

JOSHUA C. BROWER

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August 22, 2018

Via E-File Only

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

246249

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

Re: STB Docket F.D. 35730
Ballard Terminal Railroad Co., LLC-
Lease & Op. Exemption-
Eastside Community Rail LLC

Dear Ms. Brown:

I represent Ballard Terminal Railroad Company (“BTRC”) with regard to the above-referenced matter. Please accept this letter as BTRC’s Answer/Response to Snohomish County’s Petition to Revoke filed on July 12, 2018 in the above-referenced docket (the “Petition”) and its subsequent Motion for Default (if any). BTRC is submitting this Answer/Response to: 1) clarify and correct statements made about it by Snohomish County; and 2) convey its position regarding continued common carrier freight operations and obligations within the Eastside Corridor.

BTRC had not previously submitted an Answer/Response in this proceeding because it believed this proceeding was/is intrinsically linked to Snohomish County’s parallel proceeding against ECR in Docket F.D. 35692; BTRC believes resolution of Docket F.D. 35730 depends on the outcome of Docket F.D. 35692. As such, BTRC’s Answer/Response in this proceeding hereby incorporates its Answer/Response in STB Docket F.D. 35692, a copy of which is attached hereto as Exhibit 1.

Sincerely,

BROWER LAW PS

/s/ *Joshua Brower*

JOSHUA C. BROWER

cc: Client

cc Parties of Record (via email only):

Allison I. Fultz, King County, WA

Charles H. Montagne, Snohomish County, WA

D. Engle, ECR LLC

Matt Cohen, City of Woodinville

EXHIBIT 1

Brower Law PS

JOSHUA C. BROWER

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August 7, 2018

Via E-File Only

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: STB Docket F.D. 35692
Eastside Community Rail, LLC-
Acq. & Op. Exemption-
GNP RLY, Inc.

Dear Ms. Brown:

I represent Ballard Terminal Railroad Company (“BTRC”) with regard to the above-referenced matter. Please accept this letter as BTRC’s Answer/Response to Snohomish County’s Petition to Revoke filed on July 12, 2018 in the above-referenced docket (the “Petition”). BTRC is submitting this Answer/Response to: 1) clarify and correct statements made about it by Snohomish County; and 2) convey its position regarding continued common carrier freight operations and obligations within the Eastside Corridor.

Answer/Response

1. BTRC Obtained STB Approval to Provide Service on the Eastside Line Pursuant to ECR’s Common Carrier Obligations that Run with the Reserved Freight Easement

The County correctly states on page 15 of the Petition that BTRC has been operating the freight line service within the Eastside Corridor pursuant to STB approval since approximately 2013. *See Ballard Terminal Railroad Co., LLC—Lease Exemption—Line of Eastside Community Rail, LLC*, F.D. 35730, served April 18, 2013.

While BTRC is not a party to ECR’s O&M Agreement, nor a third-party beneficiary thereof, it also is correct that BTRC’s Lease with ECR requires BTRC to meet and perform ECR’s obligations under the approved O&M Agreement.

2. Albeit Belatedly, BTRC Correctly Paid the Per-Carload Fee

506 Second Ave, Suite #1400, Seattle, WA 98104

On or about May 16, 2018 BTRC properly paid and delivered the \$10 per carload payment required pursuant to Section 9.4.a of the O&M Agreement. The O&M Agreement requires the fee be paid to the “Port,” which at the time owned the *entire* Eastside Corridor. Subsequently, the Port sold a portion of its interest in the Corridor to Snohomish County and the other portion to the City of Woodinville, WA, both of which own a pro-rata portion. BTRC delivered the \$10 per carload payment to Snohomish County and Woodinville in amounts reflecting their pro-rata ownership of the Corridor; the County, which owns approximate 82.05% of the Corridor received \$8.205 per carload while Woodinville, which owns the remaining approximately 17.95%, received \$1.795 per carload. BTRC received instructions from the City of Woodinville to deliver the payment pursuant to this pro-rata split.

1. BTRC is Willing To Continue Providing Common Carrier Service on the Eastside Corridor Subject to Obtaining Financial Assistance to Improve the County- and City-Owned Trackage.

The County is correct that the car-count on the line has consistently fallen over the past few years, as represented by Mr. Cole as early as 2013.¹ Since that time, the situation has worsened, not improved. If the Board is inclined to deny the County’s Petition, BTRC is willing to continue providing common carrier freight service within the Eastside Corridor, subject to obtaining sufficient financial assistance to repair and maintain the trackage so it can do so. BTRC is willing to work directly with the County to obtain and secure such financing.

Without financial assistance to repair and maintain the tracks, BTRC respectfully requests it be released from any common carrier obligations, if any, it may hold within the Eastside Corridor and those obligations be assigned to the County and City of Woodinville, the owners of the Corridor and trackage.

BTRC does not believe GNP can be obligated with or provide common carrier service because it is long-defunct, having been discharged in bankruptcy. Even before then, GNP lacked the physical resources (i.e., a locomotive, equipment) and staff to do so.

2. BTRC Did Not Make any Knowing Misrepresentations to the Board

BTRC has never knowingly made nor participated in making misrepresentations to this Board. BTRC, like the County and City of Woodinville, also has been bilked and lied to by Mr. Engle.

For years, BTRC has been dealing with Mr. Engle’s less than honest behavior. Upon information and good faith belief, BTRC believes Mr. Engle inappropriately and without legal authority misdirected to himself nearly \$55,000 in revenue owed to BTRC. Under the Lease, that money was to be paid directly to BTRC. Instead, Mr. Engle convinced the Bankruptcy Trustee and BTRC freight clients to deliver those funds to directly Mr. Engle who in turn never delivered them to BTRC. When BTRC learned of Mr. Engle’s actions, it undertook efforts to

¹ Mr. Cole retired from BTRC, is no longer involved in its operations in any way, is suffering from an age-related debilitating disease and is thus unable to provide any information, response or declarations related to this matter.

obtain payment, or, in the alternative, title to the freight easement so BTRC would no longer have to do business with Mr. Engle or ECR.

To date, BTRC has been unsuccessful in obtaining remuneration or the freight easement from Mr. Engle.

Until the County filed its Petition on July 12, 2018, BTRC believed in good-faith that ECR owned the freight easement. Like everyone else, BTRC was unaware that Mr. Engle may have successfully transferred ownership of the easement to his father and now ex-wife.

BTRC cannot comment on the legality or efficacy of Mr. Engle's attempt to transfer the freight easement from GNP to his father and now ex-wife. Until weeks ago, BTRC had no reason to believe anything other than GNP held title when it went through and was discharged from bankruptcy and that ECR obtained title as part of those proceedings.

Had BTRC known then what it knows now, it would have taken very different actions regarding the Eastside Corridor operations.

3. Conclusion

BTRC respectfully requests the Board direct it regarding continued common carrier freight obligations and operations within the Eastside Corridor, clarifying who has and must perform those obligations. Until then, and with the Board's direction, BTRC is willing to suspend all operations within the Corridor.

Sincerely,

BROWER LAW PS

/s/ Joshua Brower

JOSHUA C. BROWER