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July 8, 2019

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 8, 2019
Part of
Public Record

Re: **Docket No. NOR 42163**
Tri-City Railroad Company, LLC v. City of Kennewick, Washington, et al.

Dear Ms. Brown:

The City of Kennewick, Washington, and the City of Richland, Washington (collectively, the “Cities”) hereby respond to the June 18, 2019 request of Tri-City Railroad Company, LLC (“TCRY”) for – (1) permission to withdraw the above-docketed complaint; and (2) Surface Transportation Board (“Board”) “enforcement” of its decision in Tri-City Railroad Company – Petition for Declaratory Order, Docket No. FD 35915 (STB served Sep. 14, 2016) (“TCRY-Dec. Order”). The Cities agree that it would be appropriate for the Board to permit TCRY to withdraw its complaint, but the Cities disagree with TCRY’s call for Board “enforcement” of TCRY-Dec. Order. As explained below, there is no need for enforcement, and, in any event, the nature of the Board’s 2016 decision does not support further agency action. Accordingly, TCRY’s enforcement request must be denied.

Further eminent domain proceedings before the Benton County Superior Court are not in defiance of the Board’s holdings in TCRY-Dec. Order or ICCTA,¹ as the Superior Court and State of Washington Court of Appeals have both recently confirmed. Indeed, the Cities have responded proactively to the guidance provided by the Board, and the state courts have conscientiously interpreted and applied TCRY-Dec. Order.² TCRY’s insistence that the Cities and the state court are acting to “undo” TCRY-Dec. Order is based upon TCRY’s self-serving mischaracterization of the facts and law.

¹ ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 83, codified at 49 U.S.C. §§ 10101, et seq.

² Contrary to TCRY’s arguments, the Board, in TCRY-Dec. Order, neither ordered the Cities to desist from further efforts to establish a crossing, nor pronounced categorically that *any* crossing at Richland Junction, regardless of circumstances, would unduly interfere with TCRY’s operations.

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Moreover, the Board's decision in TCRY-Dec. Order did not direct the Cities to take – or to desist from taking – any particular action. The Board issued no “cease and desist” order, injunction, or any other such mandate, and, as such, TCRY-Dec. Order “imposed no directive or obligation”³ upon the Cities or the involved state court. Instead, the Board provided useful guidance to the parties and the court, and, thus, “there is nothing [for the Board] to enforce.”⁴ Because the Board did not order substantive relief in TCRY-Dec. Order, TCRY's call for “enforcement” must be denied,⁵ and the state court should be afforded the discretion to continue with condemnation proceedings within its purview and expertise.⁶

For these reasons, TCRY's request to withdraw its formal complaint is appropriate and should be granted, but its supplemental request for Board “enforcement” is unwarranted and contrary to law, and accordingly must be denied.

Respectfully submitted,

By: 

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cc: Parties on Certificate of Service

³ Union Pacific Railroad Company – Petition for Declaratory Order, Docket No. FD 35504 (STB served Oct. 10, 2014) at 2.

⁴ Id.

⁵ See City of Miami v. ICC, 669 F.2d 219, 221-222 (5th Cir. Unit B 1982) (citing Port of Boston Marine Terminal Association v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71 (1970)).

⁶ See Cities Answer at 10-11.