

241448



ENTERED
Office of Proceedings
September 7, 2016
Part of
Public Record

William C. Schroeder
Partner
(509)-455-6000
will.schroeder@painehamblen.com
Licensed in Washington and Montana

September 7, 2016

ELECTRONICALLY FILED

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

Re: Docket No. FD 35915
Tri-City Railroad Company, LLC v. City of Kennewick and City of Richland
Motion to Strike *Ex Parte* Communication

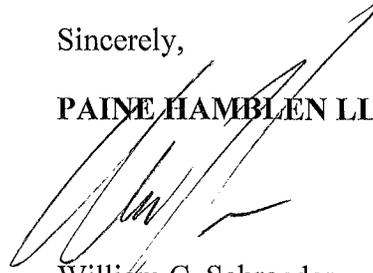
Dear Ms. Brown,

This concerns the July 26, 2016 letter by Senator Cantwell of, *inter alia*, the Commerce, Science, and Transportation Committee, to Commissioner Elliott III, Commissioner Miller, and Commissioner Begeman. Neither the undersigned counsel nor their client, the Tri-City Railroad Company, were sent a copy of this July 26, 2016 letter. Instead, it was discovered by happenstance over the Labor Day weekend.

The contents of the Senator Cantwell's July 26, 2016 letter appear to be in violation of 49 C.F.R. § 1102.2. Therefore, the Tri-City Railroad Company requests that the Board consider this letter as a Motion to Strike Senator Cantwell's July 26, 2016 letter from consideration.

Sincerely,

PAINÉ HAMBLÉN LLP

A handwritten signature in black ink, appearing to read 'W. Schroeder', is written over the company name.

William C. Schroeder

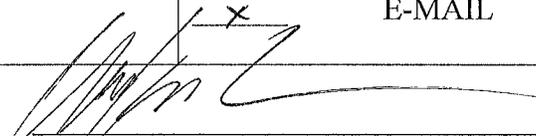
Enclosures: Letter from Senator Maria Cantwell, July 26, 2016.
49 C.F.R § 1102.2

cc: Heather Kintzley
Lisa Beaton
Steve Dijulio
Stephanie Weir
Christopher Emch
Senator Maria Cantwell

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2016, I caused to be served a true and correct copy of the foregoing **MOTION TO STRIKE *EX PARTE* COMMUNICATION** by the method indicated below and addressed to the following:

Heather Kintzley Richland City Attorney 975 George Washington Way PO Box 190 MS-07 Richland, WA 99352	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. MAIL HAND DELIVERED OVERNIGHT MAIL TELECOPY E-MAIL
Lisa Beaton Kennewick City Attorney 210 West 6 th Avenue P.O. Box 6108 Kennewick, WA 99336	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. MAIL HAND DELIVERED OVERNIGHT MAIL TELECOPY E-MAIL
P. Stephen DiJulio Stephanie Weir Christopher Emch Foster Pepper PLLC 1111 Third Avenue, Suite 3400 Seattle, WA 98101	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. MAIL HAND DELIVERED OVERNIGHT MAIL TELECOPY E-MAIL



WILLIAM C. SCHROEDER

MARIA CANTWELL
WASHINGTON

COMMITTEES:
ENERGY AND NATURAL
RESOURCES
COMMERCE, SCIENCE, AND
TRANSPORTATION
FINANCE
INDIAN AFFAIRS
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-4705

July 26, 2016

241310

The Honorable Daniel R. Elliott III, Chairman
U.S. Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

The Honorable Deb Miller, Vice Chairman
U.S. Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

The Honorable Ann D. Begeman, Commissioner
U.S. Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 26, 2016
Part of
Public Record

RE: Tri-City Railroad Co. v. The City of Kennewick and The City of Richland

Dear Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman:

I write in the interest of my constituents, the City of Kennewick and the City of Richland, Washington regarding the case *Tri-City Railroad Company - Petition for Declaratory Order* (Finance Docket No. 35915) currently pending before the Surface Transportation Board (Board).

Finance Docket No. 35915 concerns the City of Kennewick and the City of Richland's Center Parkway Project that would develop an at-grade rail crossing over two active tracks utilized by the Tri-City Railroad Co., a Class III railroad. Tri-City Railroad Co. has petitioned for a declaratory order, contending that the proposed at-grade crossing is not "routine". According to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty where such exists.

The Center Parkway Project is a long planned transportation network investment that improves regional mobility in preparation for dramatic population and industry growth anticipated in the area. By 2030, the City of Kennewick and the City of Richland will experience population growth of 56 and 68 percent, respectively. Extension of Center Parkway by 800 feet, over the active tracks, to connect to Tapteal Drive would improve emergency response times, reduce traffic congestion, and promote economic development of 60 adjacent acres of commercial property. Both the Benton County Superior Court and the Washington State Court of Appeals have affirmed the Washington Utilities and Transportation Commission's final order approving the construction of the at-grade crossing.

Originally petitioned in March 2015, the Board has yet to issue a final decision in this case. I am confident that the members of the Surface Transportation Board will provide full and fair consideration of the merits of this case and I would appreciate your assistance in providing an expeditious review of this matter.

Sincerely,

Maria Cantwell
United States Senator

EVERETT
2830 WATSON AVENUE
SUITE 9B
EVERETT, WA 98201
(425) 303-0114
Fax: (425) 303-8351

RICHLAND
826 JADWIN AVENUE
SUITE 204/204A
RICHLAND, WA 98562
(509) 948-8108
Fax: (509) 948-8337

SEATTLE
JACKSON FEDERAL BUILDING
915 2ND AVENUE, SUITE 3208
SEATTLE, WA 98174-1003
(206) 220-6400
Toll Free: 1-866-648-7328
Fax: (206) 220-6404

SPOKANE
U.S. FEDERAL COURTHOUSE
WEST 520 RIVINGTON, SUITE 637
SPOKANE, WA 99201
(509) 363-2507
Fax: (509) 363-2647

TACOMA
930 PACIFIC AVENUE
SUITE 615
TACOMA, WA 98402
(253) 872-2281
Fax: (253) 872-6879

VANCOUVER
MARSHALL HOUSE
1313 OLYMPIA'S ROW
FIRST FLOOR
VANCOUVER, WA 98601
(360) 696-7838
Fax: (360) 696-7844

WASHINGTON, DC
611 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-4705
(202) 224-3441
Fax: (202) 228-0514

KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations
Title 49. Transportation
Subtitle B. Other Regulations Relating to Transportation
Chapter X. Surface Transportation Board (Refs & Annos)
Subchapter B. Rules of Practice
Parts 1100 to 1129--Rules of General Applicability
Part 1102. Communications (Refs & Annos)

49 C.F.R. § 1102.2

§ 1102.2 Ex parte communications prohibited; penalties provided.

Effective: March 25, 2016

Currentness

(a) Definitions.

(1) "On-the-record proceeding" means any matter described in Sections 556-557 of the Administrative Procedure Act (5 U.S.C. 556-557) or any matter required by the Constitution, statute, Board rule, or by decision in the particular case, that is decided solely on the record made in a Board proceeding.

(2) "Person who intercedes in any proceeding" means any person, partnership, corporation, or association, private or public, outside of the Board which is neither a party nor party's agent, that volunteers a communication that it has reason to know may advance or adversely affect the interest of a party or party's agent in any proceeding before the Board.

(3) Ex Parte communication concerning the merits means an oral or written communication by or on the behalf of a party which is made without the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) Communications that are not prohibited.

(1) Any communication to which all the parties to the proceeding agree, or on which the Board formally rules, may be made on an ex parte basis;

(2) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which it is interested;

(3) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending on-the-record proceedings.

(c) Prohibitions.

(1) No party, counsel, agent of a party, or person who intercedes in any on-the-record proceeding shall engage in any ex parte communication concerning the merits of the proceeding with any Board Member, hearing officer, or employee of the Board who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Board Member, hearing officer, or employee of the Board who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any ex parte communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

(d) When prohibitions take effect. The prohibitions against ex parte communications concerning the merits of a proceeding apply from the date on which a proceeding is noticed for oral hearing or for the taking of evidence by modified procedure, or when the person responsible for the communication has knowledge that the proceeding will be so noticed, or at any time the Board, by rule or decision, specifies.

(e) Procedure required of Board members and employees upon receipt of ex parte communications concerning the merits of a proceeding. Any person who receives an ex parte communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. The Section Chief shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such ex parte communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Board's Designated Agency Ethics Official. The Designated Agency Ethics Official shall promptly reply to such requests. The Chief, Section of Administration, Office of Proceedings, shall promptly notify the Chairman of the Board of such ex parte communications sent to the Section Chief. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) Sanctions.

(1) The Board may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited ex parte communication concerning the merits of a proceeding.

(2) The relief or benefit sought by a party to a proceeding may be denied if the party, or his agent knowingly and willfully violates the foregoing rules.

(3) The Board may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Board employee who knowingly and willfully violates the foregoing rules.

Credits

[47 FR 49548, Nov. 1, 1982; 58 FR 42027, Aug. 6, 1993; 74 FR 52905, Oct. 15, 2009; 81 FR 8853, Feb. 23, 2016]

SOURCE: 62 FR 50524, Sept. 26, 1997; 81 FR 33416, May 26, 2016, unless otherwise noted.

AUTHORITY: 49 U.S.C. 721.

Current through September 1, 2016; 81 FR 60458.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.