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

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Office of Proceedings
December 18, 2018
Part of
Public Record

Re: Finance Docket No. 36261, Ballard Terminal Railroad Company,
L.L.C. – Petition for Declaratory Order

Dear Ms. Brown:

The undersigned represents the City of Seattle, Washington (“City”), which is not only directly affected by the above-referenced Petition for Declaratory Order (“Petition”) but, indeed, is referred to by the Petitioner as the “Respondent” (Certificate of Service, following p. 37). The Petition was filed on December 12, 2018. The City is the owner in fee of the real property underlying the rail line in dispute, is successor-in-interest to an operating agreement with the Petitioner’s railroad, and accordingly is referred to by name several times in the Petition, beginning on page 1. Under 49 C.F.R. § 1104.13(a), replies to the Petition are due to be filed within 20 days, or by January 2, 2019.

In light of the length of the Petition and its accompanying Exhibits, and in view of the upcoming holidays, we hereby request an extension, until Wednesday, January 23, 2019, to file the City’s Reply to the Petition, which is the deadline Petitioner Ballard Terminal Railroad Company, L.L.C. (“Ballard Terminal”) itself proposed (Petition at 6).

Ballard Terminal further requested that it be allowed to file what it refers to as “rebuttal” 21 days later. *Id.* Under the Board’s Rules, of course, there are generally only pleadings and replies, and replies (or “rebuttals”) to replies generally are not permitted (49 C.F.R. §1104.13(c)). This is especially true when replies to replies are not necessary to complete the record or are not relevant to the Board’s rationale. *E.g., Consolidated*

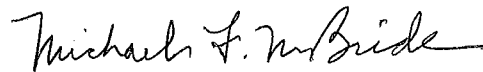
Rail Corp. – Abandonment Exemption – in Hudson County, N.J., No. AB-167(Sub-No. 1189X), 2015 WL 2442823 at *5 (served May 22, 2015).

Here, the Board is being asked to exercise its discretion to institute a declaratory proceeding. The Board's usual course in dealing with petitions for declaratory order (or with a petition for rulemaking) is first to decide whether to institute a proceeding, and for that purpose, the Board does not need more than the Petition itself, and any Replies thereto. *E.g.*, Finance Docket No. 35504, *Petition for Declaratory Order – Union Pacific Railroad Company* (served Dec. 12, 2011) at 2-4; Ex Parte No. 679, *Association of American Railroads -- Petition Regarding Methodology for Determining Revenue Adequacy* at 3-5 (served October 24, 2008)(even in a matter of such complexity as whether to use replacement costs instead of book costs in valuing railroad assets in "revenue adequacy" proceedings, the Board determined whether to exercise its discretion to institute a rulemaking proceeding on the basis of only the Petition and Replies).

Accordingly, the Board should not now provide a date for the filing of replies without knowing if replies or rebuttals will be necessary or useful to it in determining whether to institute a declaratory proceeding herein. Surely, in light of the length of the Petition and accompanying materials, Ballard Terminal cannot now argue that it has not had an adequate opportunity to present the Board with a complete record to determine whether to institute a declaratory proceeding. *Compare, Oakland Global Rail Enterprises – Petition for Declaratory Order*, F.D. 36168, 2018 WL 3655584 at 2 n.3 (served Aug. 1, 2018) (good cause required to be allowed to file a reply to a reply).

Thank you in advance for your consideration of this requested extension of time for the filing of the Reply of the City to the Petition, and for the Board's determination now whether to permit Petitioner to file a "Rebuttal" to the City's Reply.

Respectfully submitted,



Michael F. McBride

Attorney for the City of Seattle,
Washington

cc (via email): Joshua C. Allen Brower, Esq.
Patrick J. Schneider, Esq.