

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

218051

Finance Docket No. 34555

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE
DIVISION, DBA TACOMA RAIL, OR TACOMA MUNICIPAL BELTLINE OR
TMBL--ACQUISITION AND OPERATION EXEMPTION--LAKEVIEW
SUBDIVISION, QUADLOK-ST. CLAIR, AND BELMORE-OLYMPIA RAIL
LINES IN PIERCE AND THURSTON COUNTIES, WASHINGTON

PETITION FOR STAY ^{*/}



ENTERED
Office of Proceedings

SEP 22 2004

Part of
Public Record

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

September 22, 2004

Attorney for John D. Fitzgerald

*/ Expedited handling is requested, inasmuch as the notice of
exemption has been filed to become effective at 12:01AM, Monday,
September 27, 2004.

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PETITION FOR STAY

Introduction

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this petition for stay of operation of the Notice of Exemption (Notice), filed September 20, 2004, by City of Tacoma, Department of Public Utilities, Beltline Division, DBA Tacoma Rail, Tacoma Municipal Beltline or TMBL (TMBL).

The exemption should be stayed until disposition of the UTU/GO-386 forthcoming petition to reject or revoke TMBL's invocation of the carrier acquisition class exemption.

TMBL is a Class III carrier. (Notice 2). It seeks to acquire substantial trackage now owned or operated by The Burlington Northern and Santa Fe Railway Company (BNSF), between Quadlok and St. Clair, and between Belmore and Olympia, together with trackage rights over BNSF between Nisqually and East Olympia, and over Union Pacific Railroad Company (UP) between East Olympia and

^{1/} General Chairman for United Transportation Union on lines of The Burlington Northern and Santa Fe Railway Company, with offices at 400 East Evergreen Blvd., Vancouver, WA 98660.

Olympia, all in the State of Washington. TMBL estimates that its acquisition by lease or easement will embrace about 28 miles of BNSF line, and "incidental" trackage rights over approximately 22 miles of line. (Notice 4).

Request for Stay

The operation of the TMBL notice should be stayed. As filed September 20, the notice would otherwise become effective September 27, 2004.^{2/}

TMBL has failed to provide the requisite notice to the BNSF employees.^{3/} The Board's regulations require that TMBL certify to the Board, at least 60 days prior to the effective date of the notice of exemption, that it has given proper notice to railroad employees. 49 CFR §1150.42(e).

Here, TMBL has failed to give proper notice and comply with the Board's regulations:

1. TMBL did not file its certification with the Board until Friday, September 17, 2004, which was only 10 (not 60) days prior to the effective date of its Notice of Exemption.

2. TMBL did not certify posting at the workplace of BNSF employees, as required by the Board's regulations; rather, TMBL merely sent a letter to local BNSF personnel in Tacoma, requesting that BNSF personnel do the posting. (Notice, Ex. C, p. 15). There is no proof of actual posting for the requisite BNSF employees.

^{2/} TMBL states it projects consummation for October 1, 2004. (Notice 3).

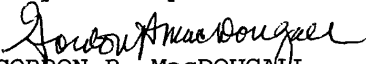
^{3/} It is suggested that requisite notice also should have been given to UP employees.

3. There is no proof or indication that UP employees have been given notice, yet TMBL is to be accorded trackage rights over UP trackage. BNSF employees represented by UTU have an interest in fair treatment for UP employees, inasmuch as the two carriers (BNSF and UP) interchange freight with each other, so that harmonious relations between disparate employees contributes to the more efficient flow of commerce and railroad safety.

CONCLUSION

The Board should stay the operation of the Notice of Exemption pending disposition of the UTYU/GO-386 petition to reject or to revoke.

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
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September 22, 2004

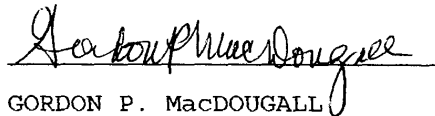
Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing by
personal service upon applicant's representative, as follows:

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GORDON P. MacDOUGALL

Dated at
Washington DC
September 22, 2004