

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35730

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.  
-- LEASE EXEMPTION --  
LINE OF EASTSIDE COMMUNITY RAIL, LLC

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**RESPONSE  
OF  
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.  
IN OPPOSITION TO PETITION FOR STAY OF THE PORT OF SEATTLE**

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RAILROAD COMPANY, L.L.C.**

Dated: April 25, 2013

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Ballard Terminal Railroad Company, L.L.C. ("Ballard") hereby objects to the Petition for Stay filed by the Port of Seattle ("Port") and requests that the Petition be denied. The matters referenced in the Port's Petition are of a private contractual nature between the Port, Eastside Community Rail, L.L.C. ("ECRR") and Ballard. As such, while Ballard and ECRR will work to satisfy the concerns of the Port, if possible, the Board is not the appropriate forum for adjudication of these private contractual matters.

In Finance Docket No. 35692, ECRR acquired a permanent freight operating easement on a 14.45 mile line extending from Woodinville to Snohomish, Washington ("Woodinville Line"). That freight operating easement carries the common carrier obligations associated with the Woodinville Line. In the proceeding at issue here, ECRR is leasing its interests in the Woodinville Line, and the associated common carrier obligations, to Ballard. The Port has not suggested that there is anything untoward with respect to this transaction, or that Ballard or ECRR have made any false or misleading statements. Nor could the Port legitimately make such allegations. As such, a stay is not appropriate.

The Port's focus appears to be a separate Operations and Maintenance Agreement between the Port and GNP RLY, Inc., the predecessor owner of the freight operating easement which ECRR acquired in the GNP RLY, Inc. bankruptcy proceeding. This private contract is unrelated to the common carrier obligation on the Woodinville Line.

Certainly, the Port cannot be (or should not be) complaining about a lease of the line from ECRR to Ballard. Section 2.1 of the Operations and Maintenance Agreement (attached to the Port's Petition for Stay) recognizes that ECRR, as successor to GNP RLY, Inc. will provide freight service on the line by itself, "and/or by or through any entity designated by ECRR and approved by the Port." Significantly, Section 2.1(g) of the Operations and Maintenance Agreement specifically recognizes that Ballard Terminal Railroad Company is the approved entity that will conduct the freight rail service on the line.

To the extent that the Port may be concerned that ECRR or Ballard will not comply with their obligations under the private contractual relationships of the Operations and Maintenance Agreement, the current draft of the Lease between Ballard and ECRR provides as follows:

2. Port of Seattle Operations and Maintenance Agreement. The terms of that certain Operations and Maintenance Agreement, dated December 18, 2009, between the Port of Seattle and ECRR as successor in interest to GNP RLY, Inc. ("O&M Agreement") is hereby incorporated herein by reference. Ballard agrees to be bound by and comply with ECRR's obligations under the terms of the O&M Agreement. In the event of a conflict between the terms of the O&M Agreement and the terms of this Agreement, the terms of the O&M Agreement shall govern.

While the Lease is still being reviewed by Ballard and ECRR, each of them fully expects to comply with its obligations under the Operations and Maintenance Agreement. And, to the extent that they do not comply with the terms of that Agreement, the Agreement provides an arbitration procedure in Section 11 to adjudicate disputes between the parties. This arbitration

procedure, and not a proceeding before the Board, is the appropriate forum for the adjudication of any of the Port's concerns.

In sum, the Port is requesting that the Board stay this proceeding in connection with private contractual matters between the Port, ECRR and Ballard. The Board has routinely held that such matters are not appropriately adjudicated before the Board and it should not diverge from that position now. Ballard respectfully requests that the Port's Petition for Stay be denied.

Respectfully submitted,

By:   
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