

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
February 22, 2018
Part of
Public Record

CITY OF SAMMAMISH -)
) F.D. 36161
PETITION FOR A DECLARATORY ORDER)

REPLY ON BEHALF OF
RAILS TO TRAILS CONSERVANCY,
CASCADE BICYCLE CLUB,
FRIENDS OF THE EAST LAKE SAMMAMISH TRAIL
AND
FRIENDS OF THE BURKE GILMAN TRAIL
TO
CITY OF SAMMAMISH'S MOTION FOR LEAVE TO FILE A SURREPLY

Rails to Trails Conservancy ("RTC"), Cascade Bicycle Club ("Cascade"), Friends of the East Lake Sammamish Trail ("FELST"), and Friends of the Burke Gilman Trail ("FBGT") (collectively "Trail Users") reply in opposition to the motion by City of Sammamish ("City") to file a reply to the responses by King County and Trail Users to the City's petition for declaratory order.

On February 2, City of Sammamish by letter sought leave to submit a reply to the replies made by King County and Trail Users in this proceeding. Replies to replies are barred by 49 C.F.R. 1104.13(c) states that City of Sammamish's reply to a reply must be barred.

The City states that "good cause" exists to abrogate 49 C.F.R. 1104.13 in this proceeding in that King County filed its reply on Monday, January 29, 2018, rather than the formal due date of January 26, 2018. But the City claims no prejudice to

it from the County's failure to submit by Friday, close of business, and further disavows any effort to strike the County's reply. See City's letter, p. 1 and p.1 note 1. The County's admittedly nonprejudicial and unobjectionable tardiness does not justify the City's violation of a procedural rule, particularly in light of the City's failure to show any prejudice, advantage to the County, or disadvantage to the City, flowing from the County's filing on Monday rather than Friday.

In any event, the City seeks to violate 49 C.F.R. 1104.13 by filing a reply to Trail Users' reply as well. Trail Users were not tardy. The City offers no "good cause" justifying violation of section 1104.13 as to Trail Users at all. Further, allowing the City to file a reply, especially without providing a surreply opportunity to Trail Users, is prejudicial to the Trail Users. It serves only to burden other participants in this proceeding with additional unwarranted filings, and similarly burdens the Board.

In the end, the City simply wants the last word, in violation of 1104.13(c). Its surreply fails to show that County or Trail Users mischaracterized the United States District Court opinion which disposed, on preliminary injunction, the dispute between County and City on grounds unrelated to preemption. The arguments the City seeks to present in its letter amount solely to rebuttals and none are germane to creating a complete record.

This Board's recent decision in Adrian & Blissfield Rail Road Company – Pet. Dec. Order, F.D. 36148, served Jan. 31, 2018, slip at 3, is thus directly applicable. In that case, the Board rejected an effort by Adrian & Blissfield Rail Road Company (ADBF) to file a reply to a reply in a declaratory proceeding involving preemption issues similar to those City claims applicable here. The Board said

“the arguments [ADBF] intends to make on reply [are] all ... rebuttals to the arguments made by [the opposing party] and none ... are necessary to develop a more complete record. Thus, ADBF has not demonstrated good cause for waiving the Board's prohibition on replies to replies, 49 C.F.R. § 1104.13(c), and ABDF's petition for leave to file a reply will be denied. The Board will, likewise, reject ADBF's December 11, 2017 letter supplementing its petition to file a reply.”

Just as in the ADBF case, City of Sammamish fails to show that its proposed reply is anything other than a mere rebuttal (last word) attempt, or that it is otherwise necessary for a complete record. This is exactly the kind of situation in which leave to file a reply to a reply should be denied.

This Board should accordingly deny the City's motion for leave to file a reply to a reply.

Respectfully submitted,

s/

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s/

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Gilman Trail

Due: 22 February 2018

Certificate of Service

The undersigned certifies service of the foregoing upon all parties of record appearing in the STB Service List for FD 36161 as of 1/25/2018 including specifically Messrs. Pfol (for Sammamish) and Spitulnik (for King County) at their addresses of record, this 22nd day of February, 2018, by US mail, postage pre-paid, first class.

s/

Charles H. Montange