

 GRANTED Office of Proceedings	DECISION ID NO.: 52478
	DECIDED DATE: 2/14/2025
	SERVED DATE: 2/14/2025
	APPROVED:  Acting Director
☒ reply to both petitions due 3/21/25	

February 10, 2025

309207

VIA E-FILING

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

ENTERED
Office of Proceedings
February 10, 2025
Part of
Public Record

Re: *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—
in King County, WA*, STB Docket No. AB-6 (Sub-No. 380X)

Dear Ms. Brown:

I have attached for e-filing King County, Washington's (1) Motion for Leave to File Request for Extension of Time, Time for Filing Having Otherwise Expired and (2) Motion to Extend Time for Reply in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Charles A. Spitulnik

Attachments

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-6 (Sub-No. 380X)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

MOTION OF KING COUNTY, WASHINGTON TO EXTEND TIME FOR REPLY

Communications with respect to this pleading should
be addressed to:

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Counsel for King County, WA

Dated: February 10, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-6 (Sub-No. 380X)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

MOTION OF KING COUNTY, WASHINGTON TO EXTEND TIME FOR REPLY

King County, Washington (the “County”) hereby submits this Motion to Extend Time for Reply in response to the Petitions for Declaratory Order filed on January 28, 2025, and January 30, 2025, in the above-referenced docket by Waverly Hills Club, Inc. (“Waverly”) and Raymond Spencer and Lael Spencer (the “Spencers”), respectively. Pursuant to the Board’s rules at 49 C.F.R. § 1104.13(a), a reply to Waverly’s Petition would be due no later than February 17, 2025, and a reply to the Spencers’ Petition would be due no later than February 19, 2025. Because Waverly’s lengthy Petition and the Spencers’ Petition both make a number of representations and assertions that will take time for the County’s counsel to review, and because responding to the Petitions require coordination between the County and its undersigned outside counsel, the County respectfully requests an extension of time to March 21, 2025, to respond to both Petitions in one consolidated reply. This extension of time will enable the County to respond fully and efficiently to the legal and factual issues presented, which directly implicate the County’s statutory and property rights, so that the Board may have a fully developed record on which to base its decision. Moreover, the extension will allow the County enough time to address both Petitions at once,

reducing the Board's administrative burden of reviewing responses to two separate Petitions that appear to present similar arguments and claims based on similar facts with regard to the same line.

BACKGROUND

The Petitions at issue here concern a segment of a railroad right-of-way (the "Line") located between Redmond and Issaquah that is owned by the County and is within its jurisdiction. The Line was railbanked pursuant to the Board's procedures in 1998, with the County serving as trail sponsor. *See The Burlington Northern and Santa Fe Railway Co.—Abandonment Exemption –In King County, WA*, STB Docket No. AB-6 (Sub-No. 380X) (STB served May 13, 1998). Pursuant to the authority granted by the Board under the Trails Act, 16 U.S.C. 1247(d), the Line has since been converted into an interim trail and remains preserved as part of the interstate rail network and available for reactivation at a future time. Waverly and the Spencers have encroached on the Line, Waverly Pet. at 4, 42; Spencers Pet. at 3, 14, and appear to desire exclusive ownership and control of the area that has been encroached upon, Waverly Pet. at 7; *see also* Spencers Pet. at 19. Rather than negotiating with the County to ensure safeguards are in place for the Line to remain available for trail use and future reactivation of rail service, *see* Waverly Pet. 24-25, Waverly now seeks to completely remove a portion of the Line from the Board's jurisdiction in order to claim it as Waverly's exclusive property, which Waverly asserts is "the best solution" to allow the area to "be free of County meddling." Waverly Pet. at 8, 29, 42. In a similar tone, the Spencers argue that the County cannot enforce its property interest in the Line against the Spencers' encroachment and "should not be allowed to further the charade that the County has exclusive railroad easement rights." Spencers Pet. at 12.

ARGUMENT

Pursuant to the Board's rules at 49 C.F.R. § 1104.13(a), a reply to any pleading must be filed within 20 days after the pleading is filed, unless otherwise provided. However, under 49 C.F.R. § 1104.7(b), the Board has discretion to extend the time period for replies upon request and with good cause.¹

Good cause exists here. As is clear from the Petitions, the County is directly implicated in Waverly's and the Spencers' requests to the Board, and its rights as the Line's owner and trail sponsor could be affected by the requests to partially remove the Line's railbanked status or alter its effect. The County's undersigned counsel understands that the County was not provided notice ahead of time that either Petition was being filed. Waverly's lengthy 45-page Petition, with over 100 additional pages of supporting exhibits, appears to make a vast range of assertions and arguments that lead to various diverging requests for relief. Some of these requests could, if granted, have far-reaching consequences for the County in its trail sponsor capacity and for trail sponsors more broadly. The Spencers Petition relies on many of the same facts and arguments (and is submitted by the same counsel), but differs somewhat in its scope and requests of the Board. Additional time is necessary to assess and respond to the multitude of issues and claims raised by these two parties, and to verify the voluminous facts asserted in the two Petitions. Allowing the County to review and respond to these background legal and factual aspects of these two similar Petitions will assist the Board in making a well-informed decision.

Moreover, the County was only able to engage and fully brief its undersigned counsel on this matter after both of the Petitions were filed. The County's undersigned outside counsel in

¹ Requests for extensions of time are due not less than 10 days before the due date of the filing pursuant to the Board's regulations. 49 C.F.R. § 1104.7(b). Because the County is one day late in filing its request for extension of time with respect to the Waverly Petition, it is simultaneously filing a Motion For Leave to File this Motion as to that petition.

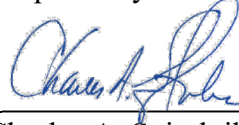
these proceedings needs additional time to coordinate with the County on review of the relevant documentation of the protracted interactions between Waverly (and potentially the Spencers) and the County on the Line, *see* Waverly Pet. at 24-25, as well as more general litigation surrounding the Line, *see* Waverly Pet. 20-23. The County should be provided sufficient time to review and respond to Waverly's and the Spencers' various claims and assertions.

The County also submits that neither Waverly nor the Spencers will be prejudiced by this modest extension of time. Waverly has engaged in protracted litigation and negotiation with the County for years on this matter, without ever raising its claims before the Board. Even if the Board agreed with Waverly's and the Spencers' arguments and granted one or more of its various requests, there would be no immediate impact as the real relief Waverly and the Spencers appear to seek—property rights—must be sought in state court.

Providing the County with sufficient time to review and respond to the Petitions will equip the Board with a complete record and elucidation of Waverly's and the Spencers' arguments that will assist the Board in expeditiously making a fully informed and well-considered decision. The length of time that the County requests is modest and consistent with extensions that the Board has granted to other parties responding to a petition for declaratory order. *See Vermont Ry., Inc.—Petition for Declaratory Order*, FD 34364 (STB served July 3, 2003) (granting 30-day extension); *The Louisville and Jefferson Cnty. Riverport Auth.—Petition for Declaratory Order*, FD 36463 (STB served Dec. 3, 2020) (same).

WHEREFORE, and in view of the foregoing, the County respectfully requests the Board extend the time for responding to both Petitions in a consolidated reply to March 21, 2025.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is positioned above a horizontal line.

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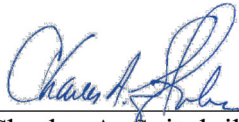
calexander@kaplankirsch.com

Counsel for King County, WA

Dated: February 10, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have on the 10th day of February 2025, caused to be served a copy of the foregoing Motion for Extension of Time upon all parties of record in this proceeding by email or by first-class mail.



Charles A. Spitulnik

Dated: February 10, 2025