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**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 21, 2021
Part of
Public Record

FINANCE DOCKET NO. 36261

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. –
PETITION FOR DECLARATORY ORDER**

**FIFTH JOINT STATUS REPORT OF THE CITY OF SEATTLE,
WASHINGTON AND BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
IN RESPONSE TO DECISION SERVED HEREIN ON JUNE 27, 2019**

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December 21, 2021

**FIFTH JOINT STATUS REPORT IN RESPONSE TO DECISION SERVED HEREIN
ON JUNE 27, 2019**

Pursuant to ordering paragraph no. 2 of the Board’s Decision served herein on June 27, 2019, the City of Seattle, Washington (“Seattle”) and Ballard Terminal Railroad Company, L.L.C. (“Ballard Terminal”) provide this fifth joint status report of the litigation in the Superior Court of King County, Washington between Seattle and Ballard Terminal.¹

As explained in previous Joint Status Reports filed herein in December 2019, June 2020, December 2020, and June 2021, the Superior Court ruled on the merits on a number of motions for summary judgment filed by the parties. As a result of those rulings, the Superior Court has now resolved all of Seattle’s state-law contract claims/causes of action against Ballard Terminal, which Seattle asserts were the basis for the Board’s decision to hold Ballard Terminal’s Petition in abeyance.² On January 19, 2021, the King County Superior Court issued an “Order Granting the City’s Third Motion for Summary Judgment—To Dismiss Remaining Defendant’s Claims for Damages and Attorney Fees” (“Final Court Order”). A copy of the January 19, 2021 Final Court Order was attached to Seattle’s March 10, 2021 letter filed herein.

Seattle and Ballard Terminal Railroad Company separately appealed and cross-appealed portions of the Final Court Order to Division I of the Washington State Court of Appeals. The case number for the appeal and cross-appeal is 82377-9-I. Seattle appealed those portions of the Final Court Order that decided, in the first instance, issues involving the Board’s jurisdiction. Ballard Terminal cross-appealed the portion of the Final Court Order that exclusively involves issues of Washington State law (i.e., Anti-SLAPP damages and attorneys’ fees) and do not involve issues of the Board’s jurisdiction.

The parties have complied with the Court of Appeals’ briefing schedule. The Court of Appeals has set the matter for oral argument on January 13, 2022, at 10:00 a.m.

The parties maintain the positions stated in prior status reports. Ballard Terminal again asserts that there is no relief that the Board can provide to the parties that the Washington Superior Court has not already provided, and therefore again requests the Board dismiss its

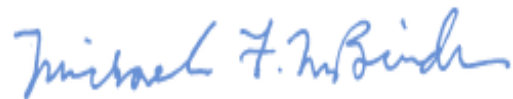
¹ King County Superior Court Docket No. 19-2-01794-5 SEA.

² <https://dcms-external.s3.amazonaws.com/MPD/62491/EFB8285C8EEE4B8185258425006D2660/46990.pdf>.

Petition without prejudice. In contrast, it is Seattle's position that because it appealed those portions of the Superior Court's Final Order involving the Board's jurisdiction, that the Board should continue holding Ballard Terminal's Petition in abeyance pending the outcome of Seattle's appeal, which could take a year or more to complete.

If the Board does not dismiss Ballard Terminal's Petition without prejudice and continues holding it in abeyance, counsel for the Parties will advise the Board of the posture of the state court proceedings during the next status report and will continue to apprise the Board of any additional decisions on the merits that occur prior to the status report.

Respectfully submitted,



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