

**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

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Public Record

FINANCE DOCKET NO. 36261

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

**SEVENTH 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 27, 2022

**SEVENTH 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 (“Decision”), the City of Seattle, Washington (“Seattle”) and Ballard Terminal Railroad Company, L.L.C. (“Ballard Terminal”) provide this seventh 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, June 2021, December 2021, and June 2022, the Superior Court ruled on the merits on a number of motions for summary judgment filed by the parties and issued a “Final Order,” a copy of which 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 Order to Division I of the Washington State Court of Appeals. The Court of Appeals held oral argument on January 13, 2022 and published its Opinion on May 16, 2022. A copy of the Opinion was attached to Seattle’s May 31, 2022 letter filed herein.

Seattle filed a Petition for Discretionary Review to the Washington Supreme Court on June 15, 2022, seeking review of the Court of Appeals’ Opinion. On October 12, 2022, the Supreme Court of Washington issued an Order in Case No. 101023-1 (“Order”), denying the petition for discretionary review filed by Seattle and the cross-petition filed by Ballard Terminal. A copy of the Order was attached to Seattle’s October 27, 2022 letter filed herein.

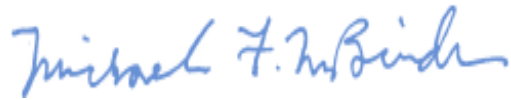
On December 27, 2022, Ballard Terminal filed a Notice to Withdraw its Petition, without prejudice, with the Board because, as explained therein, the Washington State Courts have resolved all of the “state court” issues between the parties and decided the preemption issues raised by Ballard Terminal in its Petition in the first instance as permitted by the Board in its Decision. It is Ballard Terminal’s position that the Washington State Courts can provide no further remedies or relief to the parties. If the Board grants Ballard Terminal’s request, this

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

matter will be concluded.

In contrast, Seattle maintains its position that the Final Order and Opinion were incorrectly decided, directly affecting the Board's jurisdiction and substantially impairing governmental ability to construct or maintain infrastructure near railroad facilities. Seattle is currently evaluating its options in this Docket. Consistent with the Board's rules, Ballard Terminal's Petition should not be dismissed without affording Seattle an opportunity to reply to Ballard Terminal's request for dismissal without prejudice.

Respectfully submitted,



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