

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

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

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**MOTION OF KING COUNTY, WASHINGTON, AND CITY OF REDMOND,
WASHINGTON, TO EXTEND TIME TO RESPOND**

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Dated: September 10, 2010

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**MOTION OF KING COUNTY, WASHINGTON, AND CITY OF REDMOND,
WASHINGTON, TO EXTEND TIME TO RESPOND**

King County, Washington, a political subdivision of the State of Washington (the “County”), and the City of Redmond, Washington, a municipal corporation of the State of Washington (“City”), hereby jointly submit this Motion to Extend Time to Respond to the initial pleadings of GNP Railway Inc. (“GNP”) in the above-listed proceedings, which GNP filed on August 24, 2010.¹

¹ Pursuant to the Board’s rules at 49 C.F.R. § 1104.7(b), this Motion to Extend Time was due no later than September 3, 2010. The County and City respectfully seek the Board’s leave to late-file this Motion. As discussed herein, in light of the complexity of factual and legal issues presented by GNP’s requests and the range of public interests implicated thereby, the ten day period available for the City and County to conduct their analysis and determine an appropriate course of action was impracticably short.

Pursuant to the Board's rules at 49 C.F.R. § 1104.13(a), a reply to GNP's submissions would be due no later than September 13, 2010. Because of the variety of public interests at stake in these proceedings and the complexity of legal and factual issues to be addressed, the County and City respectfully request a 30-day extension of time, to October 13, 2010, to respond to GNP's assertions and arguments. At such time the County and the City will comment in detail on the issues framed by GNP's pleadings so that the Board may have a fully developed record on which to base its decision in this important matter.

Background

The Board issued notices of interim trail use (each a "NITU") for the Redmond Spur in AB-6 (Sub-No. 463X) on October 27, 2008, and for the portion of the Woodinville Subdivision addressed in AB-6 (Sub-No. 465X) on November 28, 2008, following the abandonment requests by BNSF Railway Company ("BNSF") in those dockets. This motion refers to the portions of the Woodinville Subdivision and the Redmond Spur that are the subject of GNP's petitions collectively as the "Lines". In granting the abandonment and issuing the NITUs, the Board found that abandonment was appropriate because the Woodinville Subdivision and the Redmond Spur lack demand for freight rail service. *Id.* The County submitted Notices on March 8, 2010, that it had executed trail use agreements for both segments with BNSF. Accordingly, the process required by this Board for establishing the right to build and operate a trail has been completed and the County is fulfilling its obligations as the Interim Trail User.

In December, 2009 BNSF disposed of its interests in the Lines through a complex series of transactions involving a number of parties, including the County, the City, and GNP. GNP obtained a freight easement to provide interstate freight rail service on a portion of the Woodinville Subdivision immediately north of the segments that are railbanked and subject to

GNP's requests. GNP's contractual arrangements prohibit it from providing freight service to customers on a significant portion of the Redmond Spur. Furthermore, GNP has emphasized consistently in discussions with local stakeholders that its main goal is to initiate excursion passenger service on the Redmond Spur.

A mere eight months later, on August 24, 2010, GNP filed its Petition for Exemption in Finance Docket No. 35407 and Petition to Vacate the NITUs in Docket Nos. AB-6 (Sub-No. 463X) and AB-6 (Sub-No. 465X), seeking Board authority to operate freight rail service on the subject Lines.

Argument

GNP acknowledges that its Petition "presents an issue of first impression: where the petitioning carrier does not own the right-of-way or have the common carrier rights to reactivate the service, whether the Board must approve a request by an authorized rail carrier to restore to active common carrier service a rail line that has been converted to trail use under the National Trails Act"² As GNP thus points out, this is a highly unusual situation where the petitioning entity lacks the property rights needed to carry out its proposal. GNP's requests also fail to address a number of critical legal and factual issues that the Board should consider, such as (1) GNP's contractual obligations not to provide rail freight service on certain portions of the Lines; (2) GNP's efforts to use Board procedures to avoid environmental and other local review of its proposed passenger excursion service; and (3) the nature and viability of GNP's business plan for reactivated freight services and the need for such service.

GNP's requests accordingly raise a number of issues relating to the necessary scope of review and whether this proposal should be considered in an exempt proceeding or through a full

² GNP's Petition for Exemption, STB Finance Docket No. 35407, at 6.

application. The Board should allow additional time for interested parties to respond so that the record may be fully developed for careful consideration by the Board.

GNP's proposal also would have a significant impact on the Puget Sound region. Since the disposition of the Lines by BNSF in December, 2009, a group of local governments and regional entities have invested a great deal of time and public money in a joint planning effort for the shared use of the Woodinville Subdivision and the Redmond Spur while the property is subject to interim trail use. The Lines are now owned by the Port of Seattle, which paid BNSF \$81 million when it acquired the Woodinville Subdivision and Redmond Spur, and the City of Redmond, which purchased the southern four miles of the Redmond Spur from the Port of Seattle for \$10 million. King County also obtained a public multipurpose easement over the project segments, which allows it to develop and operate a public trail and fully comply with its obligations as the Interim Trail User.

This joint effort has identified a number of important public uses, including bicycle and pedestrian trails, providing for regional water supply, power and wastewater utility services, and possible future high capacity transit. The local governments and entities participating in this process include King County, the Port of Seattle, Sound Transit, the City of Redmond, the Cascade Water Alliance and Puget Sound Energy. Other local cities, including Kirkland, Bellevue and Renton, in which portions of the Woodinville Subdivision and the Redmond Spur are located, are actively considering the appropriate uses of the property, and would seek to comment on GNP's petitions.³ These parties recognize that, as a railbanked corridor, such plans would be subject to the possibility that freight rail service could be reintroduced in all or parts of

³ The chief executive officers of four Washington cities including Redmond will ask the Board to publish notice of GNP's petitions in the Federal Register and to solicit public comment on the issues they present.

the corridor. The County and City intend to show the Board, however, that GNP's proposal is insufficient to support a grant of authority to reactivate freight rail service.

Accordingly, a number of significant public interests are affected by GNP's requests and additional time is necessary to fully illuminate these interests for the Board's consideration. The default deadline for response of September 13, 2010, does not provide sufficient time for the County, City, and the other the local governments and regional entities to fully evaluate and comment on GNP's requests. The potential impact on the region by the decision on GNP's requests cannot be overstated. Additional time to allow a complete record to be developed for the Board is warranted in this instance.

WHEREFORE, King County and the City of Redmond respectfully request that the Board grant this Motion to Extend Time to Respond in order that a thorough record can be compiled in the above-captioned proceedings.

Respectfully submitted,



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Respectfully submitted,

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Dated: September 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION OF KING COUNTY, WASHINGTON, AND CITY OF REDMOND, WASHINGTON, TO EXEND TIME TO RESPOND, upon the following parties of record in the above-captioned proceedings by first class mail with postage prepaid and properly addressed:

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Dated this 10th day of September, 2010