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FILED ELECTRONICALLY

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
October 28, 2013
Part of the Public
Record

Re: **Finance Docket No. 35731**
Ballard Terminal Railroad Company, L.L.C. -- Acquisition
and Operation Exemption -- Woodinville Subdivision

Docket No. AB-6 (Sub-No. 465X)
BNSF Railway Company -- Abandonment Exemption --
In King County, WA

Dear Ms. Brown:

In its August 22, 2013, decision on the City of Kirkland's Motion to Compel, the Board ordered that (1) comments on Ballard's petitions be filed by October 1, 2013; and (2) replies were to be filed by October 21. The comment filing date occurred during the federal government shutdown and, pursuant to the Board's post-shutdown order of October 18, 2013 ("post-shutdown order"), the filing date for comments on Ballard's petitions was extended to October 24, 2014.

The reply deadline of October 21 is not encompassed by the Board's post-shutdown order. However, that order made clear that if further modifications to a procedural schedule are necessary, parties are to file a request for extension in the case's docket. An extension of the October 21 reply deadline is necessary in the above dockets. The comment deadline was October 24 and replies, of course, must occur after the comment filing period.

Ballard requests that the Board enter an order giving the parties until January 13, 2014, to file replies. Under the prior procedural schedule, the Board issued a reply deadline which was twenty (20) days after the filing of comments. The January 13, 2014, date proposed by Ballard has become necessary because Ballard needs sufficient time to review the over 30,000 documents produced in discovery by the reactivation opponents. It is also Ballard's understanding that Central Puget Sound Regional Transit Authority ("Sound Transit") and King County, Washington's ("King County's"), document assembly and production is still ongoing.

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By way of background, Ballard issued written discovery requests to the four reactivation opponents (King County, Sound Transit, City of Kirkland, Washington ("Kirkland"), and Port of Seattle ("the Port")) on June 27, 2013. All but the Port requested extensions of time to respond through early August, and Ballard accommodated those requests. Kirkland commenced document production in July and produced additional documents in August. King County commenced production in August and made supplemental productions in August and September. Sound Transit commenced production in September, and its counsel has advised that an additional production is forthcoming in October.

Ballard requires time to review the documents that have already been produced, which are substantial in volume. Additionally, Ballard must be afforded sufficient time to review Sound Transit's forthcoming document production.¹ If the reply deadline is not extended to January 13, 2014, Ballard will be prejudiced in its ability fully review the evidence in possession of its opponents before filing a substantive, comprehensive reply.

The reactivation opponents have had the benefit of an expedited discovery schedule (Kirkland's discovery requests to Ballard demanded document production within 15 days) and four depositions ranging in time from 2-10 hours. Three of those opponents have simultaneously received several months of extra time to produce documents in response to Ballard's requests. Ballard should not be prejudiced for its opponents' delays in the production process. In the interests of fairness and in light of circumstances described herein, Ballard respectfully requests that the Board allow Ballard adequate time to review the documents produced by the reactivation opponents. Ballard thus requests that the Board enter an order extending the reply deadline to January 13, 2014.

Respectfully submitted,



Thomas C. Paschalis
Attorney for Ballard Terminal Railroad
Company, L.L.C.

TCP

cc: Parties on Certificate of Service (via email)

¹ Sound Transit's counsel advised counsel for Ballard that the forthcoming production would occur in mid-October. There has been no production as of the date of this filing, and Ballard cannot predict when those documents will be produced and how voluminous the production will be.