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January 3, 2014

VIA ELECTRONIC FILING

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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

ENTERED
Office of Proceedings
January 3, 2014
Part of
Public Record

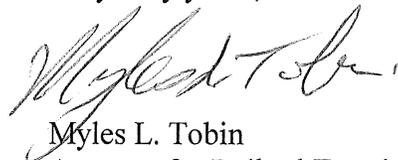
Re: **Finance Docket No. 35731**
Ballard Terminal Railroad Company, L.L.C. -- Acquisition
and Operation Exemption -- Woodinville Subdivision

Docket No. AB-6 (Sub-No. 465X)
BNSF Railway Company -- Abandonment
Exemption -- In King County, WA

Dear Ms. Brown:

Enclosed please find Ballard Terminal Railroad Company's Response to King County's, Sound Transit's and Kirkland's Motion for Leave to File Sur-Reply in the above referenced dockets.

Very truly yours,



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

MLT/ekf

Enclosure

cc: All Parties of Record (via electronic and First Class Mail)

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**BALLARD TERMINAL RAILROAD COMPANY'S RESPONSE TO KING COUNTY'S,
SOUND TRANSIT'S AND KIRKLAND'S MOTION FOR LEAVE TO FILE SUR-REPLY**

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**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.**

Dated: January 3, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
-- ACQUISITION AND OPERATION EXEMPTION --
WOODINVILLE SUBDIVISION

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BNSF RAILWAY COMPANY
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**BALLARD TERMINAL RAILROAD COMPANY'S RESPONSE TO KING COUNTY'S,
SOUND TRANSIT'S AND KIRKLAND'S MOTION FOR LEAVE TO FILE SUR-REPLY**

It is indeed ironic that King County, Sound Transit and Kirkland desire to file an impermissible sur-reply containing their further arguments, when the sole purpose of that sur-reply is a futile attempt to *silence* the many voices which have arisen in support of reactivation of rail service on the subject rail line. Ballard does not object to the filing of this sur-reply because, unlike the evident motive of King County, Kirkland and Sound Transit (hereinafter referred to as the "Opponents"), to silence the deafeningly loud support in favor of rail line reactivation, Ballard is not afraid of a full and complete airing of the issues by all interested parties.

Nothing in the three Opponents' latest pleading obscures the undeniable fact that rail reactivation on the subject line is supported by a broad-based cross-section of the community, including other railroads, railroad unions, shippers, municipal corporations, state legislators, banks and investment houses.

Nothing in the three Opponents' pleading can obscure the fact that Ballard is a bona fide party, which already runs three separate short lines, and in this endeavor has secured

the financial support of Watco Companies, LLC, one of the largest shortline railroad conglomerates in North America, Salmon Bay Sand and Gravel Company, a multimillion dollar supplier of sand, gravel and concrete products in the Northwest United States, and two of the largest banks in the Northwest United States, American West Bank and Coastal Community Bank.

Nothing in the three Opponents' pleading can obscure the fact that a multiplicity of shippers have requested service on the line, including General Mills, RJB Wholesale, CT Sales, Aggregates West, Wolford Trucking and Demolition, and CalPortland.

Nothing in the three Opponents' pleading can obscure the fact that this rail reactivation is supported by the United Transportation Union and the Brotherhood of Locomotive Engineers and Trainmen. It is supported by State of Washington Representatives Luis Moscoso, Matt Manweller, Mike Sells, John McCoy, Gael Tarleton and Senator Rosemary McAuliffe.

Nothing in the three Opponents' pleading can obscure the fact that this rail reactivation is supported by a broad based group of municipal and economic interests including the City of Snohomish, the City of Woodinville, Snohomish County, the Economic Alliance of Snohomish County and numerous others. It is also supported by regional development and environmental groups, such as the Cascadia Center for Regional Development, who have emphasized the tremendous environmental benefit of this rail reactivation, which would move thousands of trucks off the roadways in favor of environmentally efficient rail transportation.

Indeed, the only thing that the three Opponents' pleading establishes is that they remain the three lone voices in opposition to rail reactivation. The opposition pleadings are abundantly clear that, since King County secured the rail reactivation rights from the STB, King

County has been antagonistic toward reactivation of rail service on this line. Now, in the face of the overwhelming sea of support for this rail reactivation, King County and the other two Opponents remain bound and determined to transmogrify King County's rail reactivation rights into a permanent bar to actual rail reactivation. The STB must not let that happen.

The three Opponents complain that Ballard was obligated to provide all support letters in its initial petition, and any subsequent letters should evidently not be considered by this Board. That is nonsense. As discussed in earlier pleadings, it was the City of Kirkland's own efforts to sever this line, by removing 5.75 miles of rail, which effectively forced Ballard to file its Petition while support for the rail line reactivation was still building. Kirkland clearly knew that it needed to strike early, in an effort to kill any potential rail reactivation. Now that the thunderous support has come forward, Kirkland and the other two Opponents demand that this support not be heard. Kirkland and the other two Opponents should not be permitted to benefit through the acts of their own unclean hands.

Moreover, the STB set out two dates for commenters to respond to this Petition. The abundance of support letters filed by these numerous parties were filed on the two dates set forth in the STB's Orders. Thus, all such filings were timely and entirely appropriate.

The three Opponents continue to question the bona fides of Ballard. As the Board knows, in a typical rail reactivation proceeding, even the lowliest shortline can automatically reactivate rail service on a railbanked line where a NITU is in effect. Here, beyond the fact that Ballard already operates three separate shortlines, Ballard is partnering with Watco Companies, a mega million dollar shortline conglomerate, Salmon Bay Sand and Gravel, a multimillion dollar industry, and two large banks, to amass all of the money that Ballard might need to acquire, own,

rehabilitate and operate this rail line. Ballard has amassed an impressive array of financial support. Nothing more is required, or should be required by this Board.

A host of shippers have lined up in support of this rail reactivation. Where there are sidetracks already connected to the line, those sidetracks will be used. Where there are currently no sidetracks, main line loadings will be initially used until sidetracks are constructed, if necessary. Bottom line – numerous shippers desire reactivation of this rail line.

Finally, the three Opponents decry the fact that Ballard does not hold any property rights in the line, and assert that is fatal to Ballard’s petition. However, the three Opponents took whatever rights they may have in the real property *subject to* rail reactivation. In Georgia Great Southern – Abandonment and Discontinuance of Service, 6 STB 902 (2003), the Board was abundantly clear that interim trail use is subject to being cut off at any time by the reinstatement of rail service. “If and when rail service is restored, the trail user must step aside.” 6 STB at 907. If there are property rights that must be obtained or acquired, Ballard, on its own or through its affiliation with Watco and Salmon Bay Sand and Gravel, has the financial wherewithal to acquire those rights. But, as the STB has held in Georgia Great Southern, “it is inappropriate for the Board to determine whether the trail sponsors might be entitled to any recompense in this situation . . . a satisfactory resolution of such compensation issues *cannot* be a precondition to restoration of rail service . . .” 6 STB at 906-908.¹ (emphasis added)

The three Opponents’ view that their property rights in the line somehow act as a bar to restoration of rail service literally flies in the face of the STB’s explicit decision in 2009, with respect to this line, that the transfer of the opportunity to provide rail service to King County “would not preclude *any other* service provider from seeking Board authorization to

¹ Further, Ballard has repeatedly stated that it does not oppose trail usage, so the trail can still be constructed alongside the rail line, and utilized following rail service reactivation. Therefore, the three Opponents lose nothing if rail service is reactivated.

restore active rail service on all or parts of the railbanked segments in the future . . . a bona fide petitioner, under appropriate circumstances, may request the NITU to be vacated to permit reactivation of the line for continued rail service.” King County, WA – Acquisition Exemption – BNSF Railway Company, STB Finance Docket Number 35148 at 3-4. (emphasis added)

A bona fide purchaser now stands before this Board, specifically Ballard Terminal Railroad Company, and is requesting that rail service on the subject line be reactivated, and that King County’s reactivation rights be transferred to Ballard for that purpose. Ballard respectfully requests that the Board act on the commitments it made in Finance Docket 35148 and grant the Petitions of Ballard for such reactivation.

Respectfully submitted,

By: 

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**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.**

Dated: January 3, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2013, a copy of the foregoing **Ballard Terminal Railroad Company's Response to King County's, Sound Transit's and Kirkland's Motion for Leave to File Sur-Reply** was served by electronic and First Class Mail upon:

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