

UTILITIES AND TRANSPORTATION COMMISSION
STATE OF WASHINGTON

CITY OF WOODINVILLE, a Washington municipal corporation,)	
)	
Plaintiff,)	
)	
vs.)	DOCKETS: TR-143902 and TR-143903
)	
EASTSIDE COMMUNITY RAIL and BALLARD TERMINAL RAILROAD COMPANY, both Washington limited liability companies,)	RESPONDENTS BRIEF IN RESPONSE TO PETITIONERS BRIEF
)	
Defendants.)	
)	

Defendants EASTSIDE COMMUNITY RAIL (“ECYR”) and BALLARD TERMINAL RAILROAD COMPANY (“Ballard”), as response to Plaintiff CITY OF WOODINVILLE (the “City”), states as follows:

Introduction

The City proposes to widen the Sammamish River bridge and pavement on highway SR 202, over which the railroads currently operate. There are two grade crossings involved. On the east crossing, a new set of gate arms are to be installed, and at the west crossing, the existing ones replaced with longer arms, which will yield two gated crossings for the railway to maintain versus the current one. The railroads, during mediation, agreed to provide normal maintenance of the signals on both crossings, as they do now. However, the remaining issue is the **repair costs** of the proposed extra long crossing arms, which represent a substantial financial risk to the railroads. The railroads are asking for a cost sharing solution that does not put an undue burden on the railroad for these higher risk crossing arms.

Crossing Arms

A signal maintenance person can physically handle shorter, 20’, crossing arms by themselves. The City proposes 38’ gate arms, which will require two people to conduct repairs. Additionally, the long crossing arms are much more expensive, and the gate machines will be more subject to wear due to the extra weight and leverage. Thus, repair costs will be double a typical gated crossing.

It should be noted that only as a result of mediation did the City work with WSDOT to reduce the crossing arm length from 42' (the longest manufactured) to 38', which is the longest that WUTC staff generally recommends. To appreciate this length, mounted, these arms extend well over 10' beyond a typical light post.

The enemy is primarily wind damage, although vehicular damage can occur as well. Because of their light weight, the crossing arms become unwieldy in windy conditions and break apart. Ballard has experienced wind damage nearly every year in Puyallup on its Meeker Southern line ("Meeker"). (ATTACHMENT A)

Crossing Agreement Precedents

The 195th street crossing in Woodinville is totally the responsibility of the "Agency", King County. "Upon completion of the project, **the Agency, at its sole cost and expense, shall maintain all** improvements, other appurtenances, advanced warning signs, standard pavement markings with the exception of the crossing which **will be maintained by the Railway at the Agency's expense.**" (ATTACHMENT B, section XI)

Further, in section XIII, "In the event the signal system installed under this agreement is partially or wholly destroyed and the cost of repair or replacement cannot be recovered from the person or persons responsible for such destruction, then, in that event **the cost of repair or replacement shall be borne by the Agency.**"

At its very essence, this agreement recognizes "WHEREAS, the parties hereto agree that the Railway will receive no ascertainable benefit from the construction of said project." This is the case for the City's proposed project.

The City is also responsible for maintenance from the widening of the 190th street crossing. "The Railway shall maintain the roadway crossing with the portion representing the existing crossing length being maintained at Railway expense and the portion representing the additional crossing length being **maintained at Agency expense. The Agency shall reimburse the Railway for 100 percent of the annual crossing maintenance cost** for the additional crossing length..." (ATTACHMENT C, section X)

For the Shaw Road crossing on the Meeker Southern Railroad, the city of Puyallup and the Meeker Southern Railroad have a maintenance and repair agreement. In this agreement, **the City of Puyallup agrees to pay all maintenance and repair costs for this crossing**, which is attested to by James Forgette, the Trainmaster for Ballard. (Declaration, ATTACHMENTS A and D)

Finally, per this mediation, the City agreed to maintain the existing and lengthened asphalt crossing for 25-years, although the WSDOT and WUTC standards for highway crossings, and the railroad's, call for pre-fabricated

concrete panels between and alongside the tracks. The City, WSDOT and WUTC were amenable to this arrangement, which is technically outside state standards. It doesn't seem right to have concrete panels at the west crossing, but not at the east one, which has just as much traffic, but at least the City, not the railroads, will bear the maintenance costs.

It is quite clear from the above crossing agreements that cost sharing of grade crossings and equipment is entirely possible within the state, including those in Woodinville.

Project Funding

To the best of our knowledge, this project is not approved or funded by the City, state or federal sources. Additionally, the proposed project will interfere in future railway plans, and there is a matter before the Surface Transportation Board to affirm the 100' permanent freight easement held by ECYR. Then the planned bridge and roadway encroachment by Woodinville will need to be sorted out before final planning and construction, as the bridge may have to either be moved north or its substructure enhanced for future rail traffic.

Cost to Railroads

Ballard and ECYR are not Class 1 railroads capable of incurring the costly infrastructure demands of a growing city. The City's late, September 25th submittal regarding BNSF's crossings does little to change the fundamentals of this situation. Cost sharing is entirely possible within the state, including the City; witness the crossings on our operating lines noted above.

In addition, we have incurred nearly \$10,000 in legal bills in dealing with the City before we decided to stop the engagement, as this has been dragging on for years. The City has openly expressed its disdain for having the railroad in their city, although we service Woodinville companies and jobs. This railway keeps over 1,000 trucks off the roads, and supports nearly 1,000 jobs. Demise of the railway from externally imposed expense would only increase costs for these companies, cutting jobs, hurting the environment, and putting these companies' economic vitality at risk.

This 14-mile line currently moves about 250 cars per year at roughly \$500 per car, which is only \$125,000 in revenue. Although growth is slow, we are adding another customer with 70-90 cars annually later this year, and we are looking to help develop Maltby further with the support of the Economic Alliance of Snohomish County. (ATTACHMENT E, item 18)

CONCLUSION

We are not yet operating at a profitable level. Adding one more gated signal to our maintenance schedule would add operating costs, hurting already very thin margins. Spending thousands of dollars to replace or repair the City's proposed long crossing gate arms would place an undue burden on the viability of the railway. Class 3 railways like ours are a benefit to freight mobility and need public support where reasonable, as we believe it is here.

RELIEF REQUESTED

WHEREFORE, ECYR and Ballard prays that the Commission enter judgment in favor of a cost sharing solution with the City, as detailed below:

1. ECYR and Ballard, their successors and assigns, shall pay for the normal **maintenance** and inspections of the modified grade crossing equipment at the two named locations.
2. The City shall pay for any and all **repairs** to the crossing gate arms, gate machines or related equipment at either of the subject locations, no matter the cause, other than negligence on the part of the railroad.
3. For construction of the project, the City shall pay for all necessary modifications to the existing bungalows, computers, controllers, power supplies, underground wiring, foundations, etc., required as a result of the modified signal system, or as required by the Federal Railroad Administration, WSDOT, OR WUTC.
4. The City shall execute a WSDOT grade crossing agreement prior to the start of any work.

Dated: October 2, 2015

EASTSIDE COMMUNITY RAIL

By: _____
Douglas Engle

BALLARD TERMINAL RAILROAD COMPANY

By: _____
James Forgette

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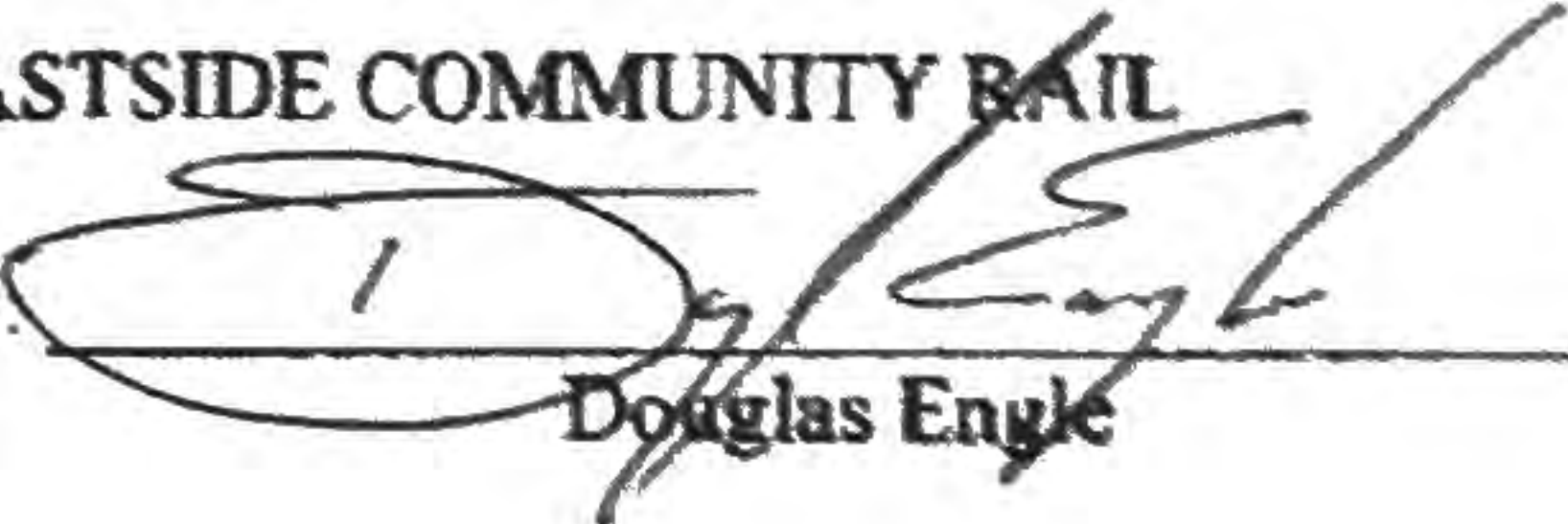
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