

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 14, 2013
Part of
Public Record

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

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

STB Finance Docket No. 35731

**BALLARD TERMINAL RAILROAD COMPANY, LLC. – ACQUISITION AND
OPERATION EXEMPTION – WOODINVILLE SUBDIVISION – VERIFIED PETITION
FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

**EMERGENCY MOTION OF KING COUNTY, WASHINGTON TO COMPEL THE
ATTENDANCE OF MICHAEL SKRIVAN AT A DEPOSITION, OR, IN THE
ALTERNATIVE, TO ISSUE A SUBPOENA COMPELLING HIS ATTENDANCE**

Pursuant to 49 C.F.R. § 1114.31 and 49 U.S.C. § 721(d), King County, Washington, a political subdivision of the State of Washington (the “County”), respectfully requests the Surface Transportation Board (the “Board”) to issue an order compelling the attendance of Mr. Michael Skrivan at a deposition duly noted for May 14, 2013, at 9:00 a.m., or, in the alternative, for the Board to issue a subpoena compelling Mr. Skrivan’s attendance at a deposition at that time, or at a mutually convenient time and place prior to May 20, 2013.

As set forth more completely below, the County requests an emergency ruling in this matter because legal counsel for CalPortland and Mr. Skrivan informed the County earlier today, less than 24 hours before the deposition is scheduled, that CalPortland believes the County lacks the authority to issue a subpoena in this matter. The County needs to take Mr. Skrivan’s deposition in the immediate future to respond to the allegations of Petitioner Ballard Terminal Railroad Company, L.L.C. (“BTR”) that a letter authored by Mr. Skrivan represents evidence of

genuine demand for freight rail service. BTR has made that assertion in connection with its Petition of Exemption and its Motion for Preliminary Injunction Pursuant to 49 U.S.C. § 721(b)(4), filed on May 8, 2013. The County's reply to BTR's Motion is due on May 28, 2013, and the County's Comments on BTR's Petition are due on June 18, 2013.

BACKGROUND

On April 2, 2013, BTR filed Petitions in the above-captioned dockets seeking, in summary, (1) an exemption from 49 U.S.C § 10902 to acquire the residual common carrier rights and obligations relating to an 11.2-mile portion of a railbanked line of railroad between Woodinville, Washington and Bellevue Washington (the "Line"), and (2) to vacate the NITU on that portion of the Line. Pursuant to the NITU, the County is the trail sponsor. On April 19, 2013, the Board instituted an exemption proceeding on the Petitions and ordered the County and other interested parties to file comments by June 18, 2013. On May 8, 2013, BTR filed a Motion for Preliminary Injunction seeking to prevent the City of Kirkland, Washington, which owns in fee simple the portion of the Line that runs through the City of Kirkland, from salvaging the rails on that portion of the Line. Responses to that Motion are due by May 28, 2013.

In support of both its Petitions and its Motion for Preliminary Injunction, BTR has asserted that "a demand for rail service has developed on the Line," Petition at 4, and that two entities "have come forward and asked Ballard to provide them rail services," Motion at 4. In support of those contentions, BTR has cited letters of "support" from CalPortland and Wolford Demolition Company. *Id.* Mr. Skrivan is an employee of CalPortland and apparently signed the CalPortland letter submitted by BTR. A copy of Mr. Skrivan's letter is attached as Exhibit 1.

In order to probe the extent to which CalPortland has "asked Ballard to provide [rail services]" and whether there exists actual demand for freight rail service on the Line, the County

issued a *subpoena duces tecum* and deposition notice to Mr. Skrivan for May 14, 2013 at 9:00 a.m. in order to accommodate Mr. Skrivan's schedule. A copy of the County's Subpoena and Notice of Deposition is attached as Exhibit 2.

On May 13, 2013, the County was informed by counsel for CalPortland that they believe the County lacked the authority to issue the subpoena to Mr. Skrivan, that they believed the subpoena was not valid, and therefore Mr. Skrivan would not appear at the deposition. Because of the urgency that the County depose Mr. Skrivan with enough time to use that deposition in response to BTR's Motion for Temporary Restraining Order, the County files this Emergency Motion seeking to compel Mr. Skrivan's attendance at the deposition noticed for May 14, 2013.

ARGUMENT

CalPortland has raised two objections to the deposition notice. First, CalPortland argues that no discovery is permitted in this proceeding because it is an "informal proceeding" in which Part 1114 subpart B does not allow discovery. Second, CalPortland argues that, even if Part 1114 subpart B does apply, it does not allow a party to compel the attendance of a non-party to a deposition, and that only the Board can issue a subpoena or otherwise compel the attendance of a witness at a deposition. Neither of CalPortland's objections is valid.

A. Discovery Is Permitted In Exemption Proceedings

It is clear that parties to an exemption proceeding such as this one have the authority to take all forms of discovery under the Board's procedures. 49 C.F.R. § 1121.2 provides that "Discovery [in exemption proceedings] shall follow the procedures set forth at 49 C.F.R. part 1114, subpart B. Discovery may begin upon the filing of the petition for exemption" In turn, 49 C.F.R. part 1114, subpart B makes clear that parties "may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in a proceeding other

than an informal proceeding.” 49 C.F.R. § 1114.21(a). Further, the Board’s procedures provide that “discovery may be used by parties *without filing a petition and obtaining prior Board approval.*” *Id.* at § 1114.21(b) (emphasis added). Thus, it is clear that all discovery permitted under Part 1114, subpart B is available in exemption proceedings such as this one without the need to obtain Board approval.

CalPortland appears to rely on the notion that an exemption proceeding is an “informal proceeding” in which discovery is not permitted. The County recognizes that exemption proceedings generally are considered “informal,” 49 C.F.R. § 1121.4. But, Section 1121.4(c) also allows the Board to institute proceedings to allow “additional information [to] be filed, and “requesting public comments.” The Board has done that here. Moreover, 49 U.S.C § 10502(b) authorizes the Board to begin an “appropriate proceeding” for an exemption without limiting it to “informal proceedings.” In Section 1121.2, the Board specifically authorized parties to an exemption proceeding to “begin [discovery] upon the filing of a petition for exemption.” Regardless of any language in Section 1114.21(a), it is clear that the Board has authorized discovery in exemption proceedings. CalPortland’s argument would impermissibly nullify the language in Section 1121.2 quoted above. Accordingly, CalPortland’s first objection must be overruled.

B. Parties Are Permitted To Compel Third-Party Witnesses To Attend Depositions Without Prior Leave Of the Board

It is similarly clear that a party to an exemption proceeding can require a third-party witness to attend a deposition without prior Board approval. As a general matter, and as noted above, the Board’s procedures provide that “discovery may be used by parties *without filing a petition and obtaining prior Board approval.*” *Id.* at § 1114.21(b) (emphasis added). More specifically, the Board’s procedures provide that “the testimony of *any person, including a party,*

may be taken by deposition upon oral examination.” Clearly, depositions are not limited to parties, but include “any person.” *See also* 49 C.F.R. § 1114.22(b)(1) (notice of deposition must be sent to “all parties to the proceeding and the person sought to be deposed.”); *id* at § 1114.24(b)(3) (“the deposition of a witness, *whether or not a party*, may be used by any party for any purpose [under certain circumstances].” Furthermore, Section 1114.31(a) authorizes a party to compel discovery, including responses to questions at deposition.

The statute granting the Board powers in hearings and proceedings confirms that a party may directly compel a non-party to attend a deposition: “A party to a proceeding may take the testimony of a witness by deposition and may order the witness to produce records at any time after a proceeding is at issue and answer.” 49 U.S.C. § 721(d)(1). Only if the party fails to attend the deposition need the Board compel attendance by issuing its own subpoena. *Id.* at § 721(d)(2). Both under Board procedures pursuant to Part 1114.22 and as authorized by Congress under 49 U.S.C § 721(d), the County, as a party to these proceedings, may require a non-party, such as Mr. Skrivan, to attend a deposition and produce records without obtaining prior Board approval.

The only authority CalPortland offered to support its view that only the Board could issue a subpoena was 49 C.F.R. § 1113.2. But Section 1113.2 applies only to oral hearings before the Board, not to exemption proceedings governed by Part 1114. The Board’s power to compel the attendance of witnesses at its own hearings does not limit the rights of parties to depose third-party witnesses as part of discovery granted under Part 1114 and Section 721(d).

C. In the Alternative, the County Requests the Board To Issue A Subpoena Compelling Mr. Skrivan To Attend A Deposition And Produce Records

As discussed above, Mr. Skrivan’s testimony is directly relevant to these proceedings. A linchpin of BTR’s case is that there exists genuine demand for freight rail service on the Line.

Mr. Skrivan's letter is offered as one of the primary pieces of evidence in support of that assertion. Establishing whether that evidence truly reflects shipper demand is plainly relevant and material to the Board's consideration of this matter. *See Norfolk Southern Railway Company — Petition For Exemption— In Baltimore City And Baltimore County, MD.*, Docket No. AB 290 (Sub-No. 311X) Slip Op. at 5-6 (May 4, 2010) (letters from potential shippers merely indicating that they would "consider" using freight rail service insufficient to show likelihood of success on the merits that there was demand for such service). The County believes that the CalPortland letter does not support BTR's assertion, and further believes there is no genuine shipper demand for service on the Line. A deposition of one a purported shipper is precisely the kind of relevant evidence that is subject to discovery pursuant to Part 1114 and Section 721(d).

Further, the need for swift action by the Board is also clear. The County must respond to BTR's Motion for Preliminary Injunction by May 28 and to the Petition by June 18. There is not much time to take Mr. Skrivan's deposition and the other depositions noticed by the parties, to complete other document discovery, and to draft and file the responses. The County needs to complete Mr. Skrivan's deposition by May 20 in order to keep that schedule. Moreover, Mr. Skrivan's deposition was originally scheduled, then rescheduled, in cooperative consultation with Mr. Skrivan and CalPortland's legal counsel to accommodate his busy schedule and to minimize the burden on a non-party. The County understands that Mr. Skrivan is still available for the May 14 deposition, and is loathe to lose that date given Mr. Skrivan's scheduling constraints.

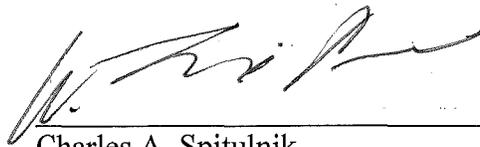
In short, Mr. Skrivan's testimony is highly relevant to this case and there is great need to take the deposition in the immediate future in light of the impending deadlines in this matter.

CalPortland has offered no substantive reason why Mr. Skrivan should not be deposed, and appears to agree that the Board can compel Mr. Skrivan to attend a deposition. Accordingly, if the Board does not agree that the County may require Mr. Skrivan to attend the deposition on May 14, 2013, the County respectfully requests the Board to exercise its authority to issue a subpoena compelling Mr. Skrivan to attend the deposition on May 14, 2013 at 9:00 a.m., and to produce the requested records at or before that time, or to attend and produce at such other time on or before May 20, 2013, as the parties may agree.

CONCLUSION

For the foregoing reasons, King County respectfully requests the Board to (1) order Mr. Skrivan to attend the deposition as noticed by the County for May 14, 2013 at 9:00 a.m., and to produce the requested records at or before that time, or, (2) in the alternative, exercise the Board's authority to issue a subpoena to compel Mr. Skrivan to attend the deposition on May 14, 2013 at 9:00 a.m., and to produce the requested records at or before that time, or such other time on or before May 20, 2013, as the parties may agree.

Respectfully submitted,



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Counsel for King County, Washington and Central
Puget Sound Regional Transit Authority

Dated: May 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the of the foregoing Emergency Motion of King County, Washington, to Compel the Attendance of Michael Skrivan at a Deposition, Or, In the Alternative, to Issue A Subpoena Compelling His Attendance upon the following parties of record and other interested persons by email on May 13, 2013, and will also provide a paper copy by first class mail with postage prepaid and properly addressed on May 14, 2013:

Myles L. Tobin, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Attorneys for Ballard Terminal Railway LLC

Matthew Cohen
Hunter Ferguson
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101
Attorneys for City of Kirkland

Tom Montgomery
Montgomery Scarp PLLC
1218 3rd Ave # 2700
Seattle, WA 98101
Attorneys for Ballard Terminal Railway LLC

Jordan Wagner
Jennifer Belk
Central Puget Sound Regional Transit Auth.
401 S. Jackson Street
Seattle, WA 98104

Scott Isaacson
General Counsel
CalPortland
2025 E Financial Way
Glendora, CA 91741

Craig Watson
Isabel Safora
Office of General Counsel
Port of Seattle
P.O. Box 1209
Seattle, WA 98111

Ben Stone
Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, WA 98101
Attorneys for CalPortland

Oskar Rey
Kirkland City Attorney's Office
123 5th Ave
Kirkland, WA 98033



W. Eric Pilsk
Kaplan Kirsch & Rockwell, LLC
Counsel for King County, Washington and Central
Puget Sound Regional Transit Authority

Dated this 13th day of May, 2013

EXHIBIT 1



March 25, 2013

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

Dear Ms Brown:

I would like to stress the importance of restoring rail service to the rail line segment between Woodinville and Bellevue, Washington via a rail line that is currently railbanked.

CalPortland is a major building materials and construction/services provider to the Western United States and Canada. We provide construction services and materials to a multitude of projects in the State of Washington generally, and in the area of Seattle, Washington, specifically.

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years which will necessitate the import of hundreds of thousands of cubic yards of construction aggregate materials to produce buildings, developments and roadways that are in strict accordance with all specifications for engineering parameters. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. Additionally, we anticipate ongoing projects in the future, on a regular basis.

In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient or very cost-effective.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will allow



Ms. Cynthia T. Brown
March 26, 2013
Page 2

CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael Skrivan', written over a horizontal line.

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

EXHIBIT 2

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY



Office of the Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120
FAX (206) 296-0191

May 10, 2013

BY E-MAIL AND HAND DELIVERY

Michael Skrivan
CalPortland
5975 East Marginal Way South
Seattle, WA 98134

**Re: Ballard Terminal Railroad Company, L.L.C.'s Petitions to
Reactivate Rail Service between Woodinville and Bellevue**

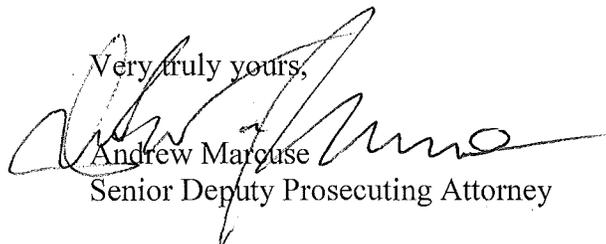
Dear Mr. Skrivan:

Thank you for speaking with me by phone yesterday about your deposition in connection with Ballard Terminal Railroad Company, L.L.C.'s (Ballard) petitions to reactivate rail service between Woodinville and Bellevue filed with the Surface Transportation Board (STB). As you and I discussed, this office represents King County, Washington, in the STB proceedings. Inasmuch as you signed a letter in support of Ballard's petitions, we believe you are likely to have information relevant to these proceedings.

As you and I also discussed, in light of the STB's schedule in this matter, we need to proceed promptly with your deposition. Yesterday, my colleague Pete Ramels and I spoke with CalPortland's general counsel, Mr. Scott Isaacson, and agreed to schedule your deposition beginning at 9:00 a.m. on Tuesday, May 14, 2013. We thank you in advance for making yourself available on relatively short notice.

Enclosed please find a subpoena for your appearance at the deposition at the agreed-upon date and time, as well the production of documents relevant to the pending matters. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Andrew Marcuse
Senior Deputy Prosecuting Attorney

Enclosures

cc w/enc: Scott Isaacson
Tom Montgomery

Prosecuting Attorney
King County

Mike Skriven
5/9/13
Page 2

Charles A. Spitulnik
W. Eric Pilsk
Allison Fultz
Craig Watson
Jordan Wagner
Myles L. Tobin, Esq.

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BEFORE THE SURFACE TRANSPORTATION BOARD

**STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.
—ACQUISITION AND EXEMPTION—
WOODINVILLE SUBDIVISION**

**STB DOCKET NO. AB-6 (SUB. NO. 465X)
BNSF RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

NOTICE OF DEPOSITION

DATE: May 14, 2013

TIME: 9:00 a.m.

To: Parties and Counsel of Record

PLEASE TAKE NOTICE that the deposition upon oral examination of **Michael Skrivan** will be taken at the request of King County, Washington, at the offices of THE KING COUNTY PROSECUTING ATTORNEY, King County Courthouse, 516 3rd Avenue #W400, Seattle, WA 98104, on May 14, 2013, beginning at **9:00 a.m.** The deposition is to be recorded by a stenographic reporter duly authorized by law to administer oaths. The oral examination shall be subject to continuance or adjournment from time to time or place to place until completed, and will be taken on the grounds and for the reason that the said witness will give evidence material to the above-captioned proceedings.

DATED: May 10, 2013.

1 CERTIFICATE OF SERVICE

2 I hereby certify that a copy of the foregoing NOTICE OF DEPOSITION was served on the
3 undersigned persons by First Class Mail on May 10, 2013:

4 Scott Isaacson
5 General Counsel
6 CalPortland
7 2025 E Financial Way
8 Glendora, CA 91741

9 Tom Montgomery
10 Montgomery Scarp PLLC
11 1218 3rd Ave # 2700
12 Seattle, WA 98101
13 *Attorneys for Ballard Terminal Railway LLC*

14 Charles A. Spitulnik
15 W. Eric Pilsk
16 Allison Fultz
17 Kaplan Kirsch & Rockwell LLP
18 1001 Connecticut Avenue, NW, Suite 800
19 Washington, DC 20036
20 *Attorneys for King County*

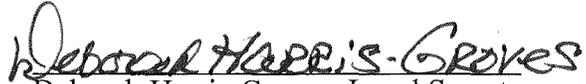
21 Craig Watson
22 General Counsel
23 Port of Seattle
24 Pier 69
25 PO Box 1209
26 Seattle, WA 98111

Jordan Wagner
Central Puget Sound Regional
Transit Authority
401 S. Jackson Street
Seattle, WA 98104

Myles L. Tobin, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Attorneys for Ballard Terminal Railway LLC

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DATED at Seattle, WA this 10th day of May 2013.



Deborah Harris-Groves, Legal Secretary
Civil Division
King County Prosecuting Attorney's Office

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7 BEFORE THE SURFACE TRANSPORTATION BOARD
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10 **STB FINANCE DOCKET NO. 35731**
11 **BALLARD TERMINAL**
12 **RAILROAD COMPANY, L.L.C.**
13 **—ACQUISITION AND EXEMPTION—**
14 **WOODINVILLE SUBDIVISION**

15 **STB DOCKET NO. AB-6 (SUB. NO. 465X)**
16 **BNSF RAILWAY COMPANY**
17 **—ABANDONMENT EXEMPTION—**
18 **IN KING COUNTY, WA**

SUBPOENA DUCES TECUM TO
MICHAEL SKRIVAN TO TESTIFY
IN A DEPOSITION AND PRODUCE
DOCUMENTS IN A PROCEEDING
BEFORE THE SURFACE
TRANSPORTATION BOARD

DATE: May 14, 2013

TIME: 9:00 a.m.

19 To: Michael Skrivan
20 CalPortland
21 5975 East Marginal Way South
22 Seattle, WA 98134

23 Pursuant to the rules of the Surface Transportation Board (“STB”) governing discovery,
24 *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, YOU ARE HEREBY COMMANDED
25 to appear at the offices of THE KING COUNTY PROSECUTING ATTORNEY, at the King County
26 Courthouse, 516 3rd Avenue #W400, Seattle, WA 98104, at 9:00 a.m. on MAY 14, 2013, then and
there to testify at the request of King County, Washington (“the County”), in the above-entitled
matters, and there to remain in attendance until discharged, and to provide testimony in a
deposition to be conducted by the County’s attorneys concerning matters regarding the petitions

1 of Ballard Terminal Railroad Company, L.L.C.'s ("Ballard") for exemption from regulation
2 under 49 U.S.C. § 10902 to reactivate rail service on the Woodinville-Bellevue segment of the
3 Woodinville Subdivision (the "Line") and to partially vacate the NITU Order issued for the Line.
4 Your testimony shall be subject to continuance or adjournment from time to time or place to
5 place until completed and is to be taken for the reason that you will give evidence relevant to
6 Ballard's petitions. Your testimony will be recorded by verbatim transcript.

7
8 YOUR ARE ALSO COMMANDED to produce the items described in Attachment A by
9 9:00 a.m. on MAY 14, 2013 to the offices of THE KING COUNTY PROSECUTING ATTORNEY, at the
10 King County Courthouse, 516 3rd Avenue #W400, Seattle, WA 98104, or at such time and place
11 as the attorneys for the County and you agree.

12 DATED: May 10, 2013.
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ATTACHMENT A

1. All communications between you or other employees or officers of CalPortland and Byron Cole or other representatives of Ballard Terminal Railroad Company, L.L.C. (“Ballard”), including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Mr. Cole or other Ballard representatives.
2. All communications between you or other employees or officers of CalPortland and Douglas Engle or other representatives of Eastside Community Rail, L.L.C. (“ECR”), including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Mr. Engle or ECR representatives.
3. All communications between you or other employees or officers of CalPortland and representatives of BNSF Railway Company (“BNSF”) about the provision of rail service to CalPortland via the rail corridor between Woodinville and Bellevue, as well as other portions of the Woodinville Subdivision or Eastside Rail Corridor, including: email, letters, faxes, and any attachments thereto; and any notes from conversations with BNSF representatives.
4. All proposals, cost estimates, or agreements for the provision of rail service to CalPortland by either Ballard or ECR, including any maps, diagrams, schematics, or blueprints depicting plans for the construction of a spur track at any of CalPortland’s facilities.
6. All materials concerning the “highway and secondary roadway projects” that CalPortland is “currently targeting,” as stated in your March 25, 2013 letter to Cynthia T. Brown (attached hereto), including any invitations for bids, proposals or bids, studies or estimates, and contracts.

1 CERTIFICATE OF SERVICE

2 I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned
3 persons by First Class Mail on May 10, 2013:

4 Scott Isaacson
5 General Counsel
6 CalPortland
7 2025 E Financial Way
8 Glendora, CA 91741

9 Tom Montgomery
10 Montgomery Scarp PLLC
11 1218 3rd Ave # 2700
12 Seattle, WA 98101
13 *Attorneys for Ballard Terminal Railway LLC*

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15 W. Eric Pilsk
16 Allison Fultz
17 Kaplan Kirsch & Rockwell LLP
18 1001 Connecticut Avenue, NW, Suite 800
19 Washington, DC 20036
20 *Attorneys for King County*

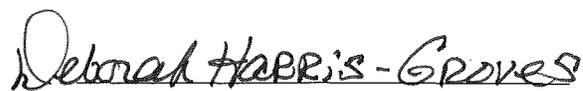
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Central Puget Sound Regional
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29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Attorneys for Ballard Terminal Railway LLC

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DATED at Seattle, WA this 10th day of May 2013



Deborah Harris-Groves, Legal Secretary
Civil Division
King County Prosecuting Attorney's Office