

SERVICE DATE – SEPTEMBER 9, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42163

TRI-CITY RAILROAD COMPANY, LLC v.
CITY OF RICHLAND, WASH., AND CITY OF KENNEWICK, WASH.

Decided: September 6, 2019

On May 13, 2019, Tri-City Railroad Company, LLC (Tri-City), filed a “complaint and petition for preliminary injunction under 49 U.S.C. § 1321(b)(4)” against the City of Richland, Wash. (Richland), and the City of Kennewick, Wash. (Kennewick) (collectively, the Cities). Tri-City alleges that the Cities are proceeding with condemnation of land for a road crossing over Tri-City’s tracks under “the purported authority of a decision of a Washington State Court that unlawfully failed to give effect to an earlier Board declaration that condemnation of the same land for the same crossing would be federally preempted.”¹ (Compl. 2.)

On May 24, 2019, the Port of Benton, Wash. (the Port), filed a petition to intervene in the proceeding, along with reply comments.² On June 3, 2019, the Cities filed a consolidated answer to Tri-City’s complaint, motion to dismiss the complaint, and reply in opposition to the petition for preliminary injunction. According to the Cities, Tri-City has failed to state a claim for which the Board can grant relief and has failed to meet its burden for a preliminary injunction. (Answer 6-9.)

¹ Tri-City refers to the Board’s decision in Tri-City Railroad—Petition for Declaratory Order (Declaratory Order Decision), FD 35915 (STB served Sept. 14, 2016), in which the Board concluded that the Cities’ proposed crossing would unreasonably interfere with Tri-City’s present and future railroad operations on one of the tracks it would cross and that, therefore, condemnation of the railroad right-of-way to permit construction of an at-grade crossing at that location pursuant to state law is preempted under 49 U.S.C § 10501(b). Here, Tri-City alleges that the Cities have amended their condemnation petition in state court to propose a track relocation, whereby Tri-City’s parallel track would be relocated so that it would be out of the path of the proposed road crossing. (Compl. 6.)

² On June 7, 2019, Tri-City filed a response to the Port’s petition to intervene and rebuttal to reply comments under 49 C.F.R. § 1104.13(a).

On June 18, 2019, Tri-City filed a request for leave to voluntarily withdraw its complaint, stating that it appears that there is no private right of action to enforce a decision of the Board by the means set forth in the complaint, or otherwise. Tri-City acknowledges that the remedy it seeks is unavailable but states that the Board could go to court to “enforce” the Declaratory Order Decision in connection with the Cities’ amended condemnation petition.

On July 8, 2019, the Cities filed in response to Tri-City’s request, supporting Tri-City’s request for leave to voluntarily withdraw its complaint and stating that there was no need or support for the Board attempting to “enforce” the Declaratory Order Decision.

Tri-City’s request for leave to withdraw its complaint and petition for preliminary injunction will be granted, and the proceeding will be dismissed without prejudice.

It is ordered:

1. Tri-City’s request for leave to withdraw its complaint and petition for preliminary injunction is granted, and the proceeding is dismissed without prejudice.
2. The Port’s petition to intervene is denied as moot.
3. The Cities’ motion to dismiss Tri-City’s complaint is denied as moot.
4. This decision is effective on the date of service.

By the Board, Allison C. Davis, Director, Office of Proceedings.