

## BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
January 2, 2024  
Part of  
Public Record

Snohomish County – )  
Adverse Abandonment – ) AB 1331  
GNP RLY, Inc., )  
in Snohomish County, WA )

Comments on Environmental Assessment  
on behalf of Adverse Applicant Snohomish County

By a decision served December 1, 2023, the Surface Transportation Board (“STB” or “Board”) through its Office of Environmental Analysis (“OEA”) issued a Draft Environmental Assessment (“DEA”) for the adverse abandonment of a freight railroad easement owned by GNP RLY, Inc. (“GNP”) over an approximately 11.9 mile rail line otherwise owned by Snohomish County pursuant to a deed from the Port of Seattle.<sup>1</sup> The line is located between MP 26.38 (Snohomish/King County line near Woodinville) and MP 38.25 (near City of Snohomish). Comments on the DEA are due on January 2, 2024. See DEA at p.

---

<sup>1</sup> The opening paragraph of the DEA could be construed to mean that GNP owns the entire line; it in fact owns only a freight rail easement over Snohomish County’s tracks and ties and real property interests (the line) as otherwise acquired from Port of Seattle pursuant to a “State of Maine” decision found at Snohomish County – Pet. Dec. Order, F.D. 35830, served March 5, 2015. SnoCo believes the record is clear on this matter and that any ambiguity in the first paragraph is inadvertent.

10. These comments on the DEA are submitted on behalf of Snohomish County (“SnoCo”), the adverse applicant in this proceeding.

I.

As of the date of the filing of these comments (January 2), SnoCo has not been furnished with any comments on the DEA and none have appeared on the STB website under filings or environmental comments.

SnoCo has no objection to the environmental conditions as set forth and recommended at p. 8 of the DEA.

SnoCo supports the conclusion in the DEA set forth at p. 8 of that document.

II.

SnoCo wishes to clarify several matters in connection with the discussion of Trails Use on p. 9 of the DEA. First, the discussion at p. 9 of the DEA states that requests for a CITU will be due ten days after a “notice of exemption” is issued. Inasmuch as this is an application proceeding, not a notice proceeding, there will not be a “notice of exemption.” Instead, there will be a decision on the merits. That is ordinarily due 110 days after the application is filed pursuant to 49 C.F.R. 1152.26(a). The application in this proceeding was filed on October 17, 2023, so the decision on the merits is due on February 4, 2024. Second, and more importantly perhaps, the Board’s regulation calls for requests for CITU’s (as well

as for public use conditions) to be filed 45 days from the filing date of the application. 49 C.F.R. 1152.26(a). Consonant with the regulation, the Board provided in its decision dated November 6, 2023, in this proceeding that requests for a CITU (and public use conditions) would be due on December 1, 2023. See Decision served Nov. 6, 2023, in this proceeding at p. 3. The final EA must be revised to be in accordance with the Board's regulations and applicable decision served November 6, 2023.

There is no prejudice to any party flowing from the apparent ambiguity or error in the Trails Use discussion in the DEA concerning due dates. As indicated in the cover letter to the Application (included in STB document 307312), SnoCo in filing its application on October 17, 2023, included a Statement of Willingness<sup>2</sup> and expressly sought the issuance of a CITU.<sup>3</sup> SnoCo also paid the relevant STB fee for filing a Statement of Willingness subject to a request for waiver and return of the fee.<sup>4</sup> (STB has not yet ruled on the waiver request.) In all events, SnoCo's request for a CITU was timely made. No other request for a CITU has been timely made under the schedule announced by the Board in its Decision served Nov. 6, 2023 in this proceeding.

---

<sup>2</sup> Attachment 11 to the Application and part of STB document 307312.

<sup>3</sup> Cover Letter, Application at p. 2 and *passim*, also part of STB Doc. 307312.

<sup>4</sup> Cover Letter at p. 2, part of STB Doc. 307312.

Moreover, as emphasized in the cover letter to the Application (see p. 2 of cover letter, included in STB document 307312), GNP has consented to negotiate a trails use agreement with SnoCo. That consent has already been filed with the agency as attachments to the Application.<sup>5</sup> The consent was therefore timely as well. Furthermore, SnoCo and GNP have entered into a trails use agreement, contingent on this Board authorizing railbanking. The agreement has likewise been filed with the agency as part of the Application.<sup>6</sup> In addition, there is an applicable consent order that obligates GNP to support railbanking and transfer the property for railbanking when authorized by STB.<sup>7</sup> In short, railbanking has been timely sought, GNP has consented to negotiate with SnoCo, and SnoCo and GNP have already entered into a railbanking agreement (and cooperation in railbanking is required by court order), subject to this Board's authorization.<sup>8</sup>

---

<sup>5</sup> Application Attachments 2 and 12 (GNP support for railbanking and consent to negotiate railbanking agreement), all part of STB Doc. 307312.

<sup>6</sup> See Application at p. 7 n.9 (sources cited and attached to Application), STB Doc. 307312, filed Oct. 17, 2023.

<sup>7</sup> Application at pp. 8-9 and sources cited.

<sup>8</sup> SnoCo in its Reply comments on the merits in this proceeding filed December 18, 2023, reiterated all these matters and requested the Board to issue a CITU by the 49 C.F.R. 1152.26(a) due date for a decision on the merits, namely, by February 4, 2023. SnoCo also suggested that it be effective immediately in view of the lack of opposition to date, the exemption from OFA previously granted, and other factors.

These considerations render moot any further filings for railbanking by any additional parties at this stage of the proceeding.<sup>9</sup>

Consistent with the above, the final EA in this proceeding should acknowledge that SnoCo has timely sought railbanking, that GNP has agreed, and the two parties have entered into a railbanking agreement (consistent with a court order) subject only to STB railbanking authorization. The final EA should be compatible with, and supportive of, issuance of a CITU no later than February 4, 2024, as provided in 49 C.F.R. 1152.26(a). The final EA should be revised so its terminology and schedule is consistent with the November 6 decision in this proceeding and with the applicable regulation.

### Conclusion

SnoCo respectfully requests that the Final EA conform to the November 6 decision in this proceeding. In addition, in light of the timely request and consent

---

<sup>9</sup> In light of the agreement between the parties obligating GNP to transfer its interests to SnoCo in the event STB authorizes railbanking, backed by a judicial consent order that GNP must comply (see Application at pp. 8-9 and sources cited), the public use conditioning process is also moot in this proceeding. The parties have reached an agreement for transfer of GNP's holdings to the public (SnoCo) for public use. Railbanking and preservation for alternative public use of the Snohomish Segment at issue in this case by SnoCo in the event of cessation of rail use has been part of a long-term plan by regional governments to ensure the preservation of the corridor in question once BNSF rerouted Boeing overhead traffic to other lines years ago. See "narrative history" portion of Historic Report, filed with Application, esp. p. 221-22 of the Attachments.

to issuance of a CITU, the Final EA should be consistent with and support the issuance of an immediately effective CITU subject to the environmental conditions and provisions set forth at p. 9 of the DEA.

Respectfully submitted,

*/s/ Charles H. Montange*

Charles H. Montange  
Law Offices of Charles H. Montange  
426 NW 162<sup>nd</sup> St.  
Seattle, WA 98177  
206-546-1936  
Fax: -3739  
[c.montange@frontier.com](mailto:c.montange@frontier.com)

Attorney for Snohomish County, Applicant

For filing: Jan. 2, 2024

#### Certificate of Service

By my signature below, I certify service of these Reply Comments upon all parties on STB's service list for AB 1331, including Mr. Savage and Mr. Cohen (counsel for GNP and Woodinville respectively) via email attachment this 2d day of January 2024.

*s/Charles H. Montange*