

National Association of Reversionary Property Owners (NARPO)

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Surface Transportation Board
Cynthia Brown, Administrator
395 E Street
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ENTERED
Office of Proceedings
September 7, 2018
Part of
Public Record

September 6, 2018

COMMENT LETTER

Re: Eastside Community Rail, LLC - Acquisition and Operation Exemption -
GNP Rly, Inc.
(Woodinville Subdivision, MP 23.8 to MP 38.25), STB Finance Docket No.
35692

Ballard Terminal Railroad Company, LLC - Lease Exemption - Eastside
Community Rail, LLC (Woodinville Subdivision, MP 23.8 to MP 38.25), STB
Docket Finance Docket No. 35730

Dear Ms. Brown:

Yesterday, September 5, 2018 the STB posted a letter filing from King County, Washington through one of their contract attorneys concerning the two above captioned FDs. The gist of the letter was King County and all the other many culprits involved with these two FDs plus AB 6-463X, AB 6-464X, AB 6-465X and AB 6-380X wanted the STB to be sure that the lines of railroad associated with these abandonments do not get dead ended and thus not be in the National Rail System (NRS). Of course if a line of railroad is not in the National Rail System, that line would not be eligible for a Notice of Interim Trail Use (NITU).

NARPO would also bring to light some of the ICC and STB precedence on the above issue of a rail line being in the the NRS and that relation to a possible NITU. See, RLTD v STB, 166 F3d 808, 814, 6th Cir. (1999), which was cited in AB 6-383X, and AB 290-168. Also see 2 ICC 2d 591 (1986) which are the original NITU/CITU rules promulgated by the ICC for the implementation of 16 USC 1247(d).

There is another major part of the NITU rules the culprits in these FDs and ABs involved seem to have forgotten, and NARPO would like to shine a little light on them. The other major part of the NITU rules is that the right of way subject to a NITU must be able to be reactivated to active rail

service if a rail carrier, not just the abandoning carrier, so desires to supply rail service to the area in the NITU. Now if we look at AB 6-465X which is one of the abandonments involved in the NITUs herein, from MP 11.25 in Bellevue, Washington to MP 23.80 in Woodinville, Washington, is supposed to be under a NITU issued by the STB back in 2009. But if you look at the two photos NARPO has attached to this letter, you will see the whole 100 feet of right of way is taken up by light rail stations and overhead trestles. There is private business property abutting right up next to the light rail right of way which is the old railroad right of way. One has to wonder just how a railroad could be built in this area if a carrier wants to reinstitute service to the industries in the area. It is hard to imagine they would tear down the \$3 billion light rail to put in a new freight rail service, but that is what the NITU rules have in them. The way Congress got 16 USC 1247(d) passed was to sell the bill on the idea that they were preserving freight rail service to an area.

On AB 6-465X which is the right of way King County/Metro built the light rail on is dead ended just 2,000 feet to the south as BNSF consummated the abandonment for a 0.8 mile part of this rail line in AB6-463X in 2008. So the industrial area between the north end of AB 6-463X and the where the light rail totally cover the right of way cannot ever be served by freight rail if they wanted it. The two attached pictures were taken at NE 8th Street in Bellevue. The light rail blocks the whole old railroad right of way from NE 6th all the way to the equivalent NE16th. NE 8th would be MP 12.2 and NE 16th would be MP 13.2 on BNSF's plat maps. Now whether or not there is possible needed rail service to the area is of no importance as the rules specify that the right of way be available to reactivation which in this case the right of way is not available for reactivation.

Also in the King County letter filed on September 5, 2018, the attorney mentioned that much litigation has occurred because of the Abandonments and Finance Dockets mentioned in the letter. While that is true, the litigation has resulted in almost \$1 billion dollars in U.S. taxpayer money being paid out or soon to be paid out to the abutting property owners in these four abandonments who had the wherewithal to take their taking cases to the U.S. Court of Claims. But only half of the possible compensation claims from these abandonments have been paid or pending. Just one Claims Court case in AB 6-464X resulted in a \$147 million settlement for the 50 property owners in the court suit. You can do the math but that is \$300,000 per property owner and each property owner only had 80 feet of the right of way. One has to wonder what Congress really thought when they passed what is now known as the federal Rails To Trails Act and codified as 16 USC 1247(d).

NARPO would like the STB to investigate the rule breaking of King County/Metro and come up with a solution that will make the right of way in AB 6-465X available for reactivation.

I certify that I have served this letter and photos on all parties of record via email.

Signed Richard Welsh Dated September 6, 2018

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