

SERVICE DATE – LATE RELEASE JUNE 14, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.—ACQUISITION AND  
OPERATION EXEMPTION—WOODINVILLE SUBDIVISION

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

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

Decided: June 14, 2013

On April 2, 2013, Ballard Terminal Railroad Company, L.L.C. (Ballard), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets in a line of railroad (the Line) currently owned by the City of Kirkland (the City) and the Port of Seattle in King County, Wash., and currently subject to railbanking/interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d). The petition for exemption was filed concurrently with a Ballard petition to partially vacate the Notice of Interim Trail Use issued in Docket No. AB 6 (Sub-No. 465X) for the Woodinville Subdivision (which comprises the Line and an additional 1.35 miles), pursuant to which King County, Wash. is the trail sponsor.

In a decision served and published in the Federal Register on April 19, 2013, the Board instituted an exemption proceeding pursuant to 49 U.S.C. § 10502(b) and sought comments from interested persons on Ballard's petitions. Pursuant to the schedule set there, comments are due by June 18, 2013, and replies by July 18, 2013.

On June 12, 2013, the City filed an emergency motion requesting the Board to issue an order compelling Ballard to produce documents requested in discovery, and a subpoena directing Eastside Community Rail, LLC (ECR) and its Managing Director, Doug Engle,<sup>1</sup> to produce

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<sup>1</sup> The City explains that ECR holds a long-term freight easement on the contiguous rail line between Woodinville and Snohomish, Wash., which it leases to Ballard. The City further asserts that Mr. Engle is a de facto partner with Ballard in efforts to secure financing and customers for rail service on the Line.

certain communications. In its motion, the City requested that the Board issue an order and subpoena no later than June 14, 2013, directing Ballard and ECR/Engle to produce the responsive documents by 9:00am PDT on June 17, 2013, in light of the current June 18, 2013 comment deadline in the exemption proceeding. In order for the Board to consider the issues raised by this motion on an expedited basis, any replies to the City's motion will be due no later than June 19, 2013, as opposed to the 20-day response time provided in 49 C.F.R. § 1104.13(a). In the interim, the Board will hold the procedural schedule in abeyance pending further order.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. All replies to the City's motion to compel are due no later than June 19, 2013.
2. The procedural schedule is held in abeyance pending further Board order.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.