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June 19, 2013

VIA ELECTRONIC FILING

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

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ENTERED
Office of Proceedings
June 19, 2013
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:

Attached for filing in the above-captioned proceedings is the **Joint Reply of Ballard Terminal Railroad Company, L.L.C. and Eastside Community Rail, LLC to City of Kirkland's Emergency Motion to Compel Discovery**, dated June 19, 2013.

Exhibit 3 to the Joint Reply has been designated as Confidential and is being filed under seal pursuant to the pending protective order requested in these matters.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas C. Paschalis
Attorney for Ballard Terminal Railroad Company
L.L.C. and Eastside Community Rail, LLC

TCP:tjl
Attachments
cc: Parties on Certificate of Service

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

**JOINT REPLY OF BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
AND EASTSIDE COMMUNITY RAIL, LLC TO CITY OF KIRKLAND'S
EMERGENCY MOTION TO COMPEL DISCOVERY**

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**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C. AND
EASTSIDE COMMUNITY RAIL, LLC**

Dated: June 19, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35731

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AND EASTSIDE COMMUNITY RAIL, LLC TO CITY OF KIRKLAND'S
EMERGENCY MOTION TO COMPEL DISCOVERY**

Ballard Terminal Railroad Company, LLC (“Ballard”) and Eastside Community Rail, LLC (“Eastside”), by and through counsel, hereby jointly reply to the City of Kirkland, Washington’s (“Kirkland’s”) emergency motion to compel supplemental document production from Ballard and Eastside. As Ballard and Eastside will explain, notwithstanding the astoundingly overbroad and burdensome discovery requests served upon them, both have engaged in substantial efforts to produce the documents and information requested by Kirkland and have complied with all discovery obligations imposed by the Code of Federal Regulations and the United States Code. Kirkland’s motion to compel supplemental document production represents nothing more than its continued efforts to harass and intimidate Ballard, Eastside, and all potential shippers who have expressed support for the reactivation of freight rail service on the Woodinville-Bellevue line (hereinafter “the Line”). Such efforts began with Kirkland’s burdensome and broadly worded discovery requests, resumed with its day-long depositions of

Ballard General Manager Byron Cole and Eastside Managing Director Douglas Engle, and continue with the filing of Kirkland's baseless motion to compel. For the reasons stated herein, Kirkland's motion should be denied.

BACKGROUND OF DISPUTE

A. Kirkland's Discovery Requests

In its discovery requests, Kirkland demanded the production of 22 broad categories of documents from Ballard and 25 categories of documents from Eastside.¹ Among the requests, Kirkland sought Ballard's and Engle's communications over a five-year period with numerous public bodies, including those opposing reactivation in this proceeding, and several potential shippers. The requested documents included not only all communications pertaining to the Line, but also the Snohomish-Woodinville segment (hereinafter "the Freight Segment").²

B. Ballard's Document Production

In its motion to compel, Kirkland identified four requests for which it claims Ballard's production is deficient: (1) communications between Ballard and Doug Engle; (2) communications between Ballard and Kathy Cox; (3) communications between Ballard and the Port of Seattle ("the Port"); and (4) Ballard's financial statements. At the time of Ballard General Manager Byron Cole's deposition, Ballard had produced 46 documents, including

¹ See City of Kirkland's First Set of Interrogatories and Requests for Production to Ballard Terminal Railroad Company, LLC, (Exhibit 1 hereto), and City of Kirkland's Subpoena *Duces Tecum* to Douglas Engle to Testify in a Deposition and Produce Documents in a Proceeding Before the Surface Transportation Board (Exhibit 2 hereto).

² As used herein, the "Line" refers to the portion of the railbanked right of way between Woodinville and Bellevue, Washington, that is the subject of Ballard's petitions. The "Freight Segment" refers to the contiguous rail line between Woodinville and Snohomish, Washington, which Ballard currently operates. Ballard, in its petitions, seeks to acquire reactivation rights on the Line in order to commence freight operations.

documents outlining its 2012 revenue, operating expenses, and costs.³ On the date that Kirkland filed its motion to compel, Ballard produced an additional 111 documents, which contain all communications with Douglas Engle, Eastside, and Kathy Cox which relate to the Line. The communications produced by Ballard date back to September 2012, the approximate time in which Ballard and Eastside commenced efforts to reactivate freight service on the Line.

As Ballard has now produced all relevant communications with Douglas Engle, Eastside, and Kathy Cox, Kirkland's motion to compel the documents in categories (1) and (2) above should be deemed moot.

C. Eastside's Document Production

Kirkland cites three requests for which it demands supplemental production from Eastside: (1) communications between Eastside and Ballard; (2) communications between Eastside and Kathy Cox; (3) communications between Eastside and the Port. Kirkland also demands that Eastside produce a privilege log.

When Eastside Managing Director Douglas Engle was deposed, Eastside had produced 978 documents. On June 14, Eastside produced an additional 164 documents, including all email communications between Douglas Engle and Byron Cole, Ballard, and Kathy Cox during the time period requested by Kirkland.⁴ Eastside's production of communications with Byron Cole, Ballard, and Kathy Cox should moot Kirkland's motion to compel documents in categories (1) and (2) of the preceding paragraph.

³ See BTR 1-11, marked "Confidential" (Exhibit 3 hereto).

⁴ Mr. Engle testified that he switched e-mail systems on or about December 31, 2012, and after converting certain emails to portable document files ("PDFs"), he deleted all emails prior to that date. When assembling documents to produce to Kirkland, Mr. Engle searched his email accounts and PDF files. See Engle Dep. Trans. at 31-37 (Exhibit 4 hereto).

D. The Onerous Depositions of Byron Cole and Douglas Engle

The Board should consider Kirkland's motion to compel in conjunction with the burdensome and harassing depositions that Kirkland has taken in this matter. Both Byron Cole and Douglas Engle were subjected to day-long depositions wherein they testified exhaustively on their respective communications with each other, Kathy Cox, and the Port.^{5 6} Similarly, both Mr. Cole and Mr. Engle testified to the financial condition of their respective entities, the operations on the Freight Segment, and Eastside's performance of the O&M Agreement it entered into with the Port, among numerous other topics.

Rather than belabor the record and the Board by attaching all 244 pages of Mr. Cole deposition transcript and the 240-page transcript of Mr. Engle's testimony, Ballard and Eastside will simply direct the Board's attention to the briefs filed by Kirkland, King County, Washington ("King County") and Central Puget Sound Regional Transit Authority ("Sound Transit") on June 4, 2013, in reply to Ballard's Motion for Preliminary Injunction in this matter. Kirkland's reply is indicative of the amount of information Kirkland obtained on the subjects identified in its motion to compel during the course of the lengthy depositions, and it belies any contention on the part of Kirkland that it has not sufficiently explored all relevant (in addition to many irrelevant) subjects.

⁵ Byron Cole's deposition commenced at 9:10 a.m. and concluded at 6:52 p.m. See Exhibit 5 hereto. Douglas Engle's deposition commenced at 9:17 a.m. and concluded at 6:49 p.m. See Exhibit 6 hereto. Both testified for over 7 hours, exclusive of breaks.

⁶ In addition to deposing Mr. Cole and Mr. Engle, Kirkland also took an unduly oppressive deposition of Bobby Wolford. Mr. Wolford, a third party who submitted a two-page letter of support for reactivation of freight service on the Line, was deposed from 9:28 a.m. to 3:12 p.m. on May 16, 2013.

ARGUMENT

In proceedings before the Board, “parties are entitled to discovery ‘regarding any matter, not privileged, which is *relevant* to the subject matter involved in the proceeding.’” Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions, STB Finance Docket No. 35557 at 3 (served June 25, 2012) (emphasis added). “[A]ll discovery requests entail the balancing of the relevance of the information sought against the burden of producing that information.” Ballard Terminal Railroad Co., L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision, STB Finance Docket No. 35731 at 3 (served May 17, 2013) (citing BNSF Coal Dust Tariff at 4). The Board has “never permitted open-ended discovery into a party’s business when that discovery is unlikely to produce evidence that will affect [the Board’s] decision.” Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Ry. Co., Boston and Maine Corp., and Portland Terminal Co., STB Finance Docket No. 33381 at 4 (served June 26, 1997).

Upon conducting the requisite balancing test, the Board should conclude that (1) Ballard and Eastside have provided extensive testimony and documents pertaining to all issues relevant to this proceeding; (2) any further document production on the matters identified by Kirkland would only add to the excessive discovery burdens that Ballard and Eastside have already endured in this proceeding. The Board should decline to allow Kirkland to obtain the open-ended discovery that it seeks from Ballard and Eastside.

A. Ballard’s Objections to Kirkland’s Discovery Requests

For the benefit of the Board, Ballard and Eastside will begin by explaining the bases for two of their objections to Kirkland’s document requests. In their discovery responses, both Ballard and Eastside objected to the time frame that Kirkland purports to be relevant to this

action and Kirkland's broad requests for documents relating to the Freight Segment, which is not the line at issue in this proceeding.⁷

1. The Relevant Time Period

Kirkland's discovery requests are patently overbroad and burdensome with respect to time frame. In its discovery requests to Ballard, Kirkland contended that the relevant time period for its discovery requests is January 1, 2008, through the present. As attested to by Douglas Engle, Eastside did not obtain an easement on the Freight Segment until September 2012. At that time, Eastside entered into an interim lease agreement with Ballard and, shortly thereafter, began to pursue plans for the resumption of freight operations on the Line.⁸

As a consequence, in responding to Kirkland's discovery requests, Ballard assembled and produced communications dating back to September 1, 2012. Kirkland, in its reply to Ballard's Motion for Preliminary Injunction, repeatedly concedes that the operative time frame relevant to this proceeding is the present and the immediate past. Specifically, Kirkland's opposition to Ballard's petitions are twofold: (1) there is presently no actual demand for freight service; (2) Ballard's current financial condition, its current lack of property in Bellevue for the offloading of materials, and the current logistical problems faced by Ballard's shippers are so insurmountable that Ballard cannot be considered by the Board to be a bona fide petitioner. To be sure, Kirkland's contentions are altogether incorrect. Nevertheless, Kirkland's contentions demonstrate that the relevant time period encompasses only contemporaneous communications and events. Kirkland has made no showing that communications which occurred in January

⁷ See Ballard's Response to Kirkland's First Request for Production, a copy of which is attached hereto as Exhibit 7, and Eastside's Response to Kirkland's Documents Requests, a copy of which is attached hereto as Exhibit 8.

⁸ See Engle Dep. Trans. at 93 (Exhibit 9 hereto); Engle emails with Williams and Triplett (Exhibit 10 hereto).

2008 will impact the Board's decision on whether the Ballard is entitled to procure and exercise reactivation rights on the Line.

Kirkland's attempt to cite January 1, 2008, as the date on which the relevant time period commenced is merely a misguided attempt to invoke the Freight Segment in order to broaden the scope of its discovery requests and increase the burden on Ballard and Eastside. Ballard and Eastside's communications and activities relating to the resumption of freight service on the Line commenced in the fall of 2012. As such, the relevant time period should not extend beyond that time.

2. The Freight Segment

This action pertains to an exemption that Ballard is seeking in order to operate the Line, not the Freight Segment. Overall, Ballard operations on the Freight Segment are not germane to the issues of whether Ballard is legally entitled to obtain reactivation rights and an exemption to operate the Line. More importantly, Kirkland's broad requests for documents and communications pertaining to the Freight Segment could effectively be construed to include nearly all documents in Ballard's possession. As the Freight Segment is one of the three lines that Ballard operates, requests for communications and documents pertaining to the Freight Segment would be expected to cover a significant percentage of Ballard's documents. As the subject of this proceeding is Ballard's efforts to obtain reactivation rights and commence operations on the Line, the burden imposed by requests for documents relating to the Freight Segment significantly outweighs any purported relevance attached to such documents.

To the extent that Kirkland required information pertaining to the Freight Segment in order to explore whether Ballard is a bona fide petitioner, it was able to obtain such information through substantial deposition testimony of Byron Cole, Douglas Engle, Bobby

Wolford, and Michael Skrivan. During the course of the depositions, Kirkland obtained testimony and documents relating to car counts on the Freight Segment, the manner in which Ballard's two proposed shippers would transport goods to the Freight Segment, track conditions on the Freight Segment, and Ballard and Eastside's dealings with the Port of Seattle (the "Port") in leasing and operating the Freight Segment. Once again, the Board need look no further than Kirkland's Reply to Ballard's Motion for Preliminary Injunction to understand the depth in which these topics were previously explored. As a consequence, Ballard's objection should be upheld.

B. Ballard's and Eastside's Document Production

1. Ballard Has Produced Communications With Eastside and Kathy Cox

At this time, the portion of Kirkland's motion to compel relating to Ballard's communications with Mr. Engle, Eastside, and Kathy Cox is moot. Notwithstanding the fact that Ballard general manager Byron Cole runs three rail lines and has sat through two day-long depositions, he has reviewed Kirkland's discovery requests, conducted a diligent search for responsive documents in his possession, and produced such relevant, responsive documents to Kirkland. On June 11, 2013, the same day that Kirkland filed its motion to compel, Ballard supplemented its prior document production by providing Kirkland with 111 pages of email communications, including all communications between Mr. Cole and Mr. Engle which relate to the Line from September 2012 to the present. Mr. Cole also produced all communications in his possession with Kathy Cox. As a consequence, Kirkland's request to compel communications between Ballard and Eastside should be denied as moot.

2. Eastside Has Also Produced Communications with Ballard and Kathy Cox

Similarly, the portion of Kirkland's motion to compel Doug Engle's communications with Ballard and Kathy Cox is now moot. Eastside supplemented its prior document production on June 13, 2013. Among the documents produced to Kirkland were all communications in Mr. Engle's possession between himself and Ballard which relate to the Line from September 2012 to the present. Mr. Engle also produced all communications in his possession with Kathy Cox. Thus, Kirkland's request to compel documents relating to communications with Kathy Cox should also be denied as moot.

3. There Are No Circumstances that Justify Kirkland's Demand For a Privilege Log

In its motion to compel, Kirkland attempts to use innuendo and conjecture to justify the production of a privilege log. As Mr. Engle's deposition testimony indicates, Eastside has not produced emails in which Mr. Engle communicated with his attorneys relating to this proceeding. Mr. Engle has also not produced emails between himself, Mr. Cole, and their attorneys which discuss this proceeding. Any such emails between Mr. Cole, Mr. Engle, and their attorneys are privileged.

Though Kirkland offers no supporting testimony, it speculates that Eastside and Ballard are withholding communications involving Kathy Cox on the basis of privilege. As counsel for Ballard and Eastside has explained to counsel for Kirkland, this is simply not true. Both Ballard and Kirkland have produced all communications with Kathy Cox, even those with an attorney's name on it.⁹ Ballard and Eastside are claiming privilege solely on qualifying communications between Mr. Engle, Mr. Cole, and their counsel.

⁹ See BTR 124; ECR 1023, 1060, 1082, 1138-1139 (Exhibit 11 hereto).

Kirkland is not entitled to a privilege log under the circumstances of this proceeding. In BNSF Coal Dust Tariff, the Board went out of its way to clarify that privilege logs should not be required a matter of routine discovery practice. Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions, STB Finance Docket No. 35557 at 7-8 (served June 25, 2012). Rather, the Board announced that the production of a privilege log is only appropriate where “unique circumstances” exist which could give rise the inadvertent labeling of unprivileged, relevant material as privileged. Id. at 8. In BNSF Coal Dust Tariff, the unique circumstance that justified the creation of a privilege log was the fact that BNSF had previously been party to a Board proceeding relating to the tariffs, and thus, the discovery requests in the subsequent action would likely enmesh a great number of privileged documents. Id.

In this action there are no unique circumstances that warrant a privilege log. Notwithstanding Kirkland’s baseless conjecture, Eastside is not claiming any privilege with respect to communications with Kathy Cox.

4. Ballard and Eastside’s Communications with Port of Seattle

Kirkland demands that Ballard and Eastside produce communications and documents that each has exchanged with the Port. Ballard and Eastside objects to such production on the basis that the Port, much like Kirkland, is a public body which has appeared in proceedings in this matter for the purpose of opposing the reactivation of freight service on the Line.¹⁰ As the Port and Kirkland are parties that have a unified interest opposing Ballard’s

¹⁰ See Ballard’s Response to Kirkland’s First Request for Production, attached hereto as Exhibit 7, at 5, 7; Eastside’s Response to Kirkland’s Document Requests, attached hereto as Exhibit 8, at 4-5, 7. Ballard also objected on the basis of relevance and burden, as most communications between Ballard and the Port relate to operations on the Freight Segment and do not bear on the issues before the Board in this action.

petitions, Ballard should not bear the burden of producing responsive documents. Rather, Kirkland is capable of obtaining such documents from the Port.¹¹

a. Ballard’s Objection On the Basis of Availability From Another Source Should Be Upheld

Kirkland ignores the Board’s stated legal principles when it contends that parties cannot object to documents request on the basis that the documents are available from another source. Kirkland’s incorrect assertion is based on brief footnote comment wherein the Board merely stated that “[t]he Board’s discovery rules ‘follow generally those in the Federal Rules of Civil Procedure.’”¹² Engaging in a tenuous line of reasoning, Kirkland then cites to a holding of the U.S. District Court for the Western District of Pennsylvania indicating that in that jurisdiction, parties must produce all responsive documents in their possession, regardless of availability from another source.¹³

Kirkland’s contention betrays a fundamental misapprehension of discovery in proceedings before the Board. While there are parallels between discovery procedures in proceedings before the Board and those in federal court, the Board has explicitly ruled that “[i]n discovery matters, we are neither governed nor limited by the Federal Rules.” FMC Wyo. Corp. and FMC Corp. v. Union P. R.R. Co., STB Docket No. 42022 at 3-4 (served Feb. 5, 1998). Moreover, the Board’s predecessor, the Interstate Commerce Commission, ruled on this very issue and determined that objections to documents requests are appropriate when the documents

¹¹ Kirkland also requested Ballard and Eastside’s communications with King County and Sound Transit. Ballard and Eastside made the same objections to these requests. For reasons unknown to Ballard and Eastside, Kirkland has not included those requests in its motion to compel.

¹² See Kirkland’s Emergency Motion to Compel Discovery from Ballard and Eastside at 8 (citing Potomac Elec. Power Co. v. CSX Transp., Inc., 2 S.T.B. 290, 290 n.5 (1997)).

¹³ See Kirkland’s Emergency Motion at 8.

are available from another source. Amstar Corp. v. The At. Great S. R.R., 1989 WL 238989 (I.C.C.), No. 38239S, *3 (July 14, 1989) (holding that “the Commission has declined to order discovery when the information sought is readily available from other sources”). Contrary to Kirkland’s contention, Ballard and Eastside’s objections are valid and should be upheld. The Federal Rules of Civil Procedure do not control discovery in this matter, and Ballard and Eastside are not required to produce its communications with the Port.¹⁴

b. Eastside and Ballard’s Compliance with the O&M Agreement Cannot Be Invoked to Compel Communications and Documents Involving the Port

Kirkland overreaches in its attempt to argue that Eastside’s compliance with the O&M Agreement between Eastside and Port is an appropriate area of inquiry and, further, that it necessitates the production of documents and communications involving the Port. Simply put, Eastside and the Port’s performance of their obligations under O&M Agreement is not relevant to the issues that the Board has to decide in these proceedings.

The Board is not being asked to determine whether the O&M Agreement has been breached by either Eastside or the Port. As the Board is aware, the Port filed a petition requesting that the Board stay Ballard’s exemption to lease and operate the Freight Segment. The Port’s petition was denied, the proceeding is closed, and the Port has instituted no further action relating to the Eastside’s exemption with respect to the Freight Segment.¹⁵ Kirkland’s attempts to inject a collateral matter into this proceeding is a transparent attempt to conflate

¹⁴ Kirkland own conduct should be construed as an admission that the Federal Rules of Civil Procedure do not control discovery in this proceeding. Though Rule 30(d) of the Federal Rules provides that depositions are not to exceed 7 hours, both Mr. Cole and Mr. Engle were made to testify for over 7 hours, exclusive of breaks, in contravention of the rule.

¹⁵ See Ballard Terminal Railroad Company, LLC – Lease Exemption – Line of Eastside Community Rail, LLC, STB Finance Docket No. 35730 (served May 1, 2013).

distinctive issues in order to broaden the scope of relevant discovery in this action. There is no pending dispute before the Board with respect to Eastside's performance of the O&M Agreement on the Freight Segment.

Kirkland spins its wheels by disingenuously arguing that Ballard's status as a bona fide petitioner depends on rights outlined in the O&M Agreement, and that as a consequence, Kirkland needs to review communications and documents exchanged with the Port. Regardless of whether Ballard's status as a bona fide petitioner is affected by the O&M Agreement, Kirkland need not obtain additional documents and communications to ascertain the rights of Ballard or Eastside, or any operational limitations that they are subject to, relating to the Freight Segment. Rather, Kirkland can simply look at the O&M Agreement, which was made an exhibit to Byron Cole's deposition transcript by Kirkland's own counsel.¹⁶ Any such limitations on Eastside's (and Ballard's) rights are enumerated therein. Further discovery on Ballard and Eastside's dealings with the Port is thus unwarranted and unnecessary.

5. Ballard's Financial Statements

Kirkland, in its overbroad discovery requests, also demanded the production of Ballard's "articles of incorporation, corporate by-laws, annual reports, and tax returns." It further requested the "financial statements of Ballard, including internally prepared statements and statements prepared by an accounting firm."¹⁷ Though Ballard does not have "financial statements" in the customary sense of the term, Ballard prepares a year-end summary of its revenue, expense, and costs.¹⁸ The 2012 summary was produced to Kirkland.¹⁹ Ballard also

¹⁶ See Cole Dep. Trans. at 168 (Exhibit 12 hereto).

¹⁷ See Exhibit 7 at 2-3.

¹⁸ See Cole Dep. Trans. at 25 (Exhibit 13 hereto).

produced its State of Washington limited liability company certificate and Ballard's L.L.C. Agreement, which was entered into in 1996 by Mr. Cole and his partner Paul Nerdrum.

Ballard's document production, in addition to the deposition testimony of Byron Cole, allows Kirkland and Ballard's other opponents to acquire relevant information relating to Ballard's current financial condition. Ballard has complied with any obligation to provide relevant discovery on the issue of its finances and should not be required to provide additional documentation.

Kirkland's demand for tax returns is intrusive, hostile, and harassing. Its demand for *five years'* worth of such documents defies explanation and again exemplifies Kirkland's overbearing approach to discovery in this matter. Most curiously, Kirkland appears to be expanding the scope of its discovery requests in its motion to compel. In its written discovery requests, Kirkland never requested *communications* between Ballard and its accountants. Rather, in Request No. 2, it merely asked for certain *documents, i.e.*, "financial statements of Ballard, including internally prepared statements and statements prepared by an accounting firm." This request could not reasonably be construed to include communications between Ballard and its accounting firm. Yet somehow, Kirkland is now apparently moving the Board to compel the production of communications it never requested in the first place. See Kirkland Motion to Compel at 9. Such a request is absurd.

As mentioned above, the Board has "never permitted open-ended discovery into a party's business when that discovery is unlikely to produce evidence that will affect [the Board's] decision." Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Ry. Co., Boston and Maine Corp., and Portland Terminal Co., STB Finance Docket No. 33381 at 4 (served June 26, 1997). Kirkland's overbroad and burdensome requests

¹⁹ BTR 5-11 (Exhibit 3 hereto).

for five years' worth of Ballard's tax returns and five years' of communications with its accounting firm is indicative of its attempt to obtain open-ended discovery on all aspects of Ballard's business. The request should be denied.

WHEREFORE, Ballard requests that Kirkland's emergency motion be denied in whole.

Respectfully submitted,

By:  _____

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Thomas J. Litwiler
Thomas C. Paschalis
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Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C. AND
EASTSIDE COMMUNITY RAIL, LLC**

Dated: June 19, 2013

EXHIBIT 1

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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**

**THE CITY OF KIRKLAND'S
FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO BALLARD TERMINAL
RAILROAD COMPANY, LLC**

16 TO: Petitioner Ballard Terminal Railroad Company, LLC ("Ballard")
17 AND TO: Myles L. Tobin and Tom Montgomery, counsel for Ballard Terminal Railroad
18 Company, LLC

19 Pursuant to the rules of the Surface Transportation Board ("STB") governing discovery,
20 *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, the City of Kirkland, Washington
21 ("Kirkland"), submits the following interrogatories and requests for production of documents and
22 electronically stored information (collectively, "Discovery Requests") to Petitioner Ballard
23 Terminal Railroad Company, LLC. ("Ballard"). Pursuant to 49 C.F.R. §§ 1114.26(a), .27(a), and
24 .30(b), these discovery requests must be answered in writing and under oath within 15 days after
25 the date of service thereof. If Ballard cannot produce copies of the Documents and
26 Electronically Stored Information (as those terms are defined below) as requested herein, Ballard

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 1**

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STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 is requested to produce such Documents and Electronically Stored Information for inspection
2 and copying by 9:00 a.m. on May 23, 2013, at the office of Stoel Rives LLP, 600 University
3 Street, Suite 3600, Seattle, Washington 98101, or at such other place as mutually agreed upon by
4 counsel. Inspection and copying will be conducted by counsel for Kirkland or its agents from
5 time to time until completion.

6 DEFINITIONS

7 1. Consistent with both the STB rules, 49 C.F.R. § 1114.30(a)(1) and the Federal
8 Rules of Civil Procedure, "Document and Electronically Stored Information" shall mean the
9 original, all copies, and all translations of any writing, drawings, graphs, charts, photographs,
10 phonograph records, tapes, video recordings, sound recordings, images, and other data or data
11 compilations stored in any medium (paper or other tangible format, as well as any electronic
12 format) from which information can be obtained. "Document and Electronically-Stored
13 Information" includes, for example (and not by way of limitation), email, paper documents,
14 photographs, microfilm, microfiche, computer tapes, computer printouts, spreadsheets,
15 calendars, appointment books, lists, tabulations, surveys, all other records kept by electronic,
16 photographic, or mechanical means, and things similar to the foregoing, however denominated.
17 "Document," as used herein, shall also mean any tape or audible recording, any photograph or
18 motion picture or videotape and any non-identical copy of any document as previously defined
19 (e.g., any copy of a document as previously defined which differs from any other copy thereof
20 either by virtue of other material appearing thereon, such as handwriting or typewriting, or
21 otherwise). "Electronically Stored Information" includes without limitation email, voicemail,
22 documents, spreadsheets, calendars, and any other information existing in any electronic format
23 (e.g., Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav).

24 2. "Communication" shall mean any information transmitted from one person or
25 entity to another person or entity and includes, but is not limited to, email or letters and any
26 attachments or enclosures thereto, oral conversations and recordings thereof, voicemail, notes

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 2**

73809914.1 0021620-00004

STOEL RIVES LLP
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(206) 354-0900

1 from oral conversations, and materials comprising a presentation, application, proposal, offer, or
2 acceptance. To “communicate” means to transmit such information, in any medium.

3 3. “Person” shall mean any natural person, firm, association, partnership, limited
4 liability partnership, proprietorship, corporation, company, limited liability company, or any
5 other business or legal entity, and includes any and all of such person’s directors, officers,
6 employees, agents, attorneys, accountants, consultants, and/or other representatives.

7 4. Each of the terms “refer to,” “relate to,” “relating to,” or “regarding” shall mean
8 and include any logical or factual connection with the matter identified or discussed. These
9 terms include all matters or things that in any way discuss, concern, are connected to, arise from,
10 reflect, summarize, evaluate, comment on, evidence, suggest, indicate, and/or otherwise tend to
11 prove or disprove the subject or object of the particular Discovery Request in which any of these
12 terms is used.

13 5. “Identify.”

14 a. “Identify,” when used in the context of identifying a natural person, means to
15 state the person’s (i) full name, (ii) present or last known business and residence addresses, (iii)
16 present or last known business, residence, and cellular telephone numbers, and (iv) present or
17 last known employer, job title or (if the job title is unknown to you) the nature or description of
18 the position occupied by the person.

19 b. “Identify,” when used in the context of identifying an entity, association,
20 partnership, or other organization (*e.g.*, a Person – as that term is defined herein – other than a
21 natural person) means to state (i) the organization’s full name, (ii) the address and telephone
22 number of its primary place of business; (iii) each address where the organization is located
23 where you have had contact with it that is or may be material to this matter; (iv) each telephone
24 number you have used to contact the organization; (v) the state of the organization’s formation,
25 and (vi) all known natural persons who own, operate, and/or control the organization to the best
26 of your knowledge, information, and belief and, with respect to each natural person with whom

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 3**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 either of you has had contact, the person's (A) full name, (B) present or last known business and
2 residence addresses, (C) present or last known business, residence, and cellular telephone
3 numbers, and (D) present or last known employer, job title or (if the job title is unknown to you)
4 the nature or description of the position occupied by the person.

5 c. "Identify," when used in the context of identifying a document, means to provide
6 sufficient information to permit unambiguous identification of the document, including, without
7 limitation, the document's (i) form (i.e., letter, memorandum, handwritten notes, typewritten
8 notes, report, analysis, etc.), (ii) title (if any), (iii) date, (iv) author, and (v) addressee or intended
9 recipient, if any, and (vi) current location.

10 d. "Identify," when used in the context of identifying a communication, means to
11 provide sufficient information to permit unambiguous identification of the communication,
12 including without limitation (i) the date of the communication, (ii) the manner in which the
13 communication took place (i.e., whether the communication took place through a meeting,
14 telephone conversation, letter, email, or other form of communication, the form of which you are
15 to specify), (iii) the location of the communication if the communication was in the form of a
16 telephone conversation or meeting, (iv) all parties or persons present at the time of such
17 communication or who participated, overheard, or may have overheard the communication if it
18 was oral, or who have seen or may have seen the communication if it was in writing, and (v) the
19 subject matter and substance of the communication.

20 6. "You," "your," or "Ballard" means and includes Ballard Terminal Railroad
21 Company, LLC. and all agents, related entities, owners, affiliates, representatives, attorneys and
22 any other person who, or entity that, is affiliated with, has acted, and/or is acting for or on behalf
23 of Ballard.

24 7. The "Line" means any part of the railbanked segment of the Woodinville
25 Subdivision running between milepost 23.8 in Woodinville, Washington, and approximately
26 milepost 11.25 in Bellevue, Washington.

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 4**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 **REQUESTS FOR PRODUCTION**

2 **RFP NO. 1:** Please produce all versions of your articles of incorporation, corporate by-
3 laws, annual reports, and tax returns.

4 **RESPONSE:**

5
6 **RFP NO. 2:** Please provide all financial statements of Ballard's, including internally
7 prepared statements and statements prepared by an accounting firm.

8 **RESPONSE:**

9
10 **RFP NO. 3:** Please produce all communications between you and any potential shipper
11 on the Line, including but not limited to CalPortland Company and Woford Trucking and
12 Demolition, Inc., and any representatives or agents thereof.

13 **RESPONSE:**

14
15 **RFP NO. 4:** Please produce all communications between you and Douglas Engle.

16 **RESPONSE:**

17
18 **RFP NO. 5:** Please produce all communications related to the Line or Freight Segment
19 between you and representatives of EBS Capital Partners.us, LLC, including but not limited to
20 Daniel T. Behr and Douglas C. Olds.

21 **RESPONSE:**

22
23 **RFP NO. 6:** Please produce all communications related to the Line or Freight Segment
24 between you and officers, employees, or other representatives of Marketing Philharmonic,
25 including but not limited to Kathy Cox.

26
**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 6**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

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RESPONSE:

RFP NO. 7: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Wright Runstad & Company.

RESPONSE:

RFP NO. 8: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the organization known as the Eastside TRailway Alliance.

RESPONSE:

RFP NO. 9: Please produce all communications between you and BNSF Railway Company related to the Line or Freight Segment, including any communications regarding interchanges to the Line or the Freight Segment.

RESPONSE:

RFP NO. 10: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE:

RFP NO. 11: Please produce all communications related to the Line or Freight Segment between you and members of the King County Council and their staff.

RESPONSE:

FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO BALLARD TERMINAL RAILROAD COMPANY, LLC - 7

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 **RFP NO. 12:** Please produce all communications related to the Line or Freight Segment
2 between you and officers, employees, or other representatives of the Central Puget Sound
3 Regional Transit Authority (a/k/a Sound Transit).

4 **RESPONSE:**
5

6 **RFP NO. 13:** Please produce all communications related to the Line or Freight Segment
7 between you and officers, employees, or other representatives of Snohomish County,
8 Washington.

9 **RESPONSE:**
10

11 **RFP NO. 14:** Please produce all communications related to the Line or Freight Segment
12 between you and officers, employees, or other representatives of the City of Snohomish,
13 Washington.

14 **RESPONSE:**
15

16 **RFP NO. 15:** Please produce all communications related to the Line or Freight Segment
17 between you and officers, employees, or other representatives of the City of Woodinville,
18 Washington.

19 **RESPONSE:**
20

21 **RFP NO. 16:** Please produce all versions of your business plan(s) to provide or support
22 freight or passenger service on the Line, the Freight Segment, or both, and all documents related
23 to such plan(s).

24 **RESPONSE:**
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26

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 8**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 **RFP NO. 17:** Please produce all documents related to estimated costs to reactivate rail
2 service on the Line, including without limitation the cost of repairing track, ties, signals, and
3 switches.

4 **RESPONSE:**

6 **RFP NO. 18:** Please produce all documents related to discussions or negotiations with
7 the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property
8 rights necessary to use the Line for rail service.

9 **RESPONSE:**

11 **RFP NO. 19:** Please produce all documents referring or relating to your past, current,
12 and/or prospective contractual and/or business relationship with Eastside Community Rail, LLC,
13 including but not limited to lease agreements and operating agreements between the two entities.

14 **RESPONSE:**

16 **RFP NO. 20:** Please produce all documents related to any request(s) for funds from the
17 State of Washington to maintain or improve the Line or the Freight Segment.

18 **RESPONSE:**

20 **RFP NO. 21:** Please produce all documents that show traffic volume and revenues from
21 traffic volume on the Freight Segment.

22 **RESPONSE:**

24 **RFP NO. 22:** Please produce all documents showing projected freight rail traffic and
25 revenue on the Line, if freight rail service on the Line is reinstated.

26 **RESPONSE:**

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 9**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 DATED: May 8, 2013.

2 STOEL RIVES LLP

3
4 

5 Matthew Cohen, WSBA No. 11232

6 mcohen@stoel.com

7 Hunter Ferguson, WSBA No. 41485

8 hoferguson@stoel.com

9 Attorneys for the City of Kirkland, Washington

10 ANSWERS & RESPONSES DATED: _____

11 BY: _____

12 ITS: _____

13 LOCATION: _____

14 _____, being first duly sworn, on oath deposes and says:

15 That ___ is the _____ of Ballard Terminal Railroad Company LLC, in the
16 above cause of action; has read the foregoing Interrogatories and Requests for Production of
17 Documents and the Answers and Responses thereto and has reviewed the documents produced,
18 knows the contents thereof, and believes the answers to the Interrogatories and responses to the
19 Requests to be true and the documents produced complete.

20 _____
Signature

21 _____
Print Name

22 SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2013.

23 Signature: _____

24 Name (Print): _____

25 NOTARY PUBLIC in and for the State of
Washington, residing at _____

26 My appointment expires: _____

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 10**

73809914.1 0021620-00004

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600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 **STATEMENT OF ATTORNEY**

2 The undersigned hereby states that he is the attorney for the party answering the above
3 propounded Interrogatories and responding to the Request for Production of Documents, and that
4 all objections, if any, set forth in response to said Interrogatories and Requests were made by the
5 undersigned and that a motion for protective order was filed with the STB as required by 49
6 C.F.R. § 1114.21(c).

7 DATED this _____ day of _____, 2013.

8 _____, counsel for
9 Petitioner Ballard Terminal Railroad Company LLC

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**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 11**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

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 8, 2013:

4 Pete Ramels
5 Andrew Marcuse
6 Office of the Prosecuting Attorney—Civil Division
7 W400 King County Courthouse
8 516 Third Avenue
9 Seattle, WA 98104
10 *Attorneys for King County*

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

18 Craig Watson
19 General Counsel
20 Port of Seattle
21 Pier 69
22 PO Box 1209
23 Seattle, WA 98111

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

DATED at Seattle, WA this 8th day of May, 2013

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Leslie Lomax, Legal Secretary
STOEL RIVES

FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 12

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

EXHIBIT 2

1
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3
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5
6
7 BEFORE THE SURFACE TRANSPORTATION BOARD
8

9
10 **STB FINANCE DOCKET NO. 35731**
11 **BALLARD TERMINAL**
12 **RAILROAD COMPANY, L.L.C.**
13 **—ACQUISITION AND EXEMPTION—**
14 **WOODINVILLE SUBDIVISION**

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

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

DATE: May 22, 2013

TIME: 9:00 a.m.

20
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26
To: Douglas Engle
1340 Lombard Street, #606 240 Lombard Street, #936
San Francisco, CA 94109 San Francisco, CA 94111

Pursuant to the rules of the Surface Transportation Board (“STB”) governing discovery, *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, YOU ARE HEREBY COMMANDED to appear at the offices of STOEL RIVES LLP, 600 University Street, Suite 3600, Seattle, Washington, 98101, at 9:00 a.m. on **May 22, 2013**, then and there to testify at the request of the City of Kirkland, Washington (“Kirkland”), in the above-entitled matters, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by Kirkland’s attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s (“Ballard”) for exemption from regulation under 49 U.S.C. § 10902 to

SUBPOENA TO DOUGLAS ENGLE - 1

1 reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the
2 "Line") and to partially vacate the NITU Order issued for the Line. Your testimony shall be
3 subject to continuance or adjournment from time to time or place to place until completed and is
4 to be taken for the reason that you will give evidence relevant to Ballard's petitions. Your
5 testimony will be recorded by verbatim transcript.

6 YOUR ARE ALSO COMMANDED to produce the items described in Attachment A by
7 9:00 a.m. on **May 20, 2013** to the offices of Stoel Rives LLP, 600 University Street, Suite 3600,
8 Seattle, WA 98101, or at such time and place as the attorneys for Kirkland and you agree.

9
10 DATED: May 9, 2013.

11 STOEL RIVES LLP

12 

13 Matthew Cohen, WSBA No. 11232

14 mcohen@stoel.com

15 Hunter Ferguson, WSBA No. 41485

16 hoferguson@stoel.com

17 Attorneys for the City of Kirkland, Washington
18
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SUBPOENA TO DOUGLAS ENGLE - 2

1 ATTACHMENT A

2 **DEFINITIONS**

3 1. "Documents" shall mean the original, all copies, and all translations of any
4 writing, drawings, graphs, sound recordings, images, and other data or data compilations stored
5 in any medium (paper or other tangible format, as well as any electronic format) from which
6 information can be obtained. "Documents" include, for example (and not by way of limitation),
7 paper documents, photographs, microfilm, microfiche, email, computer tapes, computer
8 printouts, spreadsheets, calendars, appointment books, lists, tabulations, surveys, all other
9 records kept by electronic, photographic or mechanical means, and things similar to the
10 foregoing, however denominated. "Documents," as used herein, shall also mean any tape or
11 audible recording, any photograph or motion picture or videotape and any non-identical copy of
12 any document as previously defined (*e.g.*, any copy of a document as previously defined which
13 differs from any other copy thereof by virtue of other material appearing thereon, such as
14 handwriting or typewriting, or otherwise). "Documents" also include without limitation email,
15 voicemail, spreadsheets, calendars, and any other information existing in any electronic format
16 (*e.g.*, Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav).

17 2. "Communication" shall mean any information transmitted from one person or
18 entity to another person or entity and includes, but is not limited to, email or letters and any
19 attachments or enclosures thereto, oral conversations and recordings thereof, voicemail, notes
20 from oral conversations, and materials comprising a presentation, application, proposal, offer, or
21 acceptance. To "communicate" means to transmit such information, in any medium.

22 3. "Related to" shall mean any logical or factual connection with the matter
23 identified or discussed. This term includes all matters or things that in any way discuss, are
24 connected to, arise from, reflect, summarize, evaluate, comment on, and/or tend to prove or
25 disprove the subject or object of the particular discovery request in which this term is used.

26
SUBPOENA TO DOUGLAS ENGLE - 3

1 9. All communications related to the Line or Freight Segment between you and
2 officers, employees, or other representatives of Marketing Philharmonic, including but not
3 limited to Kathy Cox.

4 10. All communications related to the Line or Freight Segment between you and
5 officers, employees, or other representatives of Wright Runstad & Company.

6 11. All communications related to the Line or Freight Segment between you and
7 members or other representatives of the organization known as the Eastside TRailway Alliance.

8 12. All communications related to the Line or Freight Segment between you and
9 officers, employees, or other representatives of the Port of Seattle.

10 13. All communications related to the Line or Freight Segment between you and
11 members of the King County Council or their staff.

12 14. All communications related to the Line or Freight Segment between you and
13 officers, employees, or other representatives of the Central Puget Sound Regional Transit
14 Authority (a/k/a Sound Transit).

15 15. All communications related to the Line or Freight Segment between you and
16 officers, employees, or other representatives of Snohomish County, Washington.

17 16. All communications related to the Line or Freight Segment between you and
18 officers, employees, or other representatives of the City of Snohomish, Washington.

19 17. All communications related to the Line or Freight Segment between you and
20 officers, employees, or other representatives of the City of Woodinville, Washington.

21 18. All versions of Eastside Community Rail, LLC's business plan(s) to provide
22 freight or passenger service on the Line, the Freight Segment, or both, and all documents
23 related to such plan(s), including but not limited to financial projections, proposals, worksheets,
24 or other financial analyses.

25 19. All documents related to estimated costs to reactivate rail service on the Line,
26 including without limitation the cost of repairing track, ties, signals, and switches.

 20. All documents related to discussions or negotiations with the Port of Seattle, the
City of Kirkland, and/or King County regarding obtaining the property rights necessary to use
the Line for rail service.

 21. All documents referring or relating to Eastside Community Rail, LLC's past,
current, and/or prospective contractual and/or business relationship with Ballard Terminal
Railroad Company, LLC, including but not limited to lease agreements and operating agreements
between the two entities.

SUBPOENA TO DOUGLAS ENGLE - 5

1 22. All documents related to any request(s) for funds from the State of Washington to
2 maintain or improve the Line or the Freight Segment.

3 23. All documents that show traffic volume and revenues from freight traffic on the
4 Freight Segment, including service provided by Ballard Terminal Railroad Company, LLC since
2009.

5 24. All financial statements of Ballard Terminal Railroad Company, LLC since 2008.

6 25. All documents showing projected freight rail traffic and revenue on the Line, if
7 freight rail service on the Line were reinstated pursuant to any plan of Eastside Community Rail,
LLC.

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SUBPOENA TO DOUGLAS ENGLE - 6

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 9, 2013:

4 Pete Ramels
5 Andrew Marcuse
6 Office of the Prosecuting Attorney—Civil Division
7 W400 King County Courthouse
8 516 Third Avenue
9 Seattle, WA 98104
10 *Attorneys for King County*

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

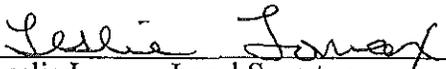
18 Isabel Safora
19 Deputy General Counsel
20 Port of Seattle
21 PO Box 1209
22 Seattle, WA 98111

23 Jordan Wagner
24 Central Puget Sound Regional
25 Transit Authority
26 401 S. Jackson Street
Seattle, WA 98104

18 Myles L. Tobin, Esq.
19 Fletcher & Sippel LLC
20 29 North Wacker Drive
21 Suite 920
22 Chicago, IL 60606-2832

21 Tom Montgomery
22 Montgomery Scarp
23 1218 3rd Ave, Suite 2700
24 Seattle, WA 98101-3237

25 DATED at Seattle, WA this 9th day of May 2013

26 
Leslie Lomax, Legal Secretary
STOEL RIVES

SUBPOENA TO DOUGLAS ENGLE -7

EXHIBIT 3

“REDACTED”

EXHIBIT 4

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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)
)

DEPOSITION UPON ORAL EXAMINATION
OF
DOUGLAS ENGLE

Taken at 600 University Street, Suite 3600
Seattle, Washington

DATE: Wednesday, May 22, 2013
REPORTED BY:Katie J. Nelson, RPR, CCR
CCR NO.: 2971

Page 31

1 Q. Okay. How --

2 A. Not intentional.

3 Q. You received the subpoena on May 9th; is that

4 correct?

5 A. I don't recall.

6 Q. Okay. After you received the subpoena, what did

7 you do with respect to searching your e-mail?

8 A. What day was May 9th?

9 Q. I believe May 9th was a Thursday.

10 MR. FERGUSON: Would you look at your

11 calendar?

12 Q. (By Mr. Ferguson) May 9th is a Thursday.

13 A. So as I recall receiving the -- the person came

14 to the door in the evening. I believe I only glanced at it

15 that night, confirming what it was, and took no further

16 actions on it until Monday or Tuesday.

17 Q. So that would be Monday or Tuesday of last week,

18 the 13th or 14th?

19 A. Yes.

20 Q. And so then, when you began to search your

21 e-mails, can you describe what you did?

22 A. So I have e-mail settings that I don't -- sent

23 e-mail is automatically deleted after 30 days. Trash is

24 emptied every week. Junk mail every week.

25 Q. Do you empty the trash or is there an automatic

Page 32

1 setting?

2 A. It's automatically, an automatic setting. I

3 transitioned from Microsoft Outlook at the end of 2012,

4 because I was having constant data file corruption issues.

5 And just bagged it and moved over to Apple's mail that

6 comes standard with the operating system.

7 Q. So Mac dot-com address?

8 A. No, Mac Mail.

9 Q. Mac Mail. It's just a software application.

10 A. So I moved everything over there, and set it up,

11 configured. That's why there's no e-mails prior to that.

12 Because I don't -- I figured at that standpoint, I had

13 saved whatever attachments I thought were necessary and

14 went down to the Apple store to the genius bar and talked

15 to the guys about how to best make the transition, how best

16 to manage the mail. And so what I came up with was the

17 settings and getting religious about saving my documents as

18 they came in and were appropriate, and not hanging onto

19 attachments, because they eat up file space and languish in

20 your mail data filing.

21 Q. You just said prior to that, were you referencing

22 a time period when you went to the genius bar?

23 A. I went to the genius bar three times during this

24 transition.

25 Q. Okay. When, roughly, did this transition occur?

Page 33

1 A. Transition, I made it formally happen December

2 31st, January 1st. So basically what I did was over the

3 Christmas holiday, I cut off Outlook, dumped it, and

4 started in on Mac Mail.

5 Q. Heck of a way to spend your New Year's.

6 A. Well, that was just the date it happened because

7 the e-mail traffic was the lowest.

8 Q. In your e-mail, do you maintain folders for

9 certain items by topic?

10 A. Yes.

11 Q. For instance, I think about my e-mail, I have a

12 folder that says "taxes," okay, because when April comes

13 around each year, I need to look at the old documents. Do

14 you have a folder that references Eastside Community Rail?

15 A. Yes. And a few others. It's nowhere near as

16 extensive as I had in Outlook, but yes, I have some

17 folders. I haven't exactly figured it all out, but I have

18 some folders, slash, I think they call them mailboxes.

19 Q. When you made the switch, did you -- when I say

20 you made the switch, when you changed your e-mail

21 configuration from an Outlook based service to the Mac

22 Mail, did you make sure that any old folders containing

23 messages or other documents were transferred over to your

24 Mac Mail configuration?

25 MR. MONTGOMERY: Object to the form.

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1 THE WITNESS: No, because I was dealing with

2 a corrupted data file and I didn't want to bring garbage in

3 to a new clean file, which was what I was trying to get

4 away from.

5 Q. (By Mr. Ferguson) So am I understanding you

6 correctly that whatever e-mail you had before December 31st

7 saved or in your inbox, none of that was saved when you

8 made the e-mail switch to Mac Mail?

9 A. No, because it was a garbage file. It was a

10 corrupted file. I believe there are -- I still have a CD

11 of files from the GNP days, as required, but outside of

12 that, no.

13 Q. Okay. So then, for --

14 A. Oh, I want to clarify. That and my ex-wife.

15 Q. What is your ex-wife's name?

16 A. Lisa Letang.

17 Q. This is not Joanne Engle?

18 A. No.

19 Q. She's your current spouse?

20 A. Yes.

21 Q. So the e-mail configuration that you've been

22 using since January 1, 2013, moving forward, do you have

23 folders by topic for communications that you've saved in

24 that configuration?

25 A. Yes.

Page 35

1 Q. Okay. Did you search through those folders in
 2 response to these discovery requests?
 3 A. No. I searched through the master inbox, which
 4 is supposed to have everything in it from all mail
 5 accounts.
 6 Q. Including documents or e-mails that you
 7 previously placed into a particular folder?
 8 MR. MONTGOMERY: Form and assumes facts not
 9 in evidence.
 10 THE WITNESS: I believe so, yes.
 11 Q. (By Mr. Ferguson) Okay.
 12 MR. COHEN: You guys want a break?
 13 MR. MONTGOMERY: Sure.
 14 MR. FERGUSON: Sure, we can take a
 15 five-minute break now.
 16 (Recess taken from 10:13 to 10:22 a.m.)
 17
 18 EXAMINATION - (Continuing)
 19 BY MR. FERGUSON:
 20 Q. Mr. Engle, the e-mails from your old Outlook
 21 configuration that, e-mails or documents, that were deleted
 22 on or about December 31, 2012, did you save any hard copies
 23 of any of that information?
 24 A. I would save to a PDF and file that
 25 appropriately, if it was an e-mail or an actual document.

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1 So knowing that I was going to make that transition, I'd
 2 already started to save any documents that I felt I might
 3 want to refer to later.
 4 Q. And when you were looking for documents in
 5 response to Kirkland's discovery requests, did you look
 6 through any of those PDFs that you had saved?
 7 A. Yes.
 8 Q. Did you look through all of the PDFs you saved?
 9 A. Yes. I want to go back to that, I looked through
 10 all of the current PDFs, because there was a time frame for
 11 which I was trying to reply, that you requested that I
 12 reply, after 2011 or something. So I don't want to say
 13 all, because I've got some PDFs that go back to 2000
 14 something.
 15 Q. Fair. You looked for PDFs within the time period
 16 specified in the subpoena, the discovery requests?
 17 A. Yes, I did.
 18 Q. And then, forgive me if I'm repeating myself
 19 here, but for the e-mails or documents that were in your
 20 master account from January 1st forward, can you explain
 21 what you did to search for responsive communications in
 22 those files?
 23 A. I mostly searched via name.
 24 Q. Did you type in last name in the search function
 25 and see what popped up?

Page 37

1 A. Right, so if I was looking for e-mails with Bruce
 2 Agnew, I'd get Bruce Agnew's name and hit enter and all of
 3 the e-mails from Bruce would show up.
 4 Q. Okay.
 5 A. As an example.
 6 Q. And you said that before January 1st, you had
 7 saved some e-mails as PDFs to preserve them; is that
 8 correct?
 9 A. Yes, and I believe most of those would have had
 10 to do with my ex-wife than anything to do with the
 11 railroad.
 12 Q. Okay. E-mails that you received after January or
 13 on or after January 1st, do you recall if you've saved any
 14 of those as PDFs or any of the documents attached to those
 15 e-mails?
 16 A. The documents, I most certainly would have saved.
 17 Doesn't mean I kept them for long, but I would have saved.
 18 I'm not one to save drafts, for example. I don't find a
 19 lot of value in that.
 20 Q. Okay.
 21 A. I would have saved a few e-mails if I would have
 22 thought they were important for some reason, but otherwise,
 23 I'm usually on the phone.
 24 Q. Okay. And of the e-mails that you searched in
 25 response to the discovery requests, are there any e-mails

Page 38

1 that you believe were responsive to Kirkland's request but
 2 which you did not produce?
 3 MR. MONTGOMERY: You mean, like King County,
 4 ones that objections were made and you discussed with Mr.
 5 Paschalis, or do you mean -- is that what you mean?
 6 Q. (By Mr. Ferguson) Do you misunderstand my
 7 question? Are there --
 8 MR. MONTGOMERY: Object to the form.
 9 THE WITNESS: I was advised by counsel that
 10 I was not going to be responding to particular entities,
 11 and I did no search for those items.
 12 Q. (By Mr. Ferguson) Can you recall which
 13 particular entities or individuals you did not search for?
 14 A. About 98 percent of my contact list.
 15 Q. Okay. Let's take a look at Exhibit 19.
 16 Specifically let's look at Page 4 of the subpoena. Item
 17 Number 5, Line 17, asked you for "All communications
 18 between you and any potential shipper on the Line,
 19 including but not limited to CalPortland and Wolford
 20 Trucking."
 21 Did you search for communications between you and
 22 any representative of CalPortland?
 23 A. Yes, Mike Skrivan only.
 24 Q. What about another Mike, Mike Meting or Mike
 25 Merry. Are you familiar with such an individual?

EXHIBIT 5

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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)
)

DEPOSITION UPON ORAL EXAMINATION
 OF
 BYRON COLE

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Friday, May 24, 2013
 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

Page 3

1 BYRON COLE - Friday, May 24, 2013

2

3 INDEX

4

5 EXAMINATION BY: Page(s)

6 Mr. Cohen 6

7 Mr. Wagner 204

8 Mr. Marcuse 213

9 Mr. Montgomery 218

10

11

12 ***

13 FURTHER EXAMINATION BY: Page(s)

14

15 Mr. Cohen 227

16

17 Mr. Montgomery 239

18

19 ***

20 EXHIBITS FOR IDENTIFICATION:

21

22 36 City of Kirkland's First Set of Interrogatories and Requests for Production to Ballard Terminal Railroad Company, LLC 26

23

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Page 5

1 EXHIBITS REFERENCED

2

3 25 Document entitled Eastside Rail Corridor Rehabilitation Proposal 25

4

5 26 Document entitled Ballard Terminal Railroad Eastside Freight Railroad Meeker Southern Railroad 20

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7 30 Lease Agreement 164

8

9 32 E-mail string, Subject: "Eastside Community Rail" 159

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Page 4

1 EXHIBITS - (Continuing)

2 EXHIBITS FOR IDENTIFICATION

3

4 37 Ballard Terminal Railroad Company, LLC's Answers to the City of Kirkland's First Set of Interrogatories 32

5

6 38 Letter from Byron Cole to Judge Lynch dated September 21, 2012 46

7

8 39 Document from RailWorks dated January 18, 2013 63

9

10 40 Verified Statement of Byron Cole 91

11

12 41 Document entitled Eastside Community Rail, LLC, Port of Seattle Capital Improvements to Eastside Rail Corridor 155

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14 42 Eastside Community Rail, LLC, Port of Seattle Capital Improvements to Eastside Rail Corridor 156

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16 43 Operations and Maintenance Agreement Between Port of Seattle and GNP 168

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18 44 Petition for Stay of the Port of Seattle 185

19

20 45 Ballard Terminal Railroad Company, LLC's Response to the City of Kirkland's First Requests for Production 239

21

22 46 Collection of documents submitted by Ballard Terminal 239

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Page 6

1 SEATTLE, WASHINGTON; Friday, May 24, 2013

2 9:10 A.M.

3 --o0o--

4 BYRON COLE, deponent herein, having been first

5 duly sworn on oath, was examined and

6 testified as follows:

7

8 EXAMINATION

9 BY MR. COHEN:

10 Q. Mr. Cole, I'm Matt Cohen. I'm one of Kirkland's

11 lawyers. I'm going to be taking your deposition today.

12 I'd like to start by asking you to state your name and

13 address for the record.

14 A. My name is Byron Cole. B-y-r-o-n, C-o-l-e. You

15 want my address?

16 Q. Address.

17 A. My residence is at 4051 56th Avenue Southwest,

18 Seattle 98116.

19 Q. Thank you. So, have you ever been deposed?

20 A. Once.

21 Q. What was the occasion?

22 A. Did I do -- I can't actually remember. It's been

23 quite a while ago.

24 Q. Was it a case involving Ballard Terminal

25 Railroad?

1 (Exhibit Number 45-46 marked.)
 2
 3 FURTHER EXAMINATION
 4 BY MR. MONTGOMERY:
 5 Q. Mr. Cole, does Exhibit 45 contain the documents
 6 that you gathered yesterday and sent to Chicago yesterday?
 7 A. I think, to some extent, yeah.
 8 MR. MONTGOMERY: I'm sorry, you gave them to
 9 me. I apologize, it's late. That's what you gave me this
 10 morning. I'm sorry, it's Ballard Terminal Railroad
 11 Company, LLC's response to City of Kirkland's first request
 12 for production.
 13 Q. (By Mr. Montgomery) I just want you to tell me
 14 if the documents attached are the ones that you gathered
 15 this morning?
 16 A. Yeah, I recognize them. I recognize the blacked
 17 out thing.
 18 Q. Exhibit 46, are those the documents you gathered
 19 yesterday, I believe, and handed to me this morning?
 20 That's the other package. Is that a yes?
 21 A. I'm trying to figure out what this one is. This
 22 certainly doesn't have anything to do with --
 23 Q. Are those the documents you handed to me this
 24 morning?
 25 A. I don't know. I thought it was, but... yeah,

1 this is our LLC paperwork.
 2 MR. MONTGOMERY: I have no further
 3 questions.
 4 THE WITNESS: I'm baffled by this, it's
 5 really old.
 6 MR. MONTGOMERY: Are you done?
 7 THE WITNESS: Says BNSF is changing their --
 8 MR. MONTGOMERY: Are you done?
 9 MR. COHEN: I'm done. Thank you.
 10
 11 (The deposition concluded at 6:52 p.m.)
 12 (Signature was reserved.)
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EXHIBIT 6

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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)
)

DEPOSITION UPON ORAL EXAMINATION
 OF
 DOUGLAS ENGLE

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Wednesday, May 22, 2013
 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

Page 7

1 SEATTLE, WASHINGTON; Wednesday, May 22, 2013
 2 9:17 A.M.
 3 --oOo--
 4 DOUGLAS ENGLE, deponent herein, having been first
 5 duly sworn on oath, was examined and
 6 testified as follows:
 7
 8 EXAMINATION
 9 BY MR. FERGUSON:
 10 Q. Good morning, Mr. Engle. My name is Hunter
 11 Ferguson. I represent the City of Kirkland. Have you had
 12 your deposition taken before?
 13 A. Yes, I have.
 14 Q. Okay. You probably aware of sort of the rules,
 15 how it works, I'm going to ask questions. I will ask for
 16 audible responses from you, head shakes and nods won't be
 17 picked up by the court reporter. I'll try to wait till the
 18 end of your answer so we don't talk over each other.
 19 A. Mm-hm (answers affirmatively).
 20 Q. Just be mindful of me doing the same and counsel,
 21 if they need to make objections, just so Katie has an
 22 easier time of writing everything down.
 23 If you need to take a break at any time, we can
 24 do that, just not in the midst of a question or a series of
 25 questions. And if you don't understand a question or if

Page 8

1 anything that I've asked is confusing, just tell me and
 2 I'll try to reword it for you.
 3 A. Mm-hm (answers affirmatively).
 4 Q. Okay. Let's start, are you represented by
 5 counsel?
 6 A. Yes.
 7 Q. Okay. Which law firm represents you?
 8 A. Fletcher Sippel.
 9 Q. Does the Montgomery Scarp firm also represent
 10 you?
 11 A. Yes.
 12 Q. Do you have an engagement letter with Fletcher
 13 Sippel?
 14 A. Yes.
 15 Q. Do you have an engagement letter with Montgomery
 16 Scarp?
 17 A. Yes, I believe so.
 18 Q. Do you recall signing an engagement letter with
 19 Montgomery Scarp?
 20 A. I don't remember.
 21 Q. Okay. Have you signed a letter with Montgomery
 22 Scarp in the past week?
 23 A. No.
 24 Q. Have you signed an engagement letter with
 25 Fletcher Sippel in the past week?

Page 9

1 A. No.
 2 Q. Do you know when you retained Fletcher Sippel to
 3 represent you?
 4 A. Not exactly, over a month ago.
 5 Q. Was it before or after Ballard filed its petition
 6 with the Surface Transportation Board?
 7 A. I believe at the same time.
 8 Q. Okay. Are you paying the legal fees to Fletcher
 9 Sippel?
 10 MR. MONTGOMERY: Go ahead.
 11 THE WITNESS: I am paying some of the legal
 12 fees to Fletcher Sippel, yes.
 13 Q. (By Mr. Ferguson) Are you paying for your own
 14 representation?
 15 A. Yes, I am.
 16 Q. Are you paying legal fees for the representation
 17 of any other person or entity to Fletcher Sippel?
 18 A. Yes.
 19 Q. And what other entity are you paying for?
 20 A. I am paying for Eastside Community Rail, and
 21 paying part of Ballard Terminal.
 22 Q. Is anyone else underwriting, I guess, just back
 23 up here and clarify. Does Fletcher Sippel represent you
 24 personally?
 25 MR. MONTGOMERY: Object to the extent it

Page 10

1 calls for a legal conclusion.
 2 THE WITNESS: I don't believe me personally,
 3 I believe Eastside, me through Eastside Community Rail.
 4 Q. (By Mr. Ferguson) Okay. Is anyone else
 5 underwriting Fletcher Sippel's representation of Eastside
 6 Community Rail?
 7 A. No. When you -- no.
 8 Q. Do you know the amount of Ballard's legal fees
 9 that you're paying for?
 10 MR. MONTGOMERY: I'm going to object on the
 11 form of beyond the scope, harassment, relevance.
 12 THE WITNESS: No.
 13 Q. (By Mr. Ferguson) Have you paid \$22,000 --
 14 MR. MONTGOMERY: Same objection.
 15 Q. (By Mr. Ferguson) -- to Ballard?
 16 A. I think I've paid in the --
 17 MR. MONTGOMERY: Hold on.
 18 THE WITNESS: Okay.
 19 MR. MONTGOMERY: Thanks. Money is
 20 communication. I'm going to object, it's also
 21 attorney-client privilege. Don't answer.
 22 MR. FERGUSON: Mr. Montgomery, are you
 23 instructing the witness not to answer?
 24 MR. MONTGOMERY: Yes, sir.
 25 MR. FERGUSON: Okay.

1 Q. I don't know the exhibit number.
 2 MR. MONTGOMERY: Does anybody know the
 3 exhibit number?
 4 THE WITNESS: Yes, it's on the front here.
 5 6.
 6 Q. (By Mr. Montgomery) It says "daily ridership" in
 7 the upper right quadrant; is that correct?
 8 A. No.
 9 Q. What is it supposed to be?
 10 A. Annual ridership.
 11 MR. MONTGOMERY: I have no further
 12 questions. Thank you.
 13 THE WITNESS: Four years of that being --
 14 MR. MONTGOMERY: They know.
 15 MR. FERGUSON: I have a couple follow-ups.
 16
 17 FURTHER EXAMINATION
 18 BY MR. FERGUSON:
 19 Q. Mr. Engle, in the past six months, have you
 20 received any communications from Fletcher Sippel attorney
 21 or Montgomery and Scarp attorney that also included any
 22 individual that was not a Fletcher & Sippel attorney or
 23 staff or Montgomery and Scarp attorney and staff?
 24 A. Try that again. I think I got it.
 25 Q. Have you ever had a conference with Myles Tobin

1 where Byron Cole was a participant in?
 2 A. Yes.
 3 Q. Have you ever received e-mails from Myles Tobin
 4 which Byron Cole was copied on?
 5 A. Yes.
 6 Q. Have you sent any e-mails to Myles Tobin that you
 7 copied Byron Cole on?
 8 A. Yes.
 9 Q. And is the same true for attorneys from
 10 Montgomery and Scarp?
 11 A. Yes.
 12 Q. Okay.
 13 MR. FERGUSON: I don't have anything
 14 further. Thank you for patiently sitting through the day.
 15 MR. MONTGOMERY: Are we off the record.
 16
 17 (The deposition concluded at 6:49 p.m.)
 18 (Signature was reserved.)
 19
 20
 21
 22
 23
 24
 25

EXHIBIT 7

BEFORE THE SURFACE TRANSPORTATION BOARD

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

BALLARD TERMINAL
RAILROAD COMPANY, LLC'S,
RESPONSE TO CITY OF
KIRKLAND'S FIRST REQUESTS
FOR PRODUCTION

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

Ballard Terminal Railroad Company, LLC ("Ballard"), by its attorneys, hereby responds to City of Kirkland's ("Kirkland's") document requests as follows:

GENERAL OBJECTIONS

1. Ballard objects to Kirkland's document requests to the extent that they call for documents protected from disclosure by the attorney-client privilege.
2. Ballard objects to Kirkland's document requests to the extent that they call for the production documents that are protected from disclosure by the attorney-work product privilege.

3. Ballard objects to Kirkland's document requests to the extent that they impose any obligations on Ballard beyond those permitted under the Code of Federal Regulations and the United States Code.

4. Ballard objects to Kirkland's document requests to the extent that they call for documents relating to the "Freight Segment," as defined in Definition 5 of Kirkland's document requests, on the basis that all such requests are overly broad, unduly burdensome, seek information that is irrelevant or immaterial, and are not sufficiently limited in scope.

5. Ballard objects to Definition 9 of Kirkland's document requests on the basis that the time period that Kirkland purports to be relevant is overly broad.

6. Ballard objects to Kirkland's document requests on the basis that the time frame outlined by Kirkland for Ballard's production of the requested documents is unreasonably short, unduly burdensome, and fails to conform the discovery policies enumerated in 49 C.F.R. § 1114.

7. Ballard objects to Kirkland's requests for "communications" to the extent that Kirkland defines "communications" to include unrecorded oral conversations in Definition 2 of Kirkland's document requests.

REQUESTS

RFP NO. 1: Please produce all versions of your articles of incorporation, corporate by-laws, annual reports, and tax returns.

RESPONSE: Ballard objects to Request No. 1 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving these objections, see documents produced. Investigation continues.

RFP NO. 2: Please provide all financial statements of Ballard's, including internally prepared statements and statements prepared by an accounting firm.

RESPONSE: Ballard objects to Request No. 2 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited with respect to time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced.

RFP NO. 3: Please produce all communications between you and any potential shipper on the Line, including but not limited to CalPortland Company and Wolford Trucking and Demolition, Inc., and any representatives or agents thereof.

RESPONSE: Ballard objects to Request No. 3 on the basis that it is vague, overly broad, and unduly burdensome. Subject to and without waiving this objection, investigation continues.

RFP NO. 4: Please produce all communications between you and Douglas Engle.

RESPONSE: Ballard objects to Request No. 4 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 5: Please produce all communications related to the Line or Freight Segment between you and representatives of EB5 Capital Partners.us, LLC, including but not limited to Daniel T. Behr and Douglas C. Olds.

RESPONSE: Ballard objects to Request No. 5 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 6: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox.

RESPONSE: Ballard objects to Request No. 6 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 7: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Wright Runstad & Company.

RESPONSE: Ballard objects to Request No. 7 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with Wright Runstad & Company.

RFP NO. 8: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the organization known as the Eastside TRailway Alliance.

RESPONSE: Ballard objects to Request No. 8 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with the Eastside TRailway Alliance.

RFP NO. 9: Please produce all communications between you and BNSF Railway Company related to the Line or Freight Segment, including any communications regarding interchanges to the Line or the Freight Segment.

RESPONSE: Ballard objects to Request No. 9 on the basis that it is overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with BNSF concerning the Line.

RFP NO. 10: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Ballard objects to Request No.10 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from the Port of Seattle.

RFP NO. 11: Please produce all communications related to the Line or Freight Segment between you and members of the King County Council and their staff.

RESPONSE: Ballard objects to Request No.11 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from King County.

RFP NO. 12: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Central Puget Sound Regional Transit Authority (a/k/a Sound Transit).

RESPONSE: Ballard objects to Request No.12 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard

further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from Sound Transit.

RFP NO. 13: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Snohomish County, Washington.

RESPONSE: Ballard objects to Request No. 13 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with Snohomish County concerning the Line.

RFP NO. 14: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Snohomish, Washington.

RESPONSE: Ballard objects to Request No. 14 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with the City of Shohomish concerning the Line.

RFP NO. 15: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Woodinville, Washington.

RESPONSE: Ballard objects to Request No. 15 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks

information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 16: Please produce all versions of your business plan(s) to provide or support freight or passenger service on the Line, the Freight Segment, or both, and all documents related to such plan(s).

RESPONSE: Ballard objects to Request No. 16 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced by Eastside Community Rail, LLC ("Eastside").

RFP NO. 17: Please produce all documents related to estimated costs to reactivate rail service on the Line, including without limitation the cost of repairing track, ties, signals, and switches.

RESPONSE: See documents produced by Eastside.

RFP NO. 18: Please produce all documents related to discussions or negotiations with the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the Line for rail service.

RESPONSE: Ballard objects to Request No. 18 on the basis that documents pertaining to negotiations with Kirkland are readily obtainable from Kirkland's own files. Ballard further objects on the basis documents pertaining to negotiations with King County and the Port of Seattle are readily obtainable from those entities, as they are unified with Kirkland for the purposes of these proceedings.

RFP NO. 19: Please produce all documents referring or relating to your past, current, and/or prospective contractual and/or business relationship with Eastside Community Rail, LLC, including but not limited to lease agreements and operating agreements between the two entities.

RESPONSE: Ballard objects to Request No. 19 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 20: Please produce all documents related to any request(s) for funds from the State of Washington to maintain or improve the Line or the Freight Segment.

RESPONSE: Ballard objects to Request No. 20 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced by Eastside. Ballard has no documents relating to requests for funds from the state of Washington to maintain or improve the Line.

RFP NO. 21: Please produce all documents that show traffic volume and revenues from traffic volume on the Freight Segment.

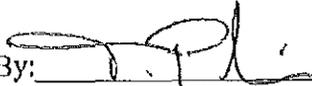
RESPONSE: Ballard objects to Request No. 21 on the basis that it is overly broad, unduly burdensome, is not sufficiently limited in time or scope, and seeks information that is irrelevant and immaterial. Subject to and without waiving this objection, see documents produced.

RFP NO. 22: Please produce all documents showing projected freight rail traffic and revenue on the Line, if freight rail service on the Line is reinstated.

RESPONSE: See Skriivan and Wolford letters attached to Ballard's Petition to Vacate and documents produced by Eastside.

Dated May 24, 2013

Respectfully submitted,

By:  _____

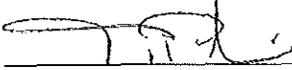
Myles L. Tobin
Thomas J. Litwiler
Thomas C. Paschalis
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS BALLARD TERMINAL
RAILROAD COMPANY, LLC**

ATTORNEY CERTIFICATION OF SERVICE

I, Thomas C. Paschalis, an attorney-at-law of the State of Illinois, hereby certify that I served a copy of the foregoing document to the following person by electronic mail and first-class mail on May 24, 2013:

Hunter Ferguson
Stoel Rives LLP
600 University Street
Suite 3600
Seattle, Washington 98101
Attorney for City of Kirkland



Thomas C. Paschalis

EXHIBIT 8

BEFORE THE SURFACE TRANSPORTATION BOARD

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

EASTSIDE COMMUNITY RAIL,
LLC'S RESPONSE TO CITY OF
KIRKLAND'S DOCUMENTS
REQUESTS

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

Eastside Community Rail, LLC ("Eastside"), by its attorneys, hereby responds to City of Kirkland's ("Kirkland's") document requests as follows:

GENERAL OBJECTIONS

1. Eastside objects to Kirkland's document requests to the extent that they call for documents protected from disclosure by the attorney-client privilege.
2. Eastside objects to Kirkland's document requests to the extent that they call for the production documents that are protected from disclosure by the attorney-work product privilege.
3. Eastside objects to Kirkland's document requests to the extent that they impose any obligations on Eastside beyond those permitted under the Code of Federal Regulations and the United States Code.
4. Eastside objects to Kirkland's document requests to the extent that they call for documents relating to the "Freight Segment," as defined in Definition 5 of Kirkland's document requests, on the basis that all such requests are overly broad, unduly burdensome, seek

information that is irrelevant or immaterial, are not sufficiently limited in scope, and are not reasonably calculated to lead to the discovery of admissible evidence.

5. Eastside objects to Definition 6 of Kirkland's document requests on the basis that the time period that Kirkland purports to be relevant is overly broad and not sufficiently limited with respect to time frame.

6. Eastside objects to Kirkland's document requests on the basis that the time frame outlined by Kirkland for Eastside's production is unreasonably short, unduly burdensome, and fails to conform the discovery policies outlined in the Code of Federal Regulations.

7. Eastside objects to Kirkland's requests for "communications" to the extent that Kirkland, in Definition 2, defines "communications" to include unrecorded oral conversations.

REQUESTS

1. All versions of Eastside Community Rail, LLC's articles of incorporation, formation documents, corporate by-laws, annual reports, and tax returns.

RESPONSE: ECR objects to Request No. 1 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, see documents produced.

2. All financial statements of Eastside Community Rail, LLC, including internally prepared statements prepared by an accounting firm.

RESPONSE: ECR objects to Request No. 2 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

3. All versions of Telegraph Hill Investments, LLC's articles of incorporation, formation documents, corporate by-laws, annual reports, and tax returns.

RESPONSE: ECR objects to Request No. 3 on the basis that it is overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

4. All financial statements of Telegraph Hill Investments, LLC, including internally prepared statements and any statements prepared by an accounting firm.

RESPONSE: ECR objects to Request No. 4 on the basis that it is overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

5. All communications between you and any potential shipper on the Line, including but not limited to CalPortland Company and Wolford Trucking and Demolition, Inc., and any representatives or agents thereof.

RESPONSE: ECR objects to Request No. 5 on the basis that it is vague, overly broad, and unduly burdensome. Subject to and without waiving this objection, see documents produced.

6. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Ballard Terminal Railroad Company, LLC, including but not limited to Byron Cole and Paul Nerdrum.

RESPONSE: Eastside objects to Request No. 6 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for written communications relating to the Line.

7. All communications related to the Line or Freight Segment between you and officers, employees, or representatives of EB5 Capital Partners.us, LLC, including but not limited to Daniel T. Behr and Douglas C. Olds.

RESPONSE: Eastside objects to Request No. 7 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks

information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for written communications relating to the Line.

8. All communications related to the Line or Freight Segment between you and officers, employees, or representatives of Wallace Properties, Inc., including but not limited to Robert Wallace and Kevin Wallace.

RESPONSE: Eastside objects to Request No. 8 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Eastside has no documents responsive to this request.

9. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox.

RESPONSE: Eastside objects to Request No. 9 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documents relating to freight shipping on the Line.

10. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Wright Runstad & Company.

RESPONSE: Eastside objects to Request No. 10 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Eastside is not in possession of written documents responsive to this request.

11. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Eastside objects to Request No.11 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on

the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from the Port of Seattle.

12. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Eastside objects to Request No.12 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from the Port of Seattle.

13. All communications related to the Line or Freight Segment between you and members of the King County Council or their staff.

RESPONSE: Eastside objects to Request No.13 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from King County.

14. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Central Puget Sound Regional Transit Authority (a/k/a Sound Transit).

RESPONSE: Eastside objects to Request No.14 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from Sound Transit.

15. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Snohomish County, Washington.

RESPONSE: Eastside objects to Request No. 15 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produce for documented communications with respect to the Line.

16. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Snohomish, Washington.

RESPONSE: Eastside objects to Request No. 16 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documented communications with respect to the Line.

17. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Woodinville, Washington.

RESPONSE: Eastside objects to Request No. 17 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documented communications with respect to the Line.

18. All versions of Eastside Community Rail, LLC's business plan(s) to provide freight or passenger service on the Line, the Freight Segment, or both, and all documents related to such plan(s), including but not limited to financial projections, proposals, worksheets, or other financial analyses.

RESPONSE: Eastside objects to Request No. 18 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced pertaining to the Line.

19. All documents related to estimated costs to reactivate rail service on the Line, including without limitation the cost of repairing track, tie, signals and switches.

RESPONSE: See documents produced.

20. All documents related to discussions or negotiations with the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the Line for rail service.

RESPONSE: Eastside objects to Request No. 20 on the basis that documents pertaining to negotiations with Kirkland are readily obtainable from Kirkland's own files. Eastside further objects on the basis documents pertaining to negotiations with King County and the Port of Seattle are readily obtainable from those entities, as they are unified with Kirkland for the purposes of these proceedings.

21. All documents referring or relating to Eastside Community Rail, LLC's past, current, and/or prospective contractual and/or business relationship with Ballard Terminal Railroad Company, LLC, including but not limited to lease agreements and operating agreements between the two entities.

RESPONSE: Eastside objects to Request No. 21 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced.

22. All documents related to any request(s) for funds from the State of Washington to maintain or improve the Line or the Freight Segment.

RESPONSE: Eastside objects to Request No. 22 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, communications with State of Washington regarding the Line have primarily been verbal. See also documents produced.

23. All documents that show traffic volumes and revenues from freight traffic on the Freight Segment, including service provided by Ballard Terminal Railroad Company, LLC since 2009.

RESPONSE: Eastside objects to Request No. 23 on the basis that it is overly broad, unduly burdensome, is not sufficiently limited in time or scope, and seeks information that is irrelevant and immaterial.

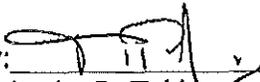
24. All financial statements of Ballard Terminal Railroad Company, LLC since 2008.

RESPONSE: Eastside objects to Request No. 24 on the basis that this Request is better directed toward Ballard.

25. All documents showing projected freight rail traffic and revenue on the Line, if freight rail service on the Line were reinstated pursuant to any plan of Eastside Community Rail, LLC.

RESPONSE: See documents produced.

Respectfully submitted,

By:  _____

Myles L. Tobin

Thomas J. Litwiler

Thomas C. Paschalis

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

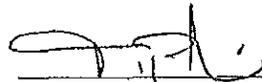
**ATTORNEYS FOR EASTSIDE COMMUNITY
RAIL, LLC**

Dated: May 20, 2013

ATTORNEY CERTIFICATION OF SERVICE

I, Thomas C. Paschalis, an attorney-at-law of the State of Illinois, hereby Certify under penalty of perjury that I served a copy of the foregoing document to the following persons by FedEx Standard Overnight on May 20, 2013:

Hunger Ferguson
Stoel Rivers LLP
600 University St.
Suite 3600
Seattle, WA 98101
Attorney for City of Kirkland



Thomas C. Paschalis

EXHIBIT 9

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1 A. We were never able to get it in to the proper
 2 form in the time frame required by the legislature. We
 3 missed the window.
 4 Q. And this is a request you had made to the
 5 Washington Department of Transportation or did you make it
 6 to --
 7 A. Under -- we made this directly with the
 8 legislature to get into the transportation budget, which it
 9 didn't get even as a line item zero. Okay, so it didn't
 10 even make any of the hurdles.
 11 So, the department of -- after a phone call --
 12 after a conversations with WSDOT, there were no -- we had
 13 missed the window for them and there was no opportunity to
 14 get funding in this legislative session through them
 15 either. So until 2015, there will be no state or WSDOT
 16 improvements made to the line.
 17 Q. Okay. Mr. Engle, if we understood your testimony
 18 correctly, you said that some amount of maintenance needed
 19 to be done to keep freight moving; is that correct?
 20 A. When I hear that back, that doesn't sound exactly
 21 right. There's always maintenance that needs to be done.
 22 MR. FERGUSON: Can you find that in the
 23 answers and read that back, please.
 24 Conscious of the time here, folks.
 25 (Answer on Page 89, Lines 6 through 22

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1 read by the reporter.)
 2 Q. (By Mr. Ferguson) Do you know what maintenance
 3 needed to be done immediately to keep freight moving?
 4 MR. MONTGOMERY: Object to the extent this
 5 calls for other than Bellevue to Woodinville.
 6 THE WITNESS: Nothing extraordinary. Ties,
 7 spikes, bolts tightened, crossing work.
 8 Q. (By Mr. Ferguson) Has --
 9 A. Normal stuff.
 10 Q. -- that work been done?
 11 MR. MONTGOMERY: Same objection; foundation.
 12 THE WITNESS: It's my understanding that Mr.
 13 Cole has maintained the right of way, has put money into
 14 the right of way, has maintained the right of way in an
 15 excepted level, which allows continued freight service.
 16 The only outstanding item that I am aware of at this time
 17 is a crossing signal in Maltby, that is -- needs some
 18 attention.
 19 Q. (By Mr. Ferguson) Has there been any
 20 interruption to freight service since ECR acquired the
 21 rights to the freight segment?
 22 MR. MONTGOMERY: Beyond the scope.
 23 THE WITNESS: Not to my knowledge.
 24 Q. (By Mr. Ferguson) Do you know who or what entity
 25 paid for the maintenance done that you just described?

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1 A. No, I don't.
 2 Q. Do you know if Ballard Terminal Railroad paid for
 3 it?
 4 A. That would be my expectation, is that they've
 5 maintained the line per our operating agreement.
 6 Q. Okay. When you say "our operating agreement,"
 7 which agreement are you referring to?
 8 A. The operating agreement between Ballard Terminal
 9 and Eastside Community Rail.
 10 Q. Is that the interim operating agreement signed in
 11 September of 2012?
 12 A. That would be the interim and the current lease.
 13 Q. The current lease is the lease that you signed
 14 last month?
 15 A. Yes.
 16 Q. Okay. Number 20, I'd like to wrap up these and
 17 then break for lunch. Number 20, asks you to produce all
 18 documents related to discussions and negotiations between
 19 the Port, City of Kirkland, and/or King County regarding
 20 obtaining the property rights necessary to use the line for
 21 rail service.
 22 Did you search for documents responsive to this
 23 request?
 24 A. Yes.
 25 Q. And did you find any documents responsive to this

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1 request?
 2 A. The Port of Seattle is clearly outside of this,
 3 because they do not own any interest in the property in
 4 question.
 5 Q. So you made a --
 6 A. And the line.
 7 Q. Did you make that conclusion yourself, that you
 8 wouldn't produce documents from the Port for that reason?
 9 A. Yes.
 10 Q. Okay. How about Kirkland, did you look for any
 11 documents related to discussions or negotiations with
 12 Kirkland?
 13 A. Yes, I did.
 14 Q. And did you find any?
 15 A. No, other than what's already been provided.
 16 Q. And when you say "what's already been provided,"
 17 what do you mean?
 18 A. Documents that have already been provided.
 19 Q. By you?
 20 A. Yes. By myself or Eastside Community Rail per
 21 the subpoena request.
 22 Q. So documents produced to us on Tuesday?
 23 A. Yes.
 24 Q. Okay. Were there any documents relating to
 25 discussions or negotiations with Kirkland that you found

EXHIBIT 10

From: Williams, Michael [michael.williams@soundtransit.org]
Sent: Thursday, October 18, 2012 4:04 PM
To: Doug Engle
Cc: Dave Farmer
Subject: RE: Eastside Community Rail (ECR)

Doug,

Thanks for the up-date. I will pass this information along to others within Sound Transit for review.

Mike

From: Doug Engle [mailto:dengle76@comcast.net]
Sent: Wednesday, October 17, 2012 11:27 AM
To: Williams, Michael
Cc: Dave Farmer
Subject: Eastside Community Rail (ECR)

Good day Mike,

Thank you again for you time this past Wed.

It was a pleasure meeting you and Don to discuss the situation in Bellevue.

Attached is the ECR Policy on rates of return and a presentation summarizing much of what we told you about ECR during our meeting.

"Peaceful Coexistence" is what we desire in all our business.

After several meetings last week, we believe that new doors are opening to ECR with its intentions of getting to Bellevue from Woodinville.

Excursion operations to the So. Kirkland P&R are being viewed as a real benefit in attracting people from the Seattle area to "Wine Country".

Per our discussion, you were interested to understand Bellevue's perspective on the situation, particularly regarding the Sound Transit operations facility in Bellevue.

I don't think there is any question, but the International Paper site is the best in that general area of Bellevue/Redmond.

Given Sound Transit does not have the funding to get to Redmond, nor the approval to get to Kirkland, I am not sure how a legitimate argument can be waged otherwise.

That said, the businesses that will be displaced are an economic hit to Bellevue.

Perhaps there is a compromise to be had on this particular point to make matters more acceptable.

We see a way forward with complementary business development opportunities to replace some of those economic losses.

Overall, Bellevue is favorable regarding ECR removing spoils via rail over trucks.

We have initiated discussions with King County and have a first draft Cooperation Agreement to reactivate the railroad from Woodinville to Bellevue.

Our early discussion with some Kirkland council members indicate there is room for negotiations.

Obviously nothing is settled or agreed to with any of the parties we have spoken with, but we are getting our arms around the situation and taking steps forward.

After our discussions Wed., we approached the situation with Bellevue and King County focusing on the west side of the tracks, which could be used for a batch plant and intermodal site.

Bellevue's fire training facility could be moved, there is a vacant lot next to it to the south and a site for sale providing access to 116th Ave NE.

We see a way to stay out of Sound Transit's way and still service construction needs with this configuration.

However, we need to have a one-way road in and one-way out access roads at either end of the operations property to 120th Ave NE.

This is a small accommodation by Sound Transit, but a critical one for our business plan to succeed.

Since Safeway is still receiving flower in Ballard via rail, and we intend to discuss returning this service directly to Bellevue.

Thus, the tracks at the very south edge of the operations facility should remain, and the access road built to the north of the railroad spur.

ECR would like to salvage the track south of NE 8th to the next crossing at SE 1st St.

The track would be used for the switching yard at the Bellevue Intermodal Yard.

The removal also helps Bellevue with its desired extension of NE 4th St.

ECR would like to use the track bed to create a gated gravel service road with a crossing at NE 8th St for access to the Bellevue Intermodal Yard.

Bellevue would have to synch the lights to allow the trucks to cross at the appropriate time.

An additional service road along the track would need to be created from NE 8th Ave to the intermodal site along the west side of the track, since the track may be used to receive or build the daily trains (switching and car movements).

In any case, ECR will work with Sound Transit to minimize any conflicts.

An interesting factoid is during Lincoln Center's construction, a truck-trailer of spoils left the site every 17 minutes for nine months.

The environmental, economic and traffic impact of utilizing rail should not be underestimated for East Link.

In summary, ECR would like Sound Transit's support to accomplish the above plan.

How do you suggest we proceed in making this a reality?

Truly yours,

Doug

Douglas Engle
Managing Director
Eastside Community Rail, LLC
425-891-4223

From: Kurt Triplett [KTriplett@kirklandwa.gov]
Sent: Wednesday, November 07, 2012 7:53 AM
To: Oskar Rey; Robin Jenkinson
Subject: Fwd: Eastside Rail Corridor Reactivation
Attachments: ECR Intro 21Oct12.pptx; ATT00001.htm; STB Revenue Adequacy 9Oct12.pdf; ATT00002.htm

Follow Up Flag: Follow up
Flag Status: Flagged

FYI.

Sent from my iPhone

Begin forwarded message:

From: Doug Engle <dengle76@comcast.net>
Date: November 7, 2012 6:50:50 AM PST
To: Kurt Triplett <KTriplett@kirklandwa.gov>, Joan McBride <jmcbride@kirklandwa.gov>
Cc: Kathy Cox <kathy@marketingphilharmonic.com>, David Farmer <dave@mgmtspecialists.com>
Subject: Eastside Rail Corridor Reactivation

Good Day,

I hope that your election results were met with much satisfaction!

In preparation for our next Thursday meeting, I have attached a brief PowerPoint presentation introducing Eastside Community Rail (ECR).

We did try to get this meeting on the calendar before the elections to no avail.

ECR intends to reactivate the line between Woodinville and Bellevue as soon as possible for freight and excursion service.

We have freight business coming together in Bellevue, including Safeway who's 5-yr service buyout is coming to an end.

Safeway continues to receive their bakery flour in Ballard via rail and trucking it to their Bellevue bakery.

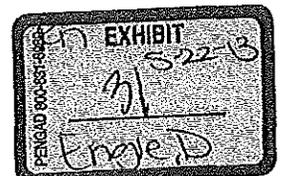
Additionally, there are very large construction projects where rail service can reduce truck traffic, favor the environment, and provide substantial costs savings.

ECR supports trails with rails, and we would like to help Kirkland still achieve its Cross Kirkland Connector.

With a little cooperation, the trail could be connected at either end.

ECR's financing partner out of Chicago has 17 pieces of rolling stock available for the excursion train.

We are also evaluating Totem Lake as an excursion depot and a station at the So. Kirkland P&R.



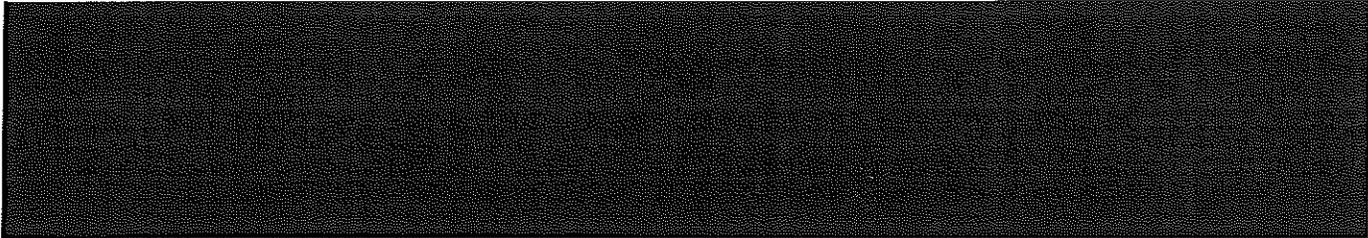
We are asking the city to enter into good faith negotiations for a rail and trail solution through Kirkland and to not disturb the track structure any further.
Please note at this time, that ECR is not formally notifying the city via legal letter in hopes of successful good faith negotiations.

There is a win-win to be had here that will better serve Kirkland's long-term interests by working together.

Best wishes,

Douglas Engle
Managing Director
Eastside Community Rail, LLC
425-891-4223

EXHIBIT 11



-----Original Message-----

From: Ernest F. Wilson [mailto:ernie.wilson@EsCRail.org]

Sent: Tuesday, March 26, 2013 10:44 PM

To: Doug Engle; Kathy Cox; Myles Tobin

Cc: Byron Cole; bobby@wolfordtrucking.com; 'Karen Guzak'; 'Les Rubstello'; Bruce Agnew; 'Loren Herrigstad'

Subject: City of Kirkland July 2012 staff memo to Council re: ERC and rail removal

ECR Team members-

Here is the packet presented to the Kirkland City Council last year, recommending that they rubber-stamp the City's Transportation Commission/Staff recommendation to remove the tracks from the corridor with all possible haste, and ignore the fact that the Master Plan hadn't even been advertised to potential consultants. Some of you have probably already seen this, but it's good documentation of COK's process. I think it makes it pretty clear that the City's top priority was getting the rails out of there as quickly as possible, without any regard to the impact on their neighbors or the region.

Regards,

--

Ernie

Kathy Cox <kathy.cox@escrail.org>
To: Doug Engle
RE: FW: Ballard Terminal Railroad Company v. City of Kirkland

7 May 2013 10:40 AM



Doug....this are my answers. If you agree I can send to Tom.

We could have Byron talk to Raechel and give him these emails.

Tom and Doug,

Below are my answers

From: Tom Montgomery [mailto:Tom@montgomeryscarp.com]
Sent: Tuesday, May 07, 2013 10:26 AM
To: 'Doug Engle'; kathy.cox@escrail.org
Cc: Myles Tobin
Subject: FW: FW: Ballard Terminal Railroad Company v. City of Kirkland

I will leave it to those closer to the action to decide whether and how to respond to Ms. Dawson's follow up questions.

From: Raechel Dawson [mailto:rdawson@kirklandreporter.com]
Sent: Tuesday, May 07, 2013 10:21 AM
To: Tom Montgomery
Subject: Re: FW: Ballard Terminal Railroad Company v. City of Kirkland

Thank you for getting back to me Mr. Montgomery.

Are you able to tell me the main points you hope to address in the injunctive relief?

We want to keep the status quo with the rails intact until the STB makes a decision on reactivating the line. There would be \$10 million in damages if Kirkland removes the rail before the reactivation decision.

Also, forgive me for my ignorance, but I'd like to confirm if I have everything straight: Ballard filed a petition asking for carrier rights at the Snohomish - Woodinville line to the STB but also to acquire rail materials if Kirkland were to remove their rail materials in their 5.75 mile section.

Ballard Terminal Railroad already holds the freight lease from Snohomish to Woodinville from Eastside Community Rail. Ballard Terminal Railroad is petitioning to reactivate the line from Woodinville to Bellevue for the public interest of removing trucks and promoting commerce with new freight business.

In addition, Ballard TRC and Eastside Community Rail will now seek injunctive relief on the removal of the rails within the Cross Kirkland Corridor span, to be filed May 8.

The freight operator, Ballard TRC, is filing for injunctive relief not Eastside Community Rail.

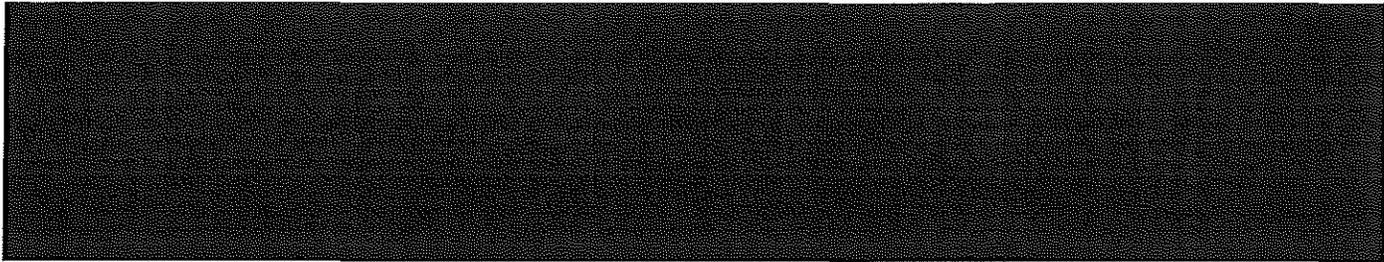
Is the STB then going to consider both of these requests in accordance or separately? And is this injunctive relief going to be an appeal of the NITU STB decision, and if so, does that mean there is the potential of having rail removal completely dismissed all together or is Ballard simply seeking a temporary restraining order of rail removal?

We believe that the STB will consider the injunctive relief and the reactivation separately. The STB has already given the schedule for the reactivation decision which will be no later than January 2014. The injunctive relief would be to keep the status quo of retaining the rails until the reactivation decision.

If it's easier to speak over the phone, I'd be happy to call you at your convenience.

Raechel Dawson
Reporter
Office: 425-822-9166, Ext 6052
Internal: 36-5052
Fax: 425-822-0141
11630 Slater Avenue NE, Ste 9, Kirkland, WA 98034

ECR001023



-----Original Message-----

From: Ernest F. Wilson [<mailto:ernie.wilson@EsCRail.org>]

Sent: Tuesday, March 26, 2013 10:44 PM

To: Doug Engle; Kathy Cox; Myles Tobin

Cc: Byron Cole; bobby@wolfordtrucking.com; 'Karen Guzak'; 'Les Rubstello'; Bruce Agnew; 'Loren Herrigstad'

Subject: City of Kirkland July 2012 staff memo to Council re: ERC and rail removal

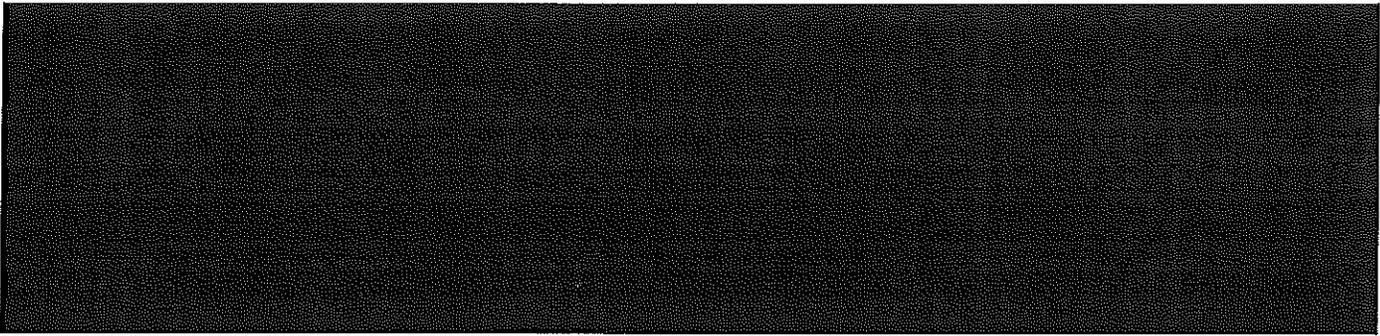
ECR Team members-

Here is the packet presented to the Kirkland City Council last year, recommending that they rubber-stamp the City's Transportation Commission/Staff recommendation to remove the tracks from the corridor with all possible haste, and ignore the fact that the Master Plan hadn't even been advertised to potential consultants. Some of you have probably already seen this, but it's good documentation of COK's process. I think it makes it pretty clear that the City's top priority was getting the rails out of there as quickly as possible, without any regard to the impact on their neighbors or the region.

Regards,

--

Ernie



From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Tuesday, April 02, 2013 11:20 AM
To: Byron Cole
Cc: James Forgette; Ernie Wilson; Kathy Cox
Subject: Fwd: Eastside 4-1-13 STB Docs Filed

Byron,

This is what was filed with the STB.

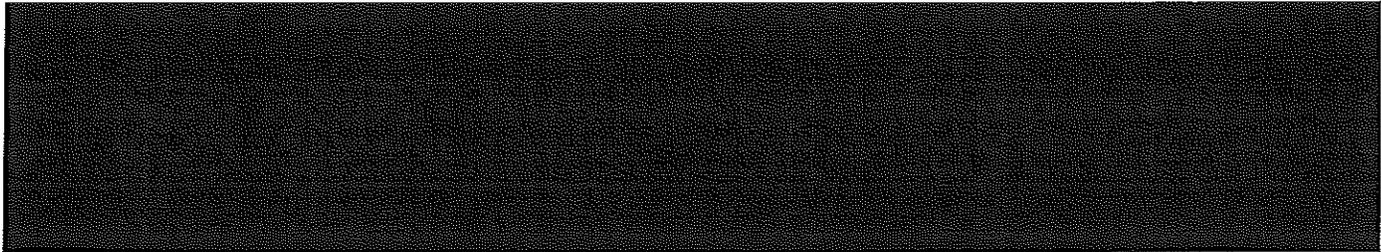
Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Elizabeth Bryant <ebryant@fletcher-sippel.com>
Subject: FW: Eastside 4-1-13 STB Docs Filed
Date: 2 April 2013 11:11:52 AM PDT
To: Doug Engle <Doug.Engle@EsCRail.org>, Byron Cole <byroncole@comcast.net>
Cc: Myles Tobin <mtobin@fletcher-sippel.com>

From: Emily Finnegan
Sent: Tuesday, April 02, 2013 1:08 PM
To: Elizabeth Bryant
Subject: Eastside 4-1-13 STB Docs Filed

Emily Finnegan
Administrative Assistant
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832
(312) 252-1542 (Direct)
(312) 252-1500 (Main)



From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Thursday, April 18, 2013 11:11 AM
To: Joe McWilliams
Cc: Sean Sullivan; Melinda Miller; Byron Cole
Subject: Fwd: STB Lease Exemption

Joe,

Please see attached.

We will incorporate the Port's requests into the ECRR-BTRC lease agreement.

Separately, we await the STB decision on Kirkland's request to extend their time to reply by 60-days.

Best regards,

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Myles Tobin <mtobin@fletcher-sippel.com>
Subject: FW:
Date: 18 April 2013 11:04:55 AM PDT
To: "Doug Engle (Doug.Engle@EsCRail.org)" <Doug.Engle@EsCRail.org>, "Byron Cole (byroncole@comcast.net)" <byroncole@comcast.net>

Here's the STB confirmation on the lease exemption. I'll work on incorporating the port of seattle agreement into the lease. Still waiting to hear from the STB on our filing from yesterday.

Regards,

Myles

Myles L. Tobin
Fletcher & Sippel LLC

29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Direct: (312) 252-1502
Fax: (312) 252-2400
Email: mtobin@fletcher-sippel.com

The contents of this e-mail message and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and then delete this message and its attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Thank you for your cooperation.

-----Original Message-----

From: mpc5000@fletcher-sippel.com [mailto:mpc5000@fletcher-sippel.com]
Sent: Thursday, April 18, 2013 11:25 AM
To: Myles Tobin
Subject:

This E-mail was sent from "C5000-Workroom" (Aficio MP C5000).

Scan Date: 04.18.2013 12:24:41 (-0400)
Queries to: mpc5000@fletcher-sippel.com

EXHIBIT 12

1 BYRON COLE - Friday, May 24, 2013

2

3 INDEX

4

5 EXAMINATION BY: Page(s)

6 Mr. Cohen 6

7 Mr. Wagner 204

8 Mr. Marcuse 213

9 Mr. Montgomery 218

10

11

12 ***

13 FURTHER EXAMINATION BY: Page(s)

14

15 Mr. Cohen 227

16

17 Mr. Montgomery 239

18

19 ***

20 EXHIBITS FOR IDENTIFICATION:

21

22 36 City of Kirkland's First Set of 26
Interrogatories and Requests for
23 Production to Ballard Terminal Railroad
24 Company, LLC

25

1 EXHIBITS REFERENCED

2

3 25 Document entitled Eastside Rail 25
Corridor Rehabilitation Proposal

4

5 26 Document entitled Ballard Terminal 20
Railroad Eastside Freight Railroad
Meeker Southern Railroad

6

7 30 Lease Agreement 164

8

9 32 E-mail string, Subject: "Eastside 159
Community Rail"

10

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12

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1 EXHIBITS - (Continuing)

2 EXHIBITS FOR IDENTIFICATION

3

4 37 Ballard Terminal Railroad Company, LLC's 32
Answers to the City of Kirkland's First
Set of Interrogatories

5

6 38 Letter from Byron Cole to Judge Lynch 46
dated September 21, 2012

7

8 39 Document from RailWorks dated January 63
18, 2013

9

10 40 Verified Statement of Byron Cole 91

11

12 41 Document entitled Eastside Community 155
Rail, LLC, Port of Seattle Capital
Improvements to Eastside Rail Corridor

13

14 42 Eastside Community Rail, LLC, Port of 156
Seattle Capital Improvements to Eastside
Rail Corridor

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16 43 Operations and Maintenance Agreement 168
Between Port of Seattle and GNP

17

18 44 Petition for Stay of the Port of Seattle 185

19

20 45 Ballard Terminal Railroad Company, LLC's 239
Response to the City of Kirkland's First
21 Requests for Production

22

23 46 Collection of documents submitted by 239
Ballard Terminal

24

25

1 SEATTLE, WASHINGTON; Friday, May 24, 2013

2 9:10 A.M.

3 --o0o--

4 BYRON COLE, deponent herein, having been first

5 duly sworn on oath, was examined and

6 testified as follows:

7

8 EXAMINATION

9 BY MR. COHEN:

10 Q. Mr. Cole, I'm Matt Cohen. I'm one of Kirkland's

11 lawyers. I'm going to be taking your deposition today.

12 I'd like to start by asking you to state your name and

13 address for the record.

14 A. My name is Byron Cole. B-y-r-o-n, C-o-l-e. You

15 want my address?

16 Q. Address.

17 A. My residence is at 4051 56th Avenue Southwest,

18 Seattle 98116.

19 Q. Thank you. So, have you ever been deposed?

20 A. Once.

21 Q. What was the occasion?

22 A. Did I do -- I can't actually remember. It's been

23 quite a while ago.

24 Q. Was it a case involving Ballard Terminal

25 Railroad?

1 Q. (By Mr. Cohen) And I see turning to Page 12 of
 2 this agreement that it was signed by you, that's your
 3 signature, right?
 4 A. Yep.
 5 Q. On April 26th?
 6 A. Just now, recently, yep.
 7 Q. Yep. Is this agreement currently in effect?
 8 MR. MONTGOMERY: Object to the extent it
 9 calls for a legal conclusion.
 10 THE WITNESS: I'm not sure if it has
 11 something in that it says when it goes into effect or not.
 12 Q. (By Mr. Cohen) Well, it does, actually. Let me
 13 turn your attention to --
 14 A. It's not an onerous agreement.
 15 Q. Right. To Page 7. I'd like to ask you about --
 16 really, what I want to ask you is whether it is your view
 17 that this agreement is currently in effect as governing the
 18 relationship between Ballard and Eastside Community Rail?
 19 MR. MONTGOMERY: Object to the form. Object
 20 to the extent it calls for a legal conclusion.
 21 Thank you.
 22 THE WITNESS: I don't think there's much new
 23 in here, and I don't think it varies very much with the
 24 Port's similar document that we've been living with,
 25 apparently without any transgressions, since we started up

1 in January of 10, 2010.
 2 Q. (By Mr. Cohen) What Port document are you
 3 referring to?
 4 A. Oh, well, they made about seven of them.
 5 Q. Yes.
 6 A. So I honestly can't -- can't remember what it's
 7 called, but they have an operations agreement that laced
 8 Tom Payne's GNP, frankly like tied him to the tracks, and
 9 then it had all these conditions and so forth.
 10 This sounds pretty darn similar to that. But
 11 it's not really onerous, so...
 12 MR. COHEN: Would you mark that one.
 13 (Exhibit Number 43 marked.)
 14 Q. (By Mr. Cohen) So, Mr. Cole, showing you what's
 15 been marked as Exhibit 43, is this the Port agreement that
 16 you've been describing as the template for --
 17 A. Yeah, I think so.
 18 Q. -- the lease agreement?
 19 A. I think so. You know, those things were, in
 20 2008, when we were living with them, and trying to be the
 21 winning carrier to take over this wonderful thing, it's
 22 been a long time ago. The whole thing went dead for a
 23 year. Throw these in a cardboard box and nobody knew if
 24 the deal was ever going to go through. We had been told by
 25 telephone call backed up by letter, that Tom Payne with GNP

1 and Byron Cole with Ballard Terminal Railroad had won the
 2 competition. And then a year went by before we got to
 3 start running the railroad.
 4 Q. Right.
 5 A. So -- I haven't really looked at the thing very
 6 much since then. Started running it and we just ran.
 7 Never hardly hear a peep out of the Port ever. They never
 8 come to visit us, ask for a train ride, want to audit what
 9 we do, see if we're safe, nothing.
 10 Q. So really, I want to go back to my last question,
 11 is it your understanding that the lease agreement between
 12 you -- between Ballard and Eastside Community Rail has
 13 taken effect?
 14 MR. MONTGOMERY: Same objections I had.
 15 THE WITNESS: Well, I'm not sure I want to
 16 hazard a guess. I'd have to talk to Doug.
 17 Q. (By Mr. Cohen) Okay.
 18 A. We've been running so long without getting paid
 19 by anybody, nobody would do this but me. And it's like,
 20 it's been 100 percent accident free, incident free, paid
 21 all the bills, and made up for that by working extra hard
 22 on our other two railroads. And have received no guff or
 23 guidance from the Port in all that time.
 24 Q. When you say made it up by working extra hard on
 25 our other two railroads?

1 A. Yeah, going out and beating the bushes and
 2 getting more trans-load business and whatever else we can
 3 do.
 4 Q. Is what you're making up on the other two
 5 railroads losses on this one?
 6 A. Yeah. Like not getting paid. Yes.
 7 Q. I wanted to call your attention to Paragraph 1 on
 8 Page 2.
 9 A. Of which document?
 10 Q. The lease agreement. What is it? Exhibit 30.
 11 A. Paragraph 1.
 12 Q. Paragraph 1.
 13 A. This little line?
 14 Q. Yes.
 15 A. I'd say --
 16 MR. MONTGOMERY: Wait for a question. Read
 17 it, I guess.
 18 Q. (By Mr. Cohen) Yes, please read it. And let me
 19 know when you have.
 20 A. Okay. So all --
 21 MR. MONTGOMERY: Please wait for a question.
 22 THE WITNESS: All right.
 23 Q. (By Mr. Cohen) My question is this, it sounds to
 24 me reading Paragraph 1, that Eastside Community Rail is
 25 basically turning over this line to you to operate a

EXHIBIT 13

Page 23

1 A. Yeah.

2 Q. Okay. Do any of the three railroads shown in red

3 on Exhibit 26 pay taxes? Are they taxpayers?

4 A. We just do one financial report and one tax

5 return for the LLC.

6 Q. Okay. And the LLC being Ballard Terminal

7 Railroad Company, LLC?

8 A. Right.

9 Q. Okay. And what were the 2012 total revenues of

10 Ballard Terminal Railroad Company, LLC?

11 A. Well, I think somewhere in my briefcase I may

12 have.

13 MR. MONTGOMERY: My --

14 THE WITNESS: A --

15 MR. MONTGOMERY: Let me cut him off. My

16 understanding is, I'm not sure, I don't want to mislead

17 you, but I believe that's in what's coming. I think that's

18 what coming is the most recent year's numbers. So you're

19 obviously welcome to test his memory, but if you want to

20 skip by that and see what comes, it's up to you.

21 THE WITNESS: I believe that too.

22 MR. MONTGOMERY: Okay.

23 Q. (By Mr. Cohen) Mr. Cole, did you bring any

24 documents with you today?

25 A. No.

Page 24

1 Q. Okay.

2 MR. COHEN: So, Mr. Montgomery, you're

3 referring to a document production that the Fletcher Sippel

4 firm is planning to produce later today?

5 MR. MONTGOMERY: I don't know if I told you

6 on or off the record, doesn't matter. I think it's my

7 understanding, Fletcher Sippel, this morning, hopes or

8 intends to e-mail to Mr. Ferguson and Mr. Ferguson's

9 assistant some production.

10 MR. COHEN: Okay.

11 MR. MONTGOMERY: I believe, as I said, the

12 2000 numbers are in there. I could be wrong, but I believe

13 they are.

14 MR. COHEN: Okay.

15 Q. (By Mr. Cohen) Well, I'll tell you, I need to

16 cover certain ground in order to prepare for subsequent

17 questions in this deposition, so I'm just going to ask you

18 for your best estimates right now subject to confirmation

19 when and if documents show up.

20 Does Ballard Terminal Railroad maintain financial

21 statements?

22 MR. MONTGOMERY: Object to the form.

23 THE WITNESS: Well, we do enough over the

24 course of the year to be able to satisfy our tax

25 preparation company for, you know, somebody -- a firm

Page 25

1 that's been in Seattle for a long time, and does a good

2 job. We've never been audited by the IRS. For 16 years,

3 that's -- I don't know if that's remarkable, but I feel

4 good about it. We're not -- we've used them every year

5 since we started.

6 Q. (By Mr. Cohen) What firm is that?

7 A. I can't tell you right now. I don't know the

8 name.

9 Q. Is it an accounting firm?

10 A. Yeah.

11 Q. Who is the lead that you deal with at that

12 accounting firm?

13 A. I can't remember her name either.

14 Q. Okay. Do you, as Ballard Terminal Railroad,

15 maintain financial statements that you supply to the

16 accounting firm in order to enable them to prepare your tax

17 returns?

18 MR. MONTGOMERY: Object to the form.

19 Go ahead. Thank you. I'm sorry. I was done. I

20 appreciate that.

21 THE WITNESS: So, one of the pieces of paper

22 that's coming from Chicago is a copy of the summary sheet

23 for the preparation work that we do to make it relatively

24 easy for the tax accounting firm to figure out how much

25 taxes we have to pay. And so, I'm giving you that sheet.

Page 26

1 I guess we have to wait here till it flies across the

2 country.

3 Q. (By Mr. Cohen) Okay.

4 MR. MONTGOMERY: Mr. Cole, I'd encourage you

5 to listen to the question asked and answer the asked

6 question, if you would.

7 THE WITNESS: I thought I was.

8 Q. (By Mr. Cohen) So I'll try to proceed without

9 that information for now and hope that it shows up soon.

10 A. Okay.

11 Q. Is Ballard Terminal Railroad's fiscal year the

12 calendar year?

13 A. It is.

14 MR. COHEN: I'm going to ask the reporter to

15 mark an exhibit.

16 THE COURT REPORTER: It's going to be 36.

17 (Exhibit Number 36 marked.)

18 Q. (By Mr. Cohen) Mr. Cole, showing you what's been

19 marked as Exhibit 36, I will advise you that this is a set

20 of discovery requests that my firm served on your lawyers

21 seeking information about Ballard Terminal Railroad. And I

22 want to ask you some questions about the status of your

23 response to certain of those information requests.

24 So I'm going to ask you to turn to -- let me ask

25 first, have you seen this document before?

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2013, a copy of the foregoing **Joint Reply of Ballard Terminal Railroad Company, L.L.C and Eastside Community Rail, LLC to City of Kirkland's Emergency Motion to Compel Discovery** was served by electronic mail upon:

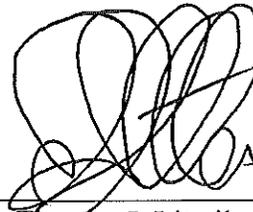
Charles A. Spitulnik
W. Eric Pilsk
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 955-5600
cspitulnik@kaplankirsch.com
epilsk@kaplankirsch.com
Counsel for King County, Washington

Matthew Cohen
Hunter Ferguson
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101
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