

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
January 23, 2014
Part of
Public Record

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON (Woodinville Subdivision)**

STB Finance Docket No. 35731

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND
OPERATION EXEMPTION – WOODINVILLE SUBDIVISION – VERIFIED PETITION
FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

**MOTION OF THE CITY OF KIRKLAND, WASHINGTON, KING COUNTY,
WASHINGTON, AND CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY TO (1) ISSUE DEPOSITION SUBPOENAS ON AMERICANWEST BANK
AND COASTAL COMMUNITY BANK, (2) ENTER A MODIFIED PROCEDURAL
SCHEDULE, AND (3) GIVE THIS MOTION EXPEDITED CONSIDERATION**

Communications with respect to this pleading should be addressed to:

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Counsel for City of Kirkland, Washington

Counsel for King County, Washington and
Central Puget Sound Regional Transit Authority

Dated: January 23, 2014

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STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
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**MOTION OF THE CITY OF KIRKLAND, WASHINGTON, KING COUNTY,
WASHINGTON, AND CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY TO (1) ISSUE DEPOSITION SUBPOENAS ON AMERICANWEST BANK
AND COASTAL COMMUNITY BANK (2) ENTER A MODIFIED PROCEDURAL
SCHEDULE, AND (3) GIVE THIS MOTION EXPEDITED CONSIDERATION**

Pursuant to 49 U.S.C. § 721(d) and 49 C.F.R. § 1117.1, the City of Kirkland,
Washington, King County, Washington, and Central Puget Sound Regional Transit Authority
(collectively, “the Regional Parties”), respectfully request the Surface Transportation Board
 (“Board”) to:

1. Issue subpoenas to AmericanWest Bank and Coastal Community Bank (collectively, the “Banks”) to attend a deposition;
2. Enter a modified Procedural Schedule to require responses to this motion by January 27, 2014; and
3. Give this Motion expedited consideration in light of the short period of time the Board has allowed for further discovery and supplemental evidentiary submissions in this matter.

In support of their Motion, the Regional Parties state as follows:

ARGUMENT

This Motion is a follow-up to the Motion filed by the Regional Parties on January 17, 2014 in which they sought, *inter alia*, the issuance of subpoenas to the Banks requesting *only* the production of documents. The Regional Parties also requested that the Board issue subpoenas to several other third-parties compelling both the production of documents and attendance at a deposition.

Based on initial conversations with representatives of the Banks, the Regional Parties now believe that a short deposition of a representative of each of the Banks is necessary to fully understand the basis for the letters the Banks provided in apparent support of Ballard Terminal Railroad Company, L.L.C. ("BTR"). Specifically, it appears that each Bank most likely has only a handful of responsive documents in its possession, most of which, the Regional Parties understand, are drafts of the support letters. Neither of the Banks appears to have documents that explain the financial bases for the support letters or the reasons why the Banks were willing to provide those letters. Nor does it appear that there are documents that set forth the extent, if any, of the kind of financial commitment the Banks may be willing to make to BTR. Because that information is essential to understand whether the letters from the Banks indicate that BTR has the financial resources to initiate and carry out service on the Line, an issue the Board has highlighted as the focus of further discovery and its inquiry here, the Regional Parties need to depose the Banks. A copy of the proposed subpoenas is attached as Exhibit 1 and 2, respectively. *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, Docket No. FD 35731 (STB served January 15, 2014) (allowing for further discovery and comments on BTR's late-filed supporting materials).

Counsel for Kirkland has been in communication with the Banks about the document production and has informed the Banks that the Regional Parties would also seek a subpoena for depositions. AmericanWest Bank confirmed that it would not oppose either request. Coastal Community Bank has confirmed that it does not intend to oppose the request for a document subpoena. When asked about the deposition subpoena request, the Coastal Community Bank representative did not raise any opposition but was not able to affirmatively confirm that the bank would not oppose the request before the filing of this motion.

Because the issues raised in this Motion are virtually identical to the issues raised in the Regional Parties' January 17, 2014 Motion, the Regional Parties respectfully request the Board to order BTR to file any opposition to this Motion by January 27, the same date the Board set for responses to the January 17 Motion pursuant to its Order dated January 22, 2014. *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, Docket No. FD 35731 (STB served January 22, 2014) (setting procedural schedule).

CONCLUSION

For the foregoing reasons, the Regional Parties respectfully request the Board to (1) issue the subpoenas attached as Exhibits 1 and 2; (2) enter a modified procedural schedule to require the third parties to reply to this Motion by January 27, 2014; and, (3) to give this motion expedited consideration and consider it at the same time it considers the Regional Parties' January 17, 2014 Motion.

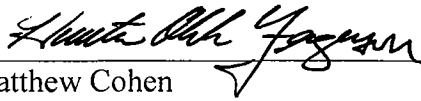
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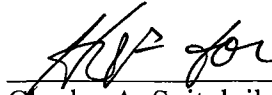
Respectfully submitted,



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Counsel for City of Kirkland, Washington

Dated: January 23, 2014



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Counsel for King County, Washington and
Central Puget Sound Regional Transit Authority

EXHIBIT 1

BEFORE THE SURFACE TRANSPORTATION BOARD

**STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.
—ACQUISITION AND EXEMPTION—
WOODINVILLE SUBDIVISION**

**STB DOCKET NO. AB-6 (SUB. NO. 465X)
BNSF RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

**SUBPOENA TO AMERICANWEST
BANK TO TESTIFY IN A
DEPOSITION IN A PROCEEDING
BEFORE THE SURFACE
TRANSPORTATION BOARD**

DATE OF DEPOSITION:

February 6, 2014

To: AmericanWest Bank
c/o Corporation Service Company,
Registered Agent
300 Deschutes Way SW, Suite 304
Tumwater, WA 98501

AmericanWest Bank
Attn: Nathan Engman
2237 NW 57th Street
Seattle, WA 98107
Phone: (206) 784-2200
Fax: (206) 784-6650

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, NATHAN ENGMAN OR AN AUTHORIZED SPEAKING AGENT IS HEREBY COMMANDED to appear at the offices of STOEL RIVES LLP, 600 University Street, Suite 3600, Seattle, Washington, 98101, at **9:00 a.m. on FEBRUARY 6, 2014**, or such other place and time as the parties may agree, then and there to testify at the request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority (collectively, “the Regional Parties”), in the above-entitled matter, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by the Regional Parties’ attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s for exemption from regulation under 49 U.S.C. § 10902 to reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the “Line”) and to partially vacate the NITU Order issued for the Line. Your testimony shall be subject to continuance or adjournment from

time to time or place to place until completed and is to be taken for the reason that you will give evidence relevant to Ballard's petitions. Your testimony will be recorded by verbatim transcript.

DATED: January __, 2014.

STOEL RIVES LLP

Matthew Cohen, WSBA No. 11232

mcohen@stoel.com

Hunter Ferguson, WSBA No. 41485

hoferguson@stoel.com

Attorneys for the City of Kirkland, Washington

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned persons on January __, 2014 in the manner noted below.

DATED at Seattle, WA this __th day of January 2014.

Leslie Lomax, Steel Rives LLP, Practice Assistant

Individual or Entity Served	Method of Service or Delivery
AmericanWest Bank Attn: Nathan Engman 2237 NW 57th Street Seattle, WA 98107 Phone: (206) 784-2200 Fax: (206) 784-6650	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☒ Facsimile
AmericanWest Bank Attn: Ashley Sargeant Senior Operations Analyst Craig Moore Deputy General Counsel 110 South Ferrall Street Spokane, WA 99202 ashley.sargeant@awbank.net craig.moore@awbank.net	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Myles L. Tobin, Esq. Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Pete Ramels Andrew Marcuse	☒ U.S. Mail ☐ Hand Delivery/Messenger

Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	☒ Email ☐ Facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County and Sound Transit</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

EXHIBIT 2

BEFORE THE SURFACE TRANSPORTATION BOARD

**STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.
—ACQUISITION AND EXEMPTION—
WOODINVILLE SUBDIVISION**

**STB DOCKET NO. AB-6 (SUB. NO. 465X)
BNSF RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

**SUBPOENA TO COASTAL
COMMUNITY BANK TO TESTIFY
IN A DEPOSITION IN A
PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

DATE OF DEPOSITION:

February 6, 2014

To: Coastal Community Bank
c/o Greg Starup
Colby Branch
2817 Colby Avenue
Everett, WA 98201
Phone: (425) 258-5299
Fax: (425) 257-0521

Administrative Office
c/o Director or Greg Starup
10520 19th Ave SE
Everett, WA 98208

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, GREG STARUP OR AN AUTHORIZED SPEAKING AGENT IS HEREBY COMMANDED to appear at the offices of STOEL RIVES LLP, 600 University Street, Suite 3600, Seattle, Washington, 98101, at **2:00 p.m. on FEBRUARY 6, 2014**, or such other place and time as the parties may agree, then and there to testify at the request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority (collectively, “the Regional Parties”), in the above-entitled matter, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by the Regional Parties’ attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s for exemption from regulation under 49 U.S.C. § 10902 to reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the “Line”) and to partially vacate the NITU Order issued for the Line. Your testimony shall be subject to continuance or

adjournment from time to time or place to place until completed and is to be taken for the reason that you will give evidence relevant to Ballard's petitions. Your testimony will be recorded by verbatim transcript.

DATED: January __, 2014.

STOEL RIVES LLP

Matthew Cohen, WSBA No. 11232

mcohen@stoel.com

Hunter Ferguson, WSBA No. 41485

hoferguson@stoel.com

Attorneys for the City of Kirkland, Washington

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned persons on January __, 2014 in the manner noted below.

DATED at Seattle, WA this __th day of January 2014.

Leslie Lomax, Steel Rives LLP, Practice Assistant

Individual or Entity Served	Method of Service or Delivery
Coastal Community Bank – Colby Branch Attn: Greg Starup VP, Mgr. SBA Lending Unit 2817 Colby Avenue Everett, WA 98201 Phone: (425) 258-5299 Fax: (425) 257-0521	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☒ Facsimile
Coastal Community Bank Attn: Angela Anderson VP Operations/ISO 16419 Smokey Point Blvd. Arlington, WA 98223 Fax: 360-436-4991 angela@coastalbank.com	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☒ Facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Myles L. Tobin, Esq. Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email

Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	☐ Facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County and Sound Transit</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

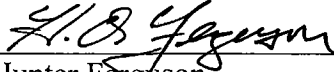
CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the of the foregoing Motion of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority to (1) Issue Deposition Subpoenas on American West Bank and Coastal Community Bank, (2) Enter a Modified Procedural Schedule, and (3) Give This Motion Expedited Consideration to be served upon the following parties of record and other interested persons on January 23, 2014, in the manner indicated below:

Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile

Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
AmericanWest Bank Attn: Nathan Engman 2237 NW 57th Street Seattle, WA 98107 Phone: (206) 784-2200 Fax: (206) 784-6650	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☒ Facsimile
AmericanWest Bank Attn: Ashley Sargeant Senior Operations Analyst Craig Moore Deputy General Counsel 110 South Ferrall Street Spokane, WA 99202 ashley.sargeant@awbank.net craig.moore@awbank.net	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Coastal Community Bank – Colby Branch Attn: Greg Starup VP, Mgr. SBA Lending Unit 2817 Colby Avenue Everett, WA 98201 Phone: (425) 258-5299 Fax: (425) 257-0521	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☒ Facsimile

Coastal Community Bank Attn: Angela Anderson VP Operations/ISO 16419 Smokey Point Blvd. Arlington, WA 98223 Fax: 360-436-4991 angela@coastalbank.com	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☒ Facsimile
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Hunter Ferguson
Stoel Rives LLP
Counsel for the City of Kirkland

Dated this 23d day of January, 2014