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ENTERED
Office of Proceedings
August 6, 2018
Part of
Public Record

For filing: 7 August 2018

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.

Request for Default Order

Dear Ms. Brown:

Enclosed for filing please find a request for a default order arising from, inter alia, Eastside Community Railroad's failure to make timely response, dissolution by the State, and the non-existence of the address for the most recent registered agent.

Thank you for your assistance in this matter.

Very truly,



Charles H. Montange
Counsel for Snohomish County (WA)

Encls.

cc. Counsel of Record (w/encl) per cert of service

BEFORE THE SURFACE TRANSPORTATION BOARD

Eastside Community Rail, LLC -)
Acquisition and Operation Exemption -) F.D. 35692
GNP RLY, Inc.)

REQUEST for a DEFAULT ORDER

Snohomish County ("County") on July 12, 2018, petitioned the Surface Transportation Board to revoke ab initio the acquisition and operation exemption issued to Eastside Community Rail, LLC ("ECR") in the decision served November 23, 2012 in Finance Docket ("FD") 35692. 49 CFR 1104.13(c) provides that replies are due "within 20 days after the pleading is filed on the Board, unless otherwise provided." Any reply by ECR (or others) was due on August 1, 2018. ECR has failed to reply. County requests this Board expeditiously to enter a default order revoking ECR's acquisition and operation exemption.

Additional information. In this proceeding, ECR has been represented by Myles Tobin with the law firm Fletcher & Sippel, as indicated in the pleadings to date and as set forth in the Board's e-library in the service list for this proceeding. 49 C.F.R. 1104.12 provides that when a party is represented by counsel, service on counsel is deemed sufficient. The County served ECR's listed counsel by Federal Express, next day

delivery, as stated in the certificate of service attached to County's Petition to Revoke. The Federal Express tracking service confirmed delivery on July 13 and 16, 2018.¹ The Washington Secretary of State per its website and telephone confirms that ECR is "administratively dissolved" for failure to meet annual registration requirements. The County nonetheless attempted to serve Douglas Engle, the last known principal and registered agent of ECR, at the most recent address of record for ECR's registered agent per the Washington Secretary of State.² The County's process server indicates that the address does not exist.³

As demonstrated in County's Petition to Revoke, the County now owns the Eastside Corridor insofar as that property is located in Snohomish County. ECR, in contrast, is a dissolved entity which due to the actions of its principal (Mr. Engle) owns no state law property interests in the corridor, for any purpose. Any continued occupancy of the Eastside Corridor by ECR thus amounts to a trespass under state law. This trespass in all events poses a material threat to Snohomish County. ECR originally occupied the Eastside Corridor pursuant to an operating and maintenance agreement requiring it to provide

¹ See Exhibit A.

² See Exhibit B (most recent address for ECR's registered agent).

³ See Exhibit C.

liability insurance covering the Port (and its successors, including the County) with liability insurance. ECR has failed to do so, and although a trespasser, has purported to lease portions of the corridor to a heavy equipment operator for storage. This puts the County at unjustifiable risk of liability arising from the actions of ECR and its invitees.⁴

ECR in the past has stated that the County cannot prevent ECR's non-rail activities on the corridor, whether insured or uninsured, because federal rail regulation preempts state law remedies, including presumably those for trespass. The County requests that this Board immediately revoke ECR's exemption ab initio pursuant to 49 C.F.R. 1150.32(c) so the County may use the processes of state law to remove uninsured ECR and its non-rail activities from the premises.⁵

ECR and GNP. Upon revocation of ECR's exemption, ECR's common carrier obligation would presumably redound by operation of law to ECR's predecessor, GNP Railway, Inc. ("GNP"), from

⁴ These matters are discussed in the County's Petition to Revoke already on file in this docket, and in Mr. Stowe's supporting Declaration.

⁵ In South Dakota Railway Co. - NITU and Termination of Modified Rail Certificate, F.D. 31874, served July 17, 2007, this Board at the request of a government entity owning the underlying right of way terminated the operating rights of a defunct entity. The relief sought by the government entity owning the underlying right of way in this proceeding is equivalent: revocation of a fraudulently obtained operating license by a defunct entity.

which the obligation was originally transferred. While the County has ascertained from the Washington Secretary of State that GNP continues to exist as a corporate entity, the County is advised that it is not licensed to conduct any business in the State. But more important, the Stowe Declaration attached to the County's Petition to Revoke in this proceeding, and documents associated therewith, show that GNP does not own any state law property interest in the Eastside Corridor. In particular, GNP by its then-CFO Douglas Engle long ago deeded any "railroad easement" it owned in the corridor to Earl Engle and Joanne Engle. If GNP now purported to operate a railroad on the premises, GNP would be a trespasser under state law just as is ECR. The County therefore reserves the right to file an adverse abandonment application against any common carrier obligation redounding to GNP, in the event GNP fails voluntarily and promptly to initiate an appropriate abandonment proceeding. In the course of any such abandonment proceeding, the County plans to "railbank" the line upon abandonment. But whether railbanked or not, the County plans to enter into an agreement with an "operator" who will operate the railbanked or abandoned line pursuant to a modified certificate of public convenience and necessity as provided in 49 C.F.R. 1150.21, et seq.⁶ In this

⁶ The underlying right of way and rail in Snohomish County are owned by Snohomish County and in King County by City of

fashion, the County may ensure legitimate long-term provision of common carrier service on its corridor by entities who are not trespassers, and who did not receive their federal rail licenses on the basis of false and misleading misrepresentations concerning property interests.

Relationship of default to BTRC. Snohomish County notes that ECR does not provide rail services on the Eastside Corridor. ECR, fraudulently misrepresenting its ownership of a freight easement in the property, instead has purported to lease the freight segment of the Eastside Corridor to Ballard Terminal Railroad Company (BTRC) for operation. BTRC in effect falsely

Woodinville. Upon abandonment, the property will qualify for a modified PCN under 49 C.F.R. 1150.21, et seq. See, e.g., D&I Railroad Co. - Operation - between Sioux Falls, SD and Sioux City, IA - Modified Rail Certificate, FD 29910, ICC served May 4, 1982. The issuance of a modified certificate keeps the line within STB jurisdiction for railbanking. See, e.g., id., FD 29910 (Sub no.1), served Oct. 6, 2004 (NITU issued upon termination of modified PCN). If the property is railbanked rather than abandoned, it still remains eligible for a modified PCN. See Ballard Terminal Railroad Company - Modified Rail Certificate, F.D. 33594, served Feb. 26, 1999 (BTRC operates in Ballard district of Seattle based on a modified PCN on a railbanked right of way). The City of Woodinville, which has sought intervention in this proceeding, has expressed concern that the Board not sever the Eastside Corridor in Snohomish County because of impacts on railbanked portions of the corridor in King County to the south. The relief ultimately sought by the County against ECR and GNP will be consistent with keeping the corridor intact under STB jurisdiction (either by a modified certificate or railbanking or both) such that no "severance" results. The relief also has the benefit of wresting the corridor out of the hands of trespassers at state law, who currently occupy it, ultimately without any service interruptions for shippers.

represented in its lease exemption that ECR owned property interests in the Eastside Corridor sufficient to grant a lease to BTRC. BTRC's lease exemption is therefore void ab initio. Moreover, since ECR owns no relevant property interest as state law, BTRC's lease can confer no rights on BTRC under state law. BTRC amounts to a trespasser at state law on the premises, for its lease is with the wrong party. The County therefore filed a petition to revoke the BTRC lease exemption on the same date (July 12) that the County filed a petition in this proceeding. BTRC was served by Federal Express per this Board's regulations as was ECR. BTRC is also in default of a timely reply.

BTRC stands in a somewhat different position from ECR. Unlike ECR, BTRC is providing freight rail service to three shippers on the Eastside Corridor. Unlike ECR, BTRC is providing insurance coverage for its rail operations (but not for ECR activities) to the County. If the BTRC lease exemption were immediately terminated, County shippers might be without service because GNP (to which would redound ECR's common carrier obligation) is no more able lawfully to provide freight rail service than ECR.

Fortunately, this Board has authority to provide for alternative rail service in situations like this where there would otherwise be a substantial deterioration or demonstrable

inadequacy in rail service, arising from lack of a carrier with legitimate rights on a rail line. See 49 C.F.R. Part 1146. The County wishes to secure a lawful operator to provide services to its shippers and is prepared to negotiate an agreement with an operator (which could be BTRC, if BTRC expresses an interest) to provide "alternative rail service" for those shippers. That arrangement could be implemented by an appropriate order by this Board under 49 C.F.R. 1146.1 conterminous with revocation ab initio of the BTRC lease exemption due to false and misleading claims of ownership on the part of ECR. That approach would ensure no disruption of service to the County's shippers on the County's rail line.

Respectfully submitted,



Charles H. Montange

426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739

c.montange@frontier.com

Attorney for Snohomish County

- Exhibit A - Fed Ex Tracking Service confirmation of delivery
- Exhibit B - WA Sec of State website (address of ECR reg. agent)
- Exhibit C - Confirmation of non-existent address for ECR agent

Certificate of Service

The undersigned certifies service of the foregoing inclusive of all exhibits on all parties of record (or their representatives) in F.D. 35692 by placing a copy in the U.S. Mail (or other express service), next business day delivery, on August 7, 2018, including specifically:

Myles Tobin, Esq.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875 (for ECR)

Charles A. Spitulnik, Esq.
Allison I. Fultz, Esq.
Kaplan Kirsch Rockwell
1001 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036 (for King County)

Joshua Brower, Esq.
506 2nd Ave. Suite 1400
Seattle, WA 98104 (for BTRC)

Matthew Cohen, Esq.
Hunter Ferguson, Esq.
Stoel Rives LLP
600 University St., Suite 3600
Seattle, WA 98101 (for Woodinville)



Exhibit A

Subject: FedEx Shipment 781824944602 Notification
From: TrackingUpdates@fedex.com (TrackingUpdates@fedex.com)
To: c.montange@frontier.com;
Date: Thursday, July 12, 2018 10:05 AM

This tracking update has been requested by:

Name: Charles Montange
E-mail: c.montange@frontier.com

Charles Montange sent Myles Tobin & Jeremy Berman of Fletcher & Sippel, LLC 1 FedEx Standard Overnight package(s). This shipment is scheduled to be sent on 07/12/2018.

Reference information includes:

Ship date: Jul 12, 2018
Scheduled delivery: Fri, 7/13/2018 by 3:00 pm
Service type: FedEx Standard Overnight
Packaging type: FedEx Large Box
Number of pieces: 1
Weight: 11.00 lb.
Special handling/Services: Deliver Weekday
Standard transit: 7/13/2018 by 3:00 pm
Status: Picked up

Tracking number: 781824944602

Shipper Information	Recipient Information
SHORELINE	Chicago
WA	IL
US	US

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:05 PM CDT on 07/12/2018.

The shipment is scheduled for delivery on or before the scheduled delivery displayed above. FedEx does not determine money-back guarantee or delay claim requests based on the scheduled delivery. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx customer support representative.

To track the status of this shipment online, please use the following: <https://www.fedex.com/apps/fedextrack/?action=track&tracknumbers=781824944602&language=en&opco=FX&clienttype=ivother>

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

Subject: FedEx Shipment 781824944602 Delivered
From: TrackingUpdates@fedex.com (TrackingUpdates@fedex.com)
To: c.montange@frontier.com;
Date: Friday, July 13, 2018 7:09 AM

This tracking update has been requested by:

Name: Charles Montange
E-mail: c.montange@frontier.com

Our records indicate that the following shipment has been delivered:

Ship date: Jul 12, 2018
Signed for by: S.DELIA
Delivery location: Chicago, IL
Delivered to: Receptionist/Front Desk
Delivery date: Fri, 7/13/2018 9:06 am
Service type: FedEx Standard Overnight
Packaging type: FedEx Large Box
Number of pieces: 1
Weight: 11.00 lb.
Special handling/Services: Deliver Weekday
Standard transit: 7/13/2018 by 3:00 pm

Tracking number: 781824944602

Shipper Information	Recipient Information
SHORELINE	Chicago
WA	IL
US	US

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:09 AM CDT on 07/13/2018.

All weights are estimated.

The shipment is scheduled for delivery on or before the scheduled delivery displayed above. FedEx does not determine money-back guarantee or delay claim requests based on the scheduled delivery. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx customer support representative.

To track the status of this shipment online, please use the following: <https://www.fedex.com/apps/fedextrack/?action=track&tracknumbers=781824944602&language=en&opco=FX&clienttype=ivother>

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.



August 6, 2018

Dear Customer:

The following is the proof-of-delivery for tracking number **781824944602**.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	A.HARRISON	Delivery location:	Chicago, IL
Service type:	FedEx Standard Overnight	Delivery date:	Jul 16, 2018 10:11
Special Handling:	Deliver Weekday		

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

Shipping Information:

Tracking number:	781824944602	Ship date:	Jul 12, 2018
		Weight:	11.0 lbs/5.0 kg

Recipient:
Chicago, IL US

Shipper:
SHORELINE, WA US

Thank you for choosing FedEx.

Exhibit B

BUSINESS INFORMATION

Business Name:

EASTSIDE COMMUNITY RAIL, LLC

UBI Number:

603 083 727

Business Type:

WA LIMITED LIABILITY COMPANY

Business Status:

ADMINISTRATIVELY DISSOLVED

Principal Office Street Address:

Principal Office Mailing Address:

Expiration Date:

02/28/2016

Jurisdiction:

UNITED STATES, WASHINGTON

Formation/ Registration Date:

02/02/2011

Period of Duration:

PERPETUAL

Inactive Date:

07/01/2016

Nature of Business:

REGISTERED AGENT INFORMATION

Registered Agent Name:

DOUGLAS ENGLE

Street Address:

1011 MAPLE AVE, SNOHOMISH, WA, 98290-0000, UNITED STATES

Mailing Address:

GOVERNORS

Title	Governors Type	Entity Name	First Name	Last Name
GOVERNOR	INDIVIDUAL		DOUGLAS	ENGLE
GOVERNOR	INDIVIDUAL		ERNEST	WILSON

BUSINESS INFORMATION

Business Name:

EASTSIDE COMMUNITY RAIL, LLC

UBI Number:

603 375 179

Business Type:

WA LIMITED LIABILITY COMPANY

Business Status:

ADMINISTRATIVELY DISSOLVED

Principal Office Street Address:

1011 MAPLE AVE, SNOHOMISH, WA, 98290, UNITED STATES

Principal Office Mailing Address:

Expiration Date:

02/28/2015

Jurisdiction:

UNITED STATES, WASHINGTON

Formation/ Registration Date:

02/09/2014

Period of Duration:

PERPETUAL

Inactive Date:

06/01/2015

Nature of Business:

REGISTERED AGENT INFORMATION

Registered Agent Name:

DOUGLAS ENGLE

Street Address:

1011 MAPLE AVE, SNOHOMISH, WA, 98290, UNITED STATES

Mailing Address:

GOVERNORS

Title	Governors Type	Entity Name	First Name	Last Name
GOVERNOR	INDIVIDUAL		DOUGLAS	ENGLE

Exhibit C

TO: EASTSIDE COMMUNITY RAIL, LLC
Plaintiff/Petitioner

vs.

Defendant/Respondent

Cause No.:
Hearing Date:

**DECLARATION OF NON-SERVICE OF:
PETITION TO REVOKE; DECLARATION OF THOMAS P.
STOWE AND EXHIBITS IN SUPPORT**

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

Declarant states s(he) attempted to serve **EASTSIDE COMMUNITY RAIL LLC c/o DOUGLAS ENGLE, REGISTERED AGENT** at the address of: **1011 MAPLE AVE, SNOHOMISH, WA 98290** and was unable to effect service for the following reasons:
7/31/2018 4:11 PM: No such address

Service Fee Total: **\$122.00**

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED this 1st day of August, 2018.



Sherri Rose Camerer, Reg. # 2018-03, Washington

ORIGINAL PROOF OF NON-SERVICE

PAGE 1 OF 1

Tracking #: **0026329652**



For: Pres. Atty- Snohomish
Ref #: **FD35692 (EASTSIDE COMMUNITY RAIL)**

