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December 2, 2010

Via E-Filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *GNP Railway, Inc.—Acquisition and Operation Exemption—Redmond Spur and Woodinville Subdivision*, STB Docket No. FD-35407;
BNSF Railway Company—Abandonment Exemption—In King County, WA, STB Docket No. AB-6 (Sub.-No. 463X);
BNSF Railway Company—Abandonment Exemption—In King County, WA, STB Docket No. AB-6 (Sub.-No. 465X)

Dear Ms. Brown:

On August 24, 2010, GNP Railway, Inc. filed a Petition to Vacate Notice of Interim Trail Use or Abandonment in STB Docket Nos. AB-6 (Sub.-No. 463X) and AB-6 (Sub.-No. 465X) and a Verified Petition for Exemption Pursuant to 49 U.S.C. 10502 in STB Docket No. FD-35407. On or around November 9, 2010, the City of Redmond, Washington; King County, Washington; BNSF Railway Company; the Central Puget Sound Regional Transit Authority; and the Rails-to-Trails Conservancy all submitted comments in the above-captioned proceedings opposing the GNP petitions.

The Port of Seattle respectfully requests that the Board deny the GNP petitions because GNP does not have the necessary legal rights to operate freight trains over the lines at issue in these proceedings.

Through its petitions, GNP seeks to vacate two Notices of Interim Trail Use covering a total of 9.1 miles of railbanked right-of-way in King County on the former BNSF Redmond Spur, between mileposts 0.0 and 7.3, and the former BNSF Woodinville Subdivision, between mileposts 22.0 and 23.8 (collectively, the "Lines"). GNP also seeks authorization to acquire the residual common carrier rights for the Lines from King County and to restore freight rail service on the Lines.

As set forth in detail in the King County Comments, the Port, BNSF, and King County executed a complex set of agreements (pursuant to authority obtained from the Board), through which BNSF conveyed title to the Lines to the Port, the Lines were railbanked with King County acting

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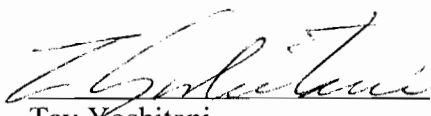
as interim trail user, and BNSF conveyed to King County the right to reinstitute service over the Lines.¹ See King County Comments at 5-11.²

As part of these transactions, the Port granted to GNP a license (the "License") to provide passenger excursion service over a portion of the Lines (the Redmond Spur between mileposts 0.0 and 2.5, the "Excursion Spur") and limited head and tail operations over a portion of the Excursion Spur (between mileposts 0.0 and 1.0). See *id.* at 17-19 and Exhibit 18. The License specifically and unambiguously prohibits GNP from providing "common carrier or contract freight rail service on the Excursion Spur," *id.* at Exhibit 18, Section 2.8, and from "setting out or picking up rail cars," *id.* at Exhibit 18, Section 2.8. The Port does not plan on granting GNP any property rights to operate freight service on the Lines, and King County and Redmond have asserted that they similarly do not plan on granting any such rights to GNP. *Id.* at 31.

As argued persuasively in the opposition comments cited herein, the Board must deny the GNP petitions because GNP not only lacks the legal right to operate freight service on the Lines, but has expressly agreed not to provide such freight service. See King County Comments at 39-43; Redmond Comments at 23-25; Rails-to-Trails Comments at 2-6; Sound Transit Comments at 7-9. The opposition comments expertly analyze long-standing Board precedent establishing that the Board will not grant a carrier's request to vacate a NITU and permit reactivation of rail service when that carrier does not own or have any other interest in the right of way at issue.

In the instant scenario, of course, GNP not only has no legal authority to operate freight service, but has proactively agreed with the Port not to operate such service on the Lines. Because GNP cannot establish this necessary element, the Port respectfully requests the Board to deny the GNP petitions.

Respectfully submitted,



Tay Yoshitani
Chief Executive Officer, the Port of Seattle

cc: All parties of record

¹ These transactions included rail lines and property in addition to the Lines, but for the purposes of this letter, I only discuss the effects of the transactions on the Lines at issue in this proceeding.

² In July 2010, the Port conveyed to Redmond title to the southerly 3.9 miles of the Redmond Spur (between mileposts 3.4 and 7.3), subject to the rights of King County as interim trail user and holder of reactivation rights over this segment. See Redmond Comments at 14.