

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

MYLES L. TOBIN  
(312) 252-1502  
mtobin@fletcher-sippel.com

April 17, 2013

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

Re: **Finance Docket No. 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, WA**

Dear Ms. Brown:

This is in response to the Motion to Extend Time to Respond filed by King County, City of Kirkland and Central Puget Sound Regional Transit Authority in the above-captioned proceedings. Ballard Terminal Railroad Company, L.L.C. ("Ballard") objects to the extension of time unless that extension is coupled with a condition that the City of Kirkland not remove the track and other rail assets on a 5.75-mile portion of the rail line at issue, until such time as the Board rules on Ballard's pending petitions.

As set forth in Ballard's petitions, Ballard is seeking to reactivate freight rail service on a railbanked line over which the trail sponsor, King County, acquired from BNSF Railway Company the right to reactivate rail service. The Board has already recognized that another service provider could seek to restore active rail service on this line when it cautiously approved King County's unusual plan to act as trail sponsor while simultaneously holding the right to resume rail service on the line:

[T]he right to reactivate a railbanked line is not an exclusive right. [citation omitted]. While the parties' agreement would transfer to King County BNSF's opportunity to provide rail service, it would not preclude *any other service provider* from seeking Board

234096  
234097  
ENTERED  
Office of Proceedings  
April 17, 2013  
Part of Public  
Record

# FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown  
April 17, 2013  
Page 2

authorization to restore active rail service on all or parts of the railbanked segments in the future if King County does not exercise its right to reinstate rail service. [citations omitted]. Accordingly, regardless of the parties' intentions, a bona fide petitioner, under appropriate circumstances, may request the NITU to be vacated to permit reactivation of the line for continued rail service. [citations omitted].

King County, WA -- Acquisition Exemption -- BNSF Railway Company, STB Finance Docket No. 35148 (STB served September 18, 2009), at 3-4 (emphasis added).

The City of Kirkland and King County would have this Board extend this proceeding for many months while they engage in discovery and prepare their case. However, King County and Kirkland are omitting one salient and critical fact. Specifically, Kirkland is poised to engage a salvage contractor to remove a 5.75-mile portion of trackage from this railbanked line immediately. As stated in Ballard's petition, even though the net liquidation value of this trackage is de minimis, reinstallation of the trackage (if it is removed) would cost approximately \$10,000,000.00. This significant sum would deal a severe blow to Ballard's reactivation request. Thus, as a part of its pending petition, Ballard is seeking transfer of the rail assets at net liquidation value.

Kirkland's potential removal of this rail line is so imminent that Ballard has filed a Motion for Temporary Restraining Order in the U.S. District Court for the Western District of Washington, at Seattle, requesting that the rail assets not be removed until the Board rules on Ballard's Petition. That motion is scheduled to be heard on May 3, 2013.

Kirkland has suggested in its initial response to Ballard's Motion for Temporary Restraining Order that the Federal District Court does not have jurisdiction because injunctive relief is a matter that should be decided by the Surface Transportation Board. So, on the one hand, Kirkland would have this Board drag out this STB proceeding for many months, while at the same time, it is opposing a motion in Federal Court to retain the status quo by leaving the rail assets intact until the Board rules on Ballard's petitions.

Kirkland cannot have it both ways. Either the proceeding at issue here must be handled expeditiously, or Kirkland must leave the rail assets intact until the Board has an opportunity to rule in this matter.

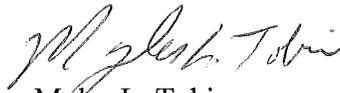
Consequently, if the Board is inclined to grant the Motion to Extend, Ballard would implore the Board to condition that extension on Kirkland leaving the 5.75 miles of

# FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown  
April 17, 2013  
Page 3

trackage and other rail assets in place until such time as the Board rules on Ballard's requests for reactivation of rail service over this railbanked line.

Respectfully submitted,



Myles L. Tobin  
Attorney for Ballard Terminal  
Railroad Company, L.L.C.

MLT/ekf

cc: All Parties of Record Via Email and First Class Mail