mot. to Withdraw 1.) On January 17, 2023, the City responded, asserting, among other things, that the Washington State courts incorrectly identified the issues raised before the courts and subsequently issued decisions that would impact the Board’s jurisdiction. (City Reply 1, Jan. 17, 2023.) Thus, the City requests that the Board provide “guidance” regarding “the existing precedent and reach of the Board’s jurisdiction under 49 U.S.C. § 10501(b).” (Id.) Such “independent guidance,” according to the City, would be valuable to “railroads and other parties in projects and other railroad-related matters that arise in Washington State,” as well as “any Washington State court that hereafter may be confronted with the same issues.” (Id. at 1, 4.)

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to eliminate controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984);

Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989). The Board, however, will grant BTRC’s motion to withdraw.

The preemption issue in this case—whether 49 U.S.C § 10501(b) preempts certain efforts by the City to remove and relocate BTRC’s tracks to accommodate the City’s recreational trail project—has been fully litigated in the Washington state court system. Indeed, the Washington State Supreme Court entered an order denying the City’s petition for review of the Appellate Court’s decision, thereby terminating the City’s appeal and upholding the lower courts’ rulings in favor of BTRC with respect to preemption. The Board has noted numerous times that issues involving § 10501(b) preemption can be decided either by the Board or the courts in the first instance, as “both the Board and the courts have concurrent jurisdiction to determine preemption.” Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819, slip op. at 4 (STB served Aug. 28, 2014); see also City of Sammamish, Wash.—Pet. for Declaratory Order, FD 36161, slip op. at 4 (STB served Mar. 29, 2018) (and cases cited therein). Further, the Washington state courts have not referred any issues to the Board. See Brookhaven, FD 35819, slip op. at 4 (declining to address preemption issue where federal court had not referred the dispute to the Board). Therefore, the Board, in its discretion, will decline to issue a declaratory order.

It is ordered:

1. BTRC’s motion to withdraw its petition for declaratory order is granted.
2. This decision is effective on its service date.

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