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Office of Proceedings
June 18, 2019
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June 18, 2019

By e-filing

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

Re: STB Docket No. NOR 42163, *Tri-City Railroad Company, LLC v. City of Richland and City of Kennewick, Washington*

Dear Ms. Brown:

Complainant Tri-City Railroad Company, LLC (TCRY) hereby respectfully requests leave to voluntarily withdraw its Complaint in the above proceeding.

Withdrawal is appropriate because, on additional review, it appears that there is no private right of action to enforce a decision of the Board by the means set forth in the Complaint, or otherwise.

The Board itself has authority to bring an action in U.S. District Court under 49 U.S.C. § 702 and 28 U.S.C. § 1336(a) to enforce its own decisions. TCRY urges the Board to bring such an action to enforce its decision in *Tri-City Railroad Company -- Petition for Declaratory Order*, 2016 WL 5904750 (Docket No. 35915, decision served September 14, 2016), in which the Board declared that a condemnation proposed by two Municipalities to extend a road over TCRY's track is federally preempted under 49 U.S.C. § 10501(b).¹ As explained in TCRY's Complaint, the Board's decision is being effectively nullified by decisions in Washington State Courts asserting jurisdiction over the federally-preempted condemnation. *City of Kennewick, et al. v. Port of Benton, et al.*, Superior Ct., Benton County, WA, No. 15-2-01039-2, decision entered on

¹ Alternatively, the Board could request that the local U.S. Attorney file the action to enforce the Board's decision under 49 U.S.C. § 703(a) and 28 U.S.C. § 1336(a).

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January 11, 2019; affirmed on interlocutory appeal, sub. nom. *City of Kennewick, et al. v. Tri-City Railroad Company*, Commissioner's decision, Wash. Ct. of Appeals, No. 36588-3-III, entered on April 18, 2019.²

If the Board or the U.S. Attorney were to bring an action to enforce the Board's decision in Finance Docket No. 35915, counsel for TCRY would provide active support for such an action.

TCRY is a small, family-owned, service-oriented Class III shortline rail carrier. The ends of justice will not be served if a municipality can run to a local Court to undo a Board decision that TCRY worked so diligently to obtain.

Respectfully submitted,

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² The Washington State Courts have relied on the Municipalities' contention that a proposal to relocate a sidetrack away from the path of the proposed crossing would eliminate the primary ground for the Board's determination of federal preemption. However, that is clearly a matter for a Petition to Reopen the Board's decision for changed circumstances under 49 U.S.C. § 1322(c), not a valid basis for assertion of State Court jurisdiction.