

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35905

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**CITY OF WOODINVILLE, WA –
AMENDED PETITION FOR DECLARATORY ORDER**

**REPLY OF CITY OF WOODINVILLE TO
EASTSIDE COMMUNITY RAIL, LLC
REQUEST FOR CONDITION**

ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: July 1, 2015

Attorneys for City of Woodinville, WA

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ECR REQUEST FOR CONDITION**

On May 29, 2015, the City of Woodinville, a municipal corporation of the State of Washington (the “City”) filed an Amended Petition seeking a declaration that its proposed acquisition of the land and physical assets of a 2.58-mile line of railroad (the “Subject Line”) from the Port of Seattle is not be subject to the Board’s jurisdiction, and that upon consummation, the City would not be subject to the Board’s regulatory authority as a carrier. Eastside Community Rail, LLC (“ECR”) filed a Reply on June 18, 2015, which does not oppose the requested declaratory order, but which requests that as a condition of any decision that the Board amend the existing Operations and Maintenance Agreement (the “O&M Agreement”) that governs ECR’s use of the Subject Line.

The City believes that it should be entitled to file a reply to ECR’s request for a condition despite it being included in ECR’s Reply. However, to the extent this filing might be considered a prohibited “reply to a reply” under 49 CFR 1104.13, the City asks the Board to accept this Reply in the interest of having a complete record. Allowance of the Reply will not prejudice any other parties, and will not unduly prolong the proceeding. *See GNP Rly, Inc.–Acquisition and Operation Exemption–Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407 (served June 15, 2011), slip op at 4-5

Discussion

The City originally filed a petition (the “Original Petition”) which sought to bifurcate the sale of the property related to the Subject Line such that certain “ancillary parcels” not needed for ECR’s existing or reasonably foreseeable freight railroad operations would be sold separately from the rest of the property. The sale of such ancillary parcels is specifically permitted under the O&M Agreement to which the Port of Seattle and ECR are parties and which governs the use and disposition of the property. However, the City and the Port of Seattle agreed to amend the structure of the transaction so that it no longer includes the separate sale of any ancillary parcels. As ECR acknowledges, the current structure for which the City seeks approval is a “more conventional *State of Maine* transaction.” ECR Reply at 1. Despite the change in structure, ECR has objected to the Board’s approval of the transaction unless the Board imposes a condition that the City cannot sell any ancillary parcels without the consent of ECR or the Board. ECR Reply at 10.

The proposed condition would give ECR consent rights that are not included in the existing negotiated O&M Agreement to which ECR is a party. The terms of the O&M Agreement were approved by the Board when the Port of Seattle acquired the Subject Line (and adjacent lines) (*The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company*, STB Finance Docket No. 35128 (served October 27, 2008)), and again recently when the Board approved (without objection of ECR or any other party) sale of the connecting line, and the partial assignment of the O&M Agreement, to Snohomish County. *Snohomish County, WA – Petition for Declaratory Order – Jurisdiction Determination*, STB Docket No. FD 35830 (served March 5, 2015).

ECR's Reply is much more of a reply to concerns potentially raised by the Original Petition. It barely acknowledges that under the revised structure, there is no pending or proposed sale of any ancillary parcel. Moreover, the City has acknowledged that only parcels unnecessary for current or reasonably foreseeable future freight rail service can be sold as ancillary parcels under Section 12.12 of the O&M Agreement. See Original Petition at 9-10 fn 6.¹

ECR also does not acknowledge that there are extensive negotiated procedures for resolving disputes already in the O&M Agreement. Under the O&M Agreement, a Coordination Committee (Section 10) and a binding arbitration (Section 11) process exists to resolve disputes between the parties.² There is no basis for adding additional terms to or modifying the O&M Agreement whose terms have previously been approved by the Board as providing sufficient protection for the rail operator and freight rail operations.

¹ Given that freight operations on or from the Subject Line since ECR became the owner of the easement have been minimal at best, and that there are no existing or foreseeable facts indicating that additional capacity for freight service would ever be needed, the Board should look at ECR's "plans" to add a maintenance road and a second track, and its "need" for the entire right-of-way, with skepticism. ECR Reply at 4. When the City and ECR met in September 2014 (ECR Reply at 4), ECR's plans for expansion were based on accommodating proposed commuter rail service to Bellevue, together with expanded freight opportunities that would have resulted from a proposed reactivation of freight service (by its freight operator Ballard Terminal Railroad Company) over the connecting line to Bellevue. However, the proposed reactivation has been denied by the Board. *Ballard Terminal Railroad Company, LLC – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731 (served December 30, 2014), slip op. at 5, 7-11 (finding that the claimed demands for service were "significantly overstated").

² In an extreme situation, ECR could also seek relief from the Board to block a proposed sale.

Conclusion

For the foregoing reasons and the reasons set forth in the Amended Petition, the City requests that the Board (1) reiterate its findings in STB Finance Docket No. 31528 with respect to the Port of Seattle's acquisition of the Subject Line, and its findings in STB Docket No. FD 35830 with respect to the substitution of Snohomish County as a non-carrier owner, (2) find that the proposed transaction, including the existing O&M Agreement, is consistent with *State of Maine*, (3) find that no conditions or changes should be imposed on the O&M Agreement, and (4) find that the acquisition of the portion of the Corridor in King County by the City from the Port of Seattle will not constitute the acquisition of a railroad line under 49 USC §10901(a)(4), or cause the City to become a rail carrier.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: July 1, 2015

Attorneys for City of Woodinville, WA

CERTIFICATE OF SERVICE

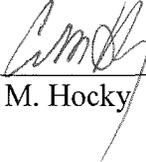
I hereby certify that on the date set forth below, I caused a copy of the foregoing Petition for Declaratory Order to be served email upon the following parties and their anticipated counsel as follows:

Isabel Safora
Deputy General Counsel
Port of Seattle
Law Department
2711 Alaskan Way
PO Box 1209
Seattle, WA 98111
Counsel for Port of Seattle
Safora.I@portseattle.org

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
*Counsel for Eastside Community Rail, LLC
and Ballard Terminal Railroad Company, LLC*
tlitwiler@fletcher-sippel.com

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
Counsel for King County, WA
cspitulnik@kaplankirsch.com

Dated: July 1, 2015



Eric M. Hocky