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Office of Proceedings
October 19, 2022
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October 19, 2022

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

By electronic filing

Re: STB FINANCE DOCKET NO. AB 1316 X
GNP Rly, Inc. – Abandonment Exemption – in King County, WA

Dear Ms. Brown:

Please accept this reply of GNP Rly, Inc. (“GNP”) to the motion of Snohomish County, Wash. (“County”) to intervene in this proceeding.

GNP supports in part and opposes in part the County’s motion. Pursuant to the BNSF Railway Company (“BNSF”) Purchase and Sale Agreement (“PSA”) with the Port of Seattle (“Port”) reached May 12, 2008 and fully executed Dec. 17, 2009, Port acquired from BNSF certain rail right-of-way and trackage extending from MP 23.8 near Woodinville, in King County, Wash. To MP 38.25 in Snohomish County, Wash. See, The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company, Verified Notice of Exemption of the Port of Seattle Pursuant to 49 C.F.R. § 1150.31, filed May 28, 2008 (“Port Exemption Filing”).

BNSF retained a permanent and exclusive easement for freight operations on the Subject Line. Simultaneous to closing the transaction with the Port, BNSF

transferred the freight easement to GNP, with GNP obtaining authority to provide common carrier freight operations over the Subject Line. *See*, Finance Docket No. 35213, GNP Rly, Inc.—Acquisition and Operation Exemption—BNSF Railway Company, (served Feb 13, 2009). GNP retains ownership of the permanent and exclusive BNSF freight rail easement. Ownership of a rail line can refer to a permanent, exclusive freight rail easement and sufficient control over its operation to carry out the common carrier obligation without undue interference. *See*, Finance Docket No. 35812, Cent. Puget Sound Reg'l Transit Auth.—Acquis. Exemption—Certain Assets of City of Tacoma in Pierce Cty., Wash., (served Feb. 5, 2015).

GNP's rights to the Freight Easement and O&M Agreement were conveyed in bankruptcy to Eastside Community Rail ("ECR"). *See*, Finance Docket No. 35692, Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP Rly, Inc., (served Nov. 23, 2012).

Ballard Terminal Railroad ("Ballard") acquired authority to lease from ECR and operate over the Port Line. *See*, Finance Docket No. 35730, Ballard Terminal Railroad Company, L.L.C.—Line of Eastside Community Rail, LLC, (served April 18, 2013), stay request den. (served May 1, 2013).

On May 29, 2014, County, a non-carrier, filed a petition for declaratory order which, *inter alia.*, disavows intent to unduly interfere with GNP freight operations over the "BNSF retained freight rail easement". *See*, Finance Docket No. 35830, Snohomish County, Wash.—Petition for Declaratory Order, (served March 5, 2015).

ECR and Ballard's exemptions were subsequently voided, with the Board restoring the permanent and exclusive BNSF freight rail easement to GNP. *See*, Finance Docket Nos. 35692 and 35730, *supra*. (served Dec. 21, 2020), decision clarified (served Sept 29, 2021).

GNP concurs with County that the Board's actions in voiding ECR and Ballard's exemptions was correct. Neither entity, nor indeed ECR's putative principal Douglas Engle, is party to this abandonment proceeding. Consequently, for the Director to base her September 14, 2022 abeyance Decision in this matter on the pendency of further State Court filings, motions or appeals, constitutes reversible error.

GNP further concurs that the permanent and exclusive freight rail easement retains considerable economic value and that preservation of the Woodinville Subdivision corridor remains in the public interest. However, the future use of the rail corridor within Snohomish County is not before the Board in this proceeding, and that other stakeholders will have interests to be considered in an appropriate future proceeding. Among these are potential shippers and freight rail carriers connecting the Subject Line to the national rail system.

Finally, GNP concurs with County that the King County/Snohomish County boundary is at MP 26.38. and that any reference to the subject trackage between MP 26.38 and MP 28.58 as being included in this proceeding is in error, and should henceforth be disregarded. GNP so amends its original filing. Excising the 0.2 miles of track extending into Snohomish County from this abandonment proceeding relieves the County of standing to participate further herein.

County's remaining concerns bear no relation to in this proceeding. They can be addressed in an appropriate proceeding, which this is not.

GNP thanks the Board for its consideration. Should the Board have questions, kindly contact the undersigned directly, either by telephone or by email.

Respectfully submitted,

James H. M. Savage

/s/ James H M Savage

By electronic signature

*Counsel for **GNP Rly, Inc.***

Cc: Service List

CERTIFICATE OF SERVICE

I certify that on October 19, 2022 I served by email an e-filed copy of the foregoing document upon all parties of record in this proceeding as listed below per the STB service list:

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DATED: October 19, 2022

/s/ James H. M. Savage

James H. M. Savage

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