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SERVICE DATE – NOVEMBER 22, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 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,
WASH. (WOODINVILLE SUBDIVISION)

Decided: November 21, 2013

This decision extends the reply deadline to December 6, 2013, and grants the motion for protective order to end further document production.

BACKGROUND

On April 2, 2013, Ballard Terminal Railroad Company, L.L.C. (Ballard), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute freight rail service, and the physical trackage assets on a line of railroad (the Line) owned by the City of Kirkland, Wash. (the City), and the Port of Seattle (Port) in King County, Wash. (King County), and currently subject to interim trail use/railbanking under the National Trails System Act, 16 U.S.C. § 1247(d).¹ The petition for exemption was filed concurrently with a Ballard petition to partially vacate the Notice of Interim Trail Use issued in Docket No. AB 6 (Sub-No. 465X) for the Woodinville Subdivision (which comprises the Line and an additional 1.35 miles). In a notice of exemption and request for comments served and published in the Federal Register on April 19, 2013 (April 19 Notice), the Board instituted an exemption

¹ In a request to withdraw as a party filed on August 14, 2013, the Port clarified that it no longer owns any property interests in the Line, having conveyed (1) an easement over the majority of the Line in April 2012 to Central Puget Sound Regional Transit Authority (Sound Transit), including fee title to approximately 1.1 miles of the Line, (2) its interest in a 5.75-mile portion of the Line to the City in April 2012, and (3) its remaining interests in the Line to King County in February 2013.

proceeding pursuant to 49 U.S.C. § 10502(b) and sought comments from interested persons on Ballard's petitions.²

In an August 22, 2013 decision, the Board modified the procedural schedule and ordered that comments on Ballard's petitions be due on October 1, 2013, and that replies to comments be due on October 21, 2013. The City filed its comments on September 30, 2013, and, as a consequence of the federal government shutdown, King County and Sound Transit timely filed their joint comments on October 17, 2013. On October 24, 2013, Ballard filed copies of several letters in support of its petitions.

On October 28, 2013, Ballard filed a letter requesting that the Board extend the reply deadline in the exemption proceeding to January 13, 2014. Ballard argues that this additional time is necessary to review the documents produced in discovery by the City, King County, and Sound Transit (collectively, the Respondents). Additionally, Ballard states that it is still waiting for Sound Transit to finish responding to the discovery requests, which were issued to the Respondents on June 27, 2013.³

On November 4, 2013, the Respondents filed a joint reply in opposition to Ballard's request for an extension of time and a motion for protective order to end further document production to Ballard. In support of their opposition to an extension of time, the Respondents argue that Ballard has had sufficient time to review the documents produced to date, as the Respondents have produced documents on a rolling basis starting in July 2013, and that an extension of over 60 days as proposed by Ballard would unnecessarily extend the duration of the exemption proceeding beyond the January 17, 2014 deadline.

In support of their motion for protective order, the Respondents allege that they and their counsel have spent over 360 hours to review and ultimately produce 4,786 responsive documents.⁴ The Respondents argue that the documents thus far requested and produced are largely irrelevant to the issues in this proceeding, and that the burden of reviewing and producing additional documents far outweighs any potential relevance.

Finally, while they argue that Ballard's reply should have been due on November 6, 2013, 20 days after King County and Sound Transit filed their joint comments, the Respondents state that they would not object to giving Ballard a two-week extension to November 20, 2013.

In order to obtain the information necessary to issue a prompt decision on Ballard's request for extension of time, the Board issued a decision on November 6, 2013, ordering Ballard

² The April 19 Notice started the 9-month statutory period for completion of the exemption proceeding, ending on January 17, 2014.

³ The Respondents state that Sound Transit produced an additional 440 documents on October 29, 2013.

⁴ Motion for Protective Order 5-6.

to reply to the Respondents' motion for protective order no later than November 12, 2013. In its November 12, 2013 reply, Ballard states that it is not in a position to know how comprehensive the Respondents' productions have been thus far, nor the extent of the substantive information contained in documents not yet produced. However, Ballard does not offer any substantive argument in opposition to the Respondents' motion for protective order.

DISCUSSION AND CONCLUSIONS

According to the Respondents, beginning in July 2013, they have produced on a rolling basis a large volume of responsive documents. In the meantime, Ballard has not identified what discovery requests the Respondents have failed either to fully or partially respond to, nor has it explained the relevance of the discovery that it claims has not been produced. At this late date in the proceeding, months after Ballard made the discovery requests, Ballard has not filed a motion to compel any deficient discovery responses, and does not offer any substantive argument in opposition to the Respondents' motion for protective order. Therefore, the Board will grant the Respondents' motion.

The Board is not persuaded that Ballard requires an extension of the reply deadline to January 13, 2014, which is four days before the Board's statutory deadline to complete this proceeding. Extending the reply deadline as Ballard requests would unnecessarily delay the Board's decision in the exemption proceeding. Therefore, in the interest of completing the record and issuing a timely decision, the Board will grant Ballard an additional two weeks from the date of this decision to file its reply to the comments on the merits of its petitions. The Board notes that although the deadline for Ballard's reply has passed, this decision nevertheless affords Ballard additional time to submit its reply evidence.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City, King County, and Sound Transit's motion for protective order is granted.
2. Ballard's reply to the comments on the merits of its petitions is due December 6, 2013.
3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.