

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36932

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Office of Chief Counsel
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Public Record

**CHANNEL PACIFIC RAILROAD — OPERATION EXEMPTION —
IN WEST SACRAMENTO, YOLO COUNTY, CAL. —
REBUTTAL OF THE CITY OF WEST SACRAMENTO AND THE PORT OF
SACRAMENTO TO THE REPLY FILED BY CHANNEL PACIFIC “RAILROAD”**

REQUEST FOR LEAVE TO FILE REBUTTAL

The City of West Sacramento, California and the Sacramento-Yolo Port District (collectively these Sacramento area government entities are hereafter referred to as the “SGEs”) respectfully request that the Board waive the application of 49 C.F.R. §1104.13(c) in this instance because additional factual inaccuracies appear in the Reply filed by the entity calling itself “Channel Pacific Railroad.” Moreover, Channel Pacific continues to obfuscate and confuse the record by its repeated misuse of terms like “rail terminal complex” and “continuous” operations apparently to portray its operations as something they are not.

Indeed, Channel Pacific’s Reply does not dispute that it is, at most, a rail customer; it fails to address the STB decision identified in the Petition as the most directly on point; and it effectively concedes that it has asserted railroad status to avoid state and local laws that would otherwise govern its activities but for the preemptive effect of 49 U.S.C. § 10501. The Reply also falsely characterizes the SGEs as “anti-rail”, which also warrants a rebuttal. In addition, although Channel Pacific asserts that it entered into an “interchange agreement” with Union Pacific Railroad (“UP”), it did not produce the agreement or a redacted copy. That omission is particularly notable given its corporate parents’ apparent confusion between Industry Track Agreements and Interchange Agreements and the fact that UP still does not identify Channel Pacific on its list of California

based short line partners. Furthermore, the Channel Pacific Reply was used as a place to oppose the limited discovery requested by SGE. That additional issue, which Channel Pacific raised for the first time in its Reply, also warrants a rebuttal.

To facilitate a fully developed record, clarify Channel Pacific's continued misuse of terminology suggesting that it is more than a rail customer, and address issues raised for the first time in the Reply, the SGEs respectfully request leave to file the following limited rebuttal and a waiver of 49 C.F.R. § 1104.13(c).

INTRODUCTION

On July 31, 2026 the SGEs filed a Petition requesting that the Board revoke its June 10, 2026 exemption and waiver decision because the notice of exemption ("NOE") filed by the entity calling itself the "Channel Pacific Railroad" ("Channel Pacific" or "CHPR") was insufficient, inaccurate, or incomplete. Alternatively, the SGEs requested that the Board find the exemption "void ab initio" under 49 CFR § 1150.42 (c).

The so-called Channel Pacific Railroad has filed a reply that is replete with pejorative and bombastic claims but short on meaningful facts and relevant legal analysis. The Reply begins with broad claims about federal preemption and railroad interstate commerce, yet the record reflects no railroad or interstate commerce. There are no locomotives, rolling stock, railroad shippers, or, as explained below, prospects for railroad shippers other than Channel Pacific's corporate parents. While SGEs' Petition stated at least seven (7) times that Channel Pacific is merely a railroad customer, the Reply blithely ignores those assertions and further ignores the STB decision that the Petition demonstrated was most analogous: Hi Tech Trans, LLC-Petition for Declaratory Order-Newark, NJ, STB Finance Docket No. 34192, slip op., at 16-17 (STV served Aug. 14, 2003), aff'd, Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 309 (3d Cir. 2004). In rejecting the argument

that a transloader located on Canadian Pacific Railroad property was subject to the Board's jurisdiction, and thus exempt from state and local law, the Board found that Hi Tech was simply a railroad shipper and explained:

[Th]e jurisdiction of this agency may extend to certain activities and facets of rail transloading facilities, but that any such activities or facilities must be closely related to providing direct rail service. In every case, jurisdiction was found and local regulations relating to transportation facilities preempted only when those facilities have been operated or controlled by a rail carrier.... Here, Hi Tech's activities are not performed by a rail carrier. The facts of this case establish that Hi Tech's relationship with CP is that of a shipper with a carrier. Hi Tech brings cargo and loads it onto rail cars, and CP, under the Transportation Agreement, hauls it to a destination designated by Hi Tech.

Hi Tech Trans. slip op., at 6 affirmed Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 309 (3d Cir. 2004). (merely using rail cars “does not morph Hi-Tech’s activities into those of a rail carrier”). *The Channel Pacific Response simply ignores that contention and continues the ruse that this is a railroad within a rail terminal which might access the shipping public.*

Lastly, the Reply refers to “continuous” rail operations at the rail terminal facility when, in fact, there has not been rail service to the facility since 2022.

The SGEs do not dispute the importance of rail transportation or the necessity of federal preemption for bona fide interstate railroad operations. “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” City of Auburn v STB, 154 F.3d 1025,1030 (9th Cir 1998). Nor do the SGEs dispute the fact that transload operations closely integrated and related with bona fide railroad operations can be covered by the Boards jurisdiction. Indeed, the Petition listed and discussed several of those transload decisions.¹ What the SGEs dispute is that Channel Pacific is an interstate railroad and not merely a prospective railroad customer of the Union Pacific and the SGEs dispute that an

¹ Petition at pp. 17-18.

industrial site can avoid state and local regulation merely because it seeks to designate a few hundred linear feet of stub-end track that can only serve or access its corporate parent as a “railroad”.

The Reply opens with sweeping reference to “unwarranted local intrusions into railroad interstate commerce” and repeatedly characterizes the SGEs as “anti-rail,” even though neither Channel Pacific nor its corporate parents applied for the state and local land use entitlements it now seeks to avoid via the Board’s Exemption. Importantly, the Reply flatly ignores the material inaccuracies and omissions identified in the Petition. Contrary to the NOE, Channel Pacific is not, and will not be, a common carrier railroad serving the public. It does not access any shippers except its corporate parent, Greencycle and, as such, there is no third-party that could pay Channel Pacific for the rail transportation it claims it may provide.

In any event, to the extent that the misstatements, factual omissions and critical additional information material to the exemption authorization process was not clear enough in the Petition, they are listed in the Section immediately below. The remaining issues raised in the Reply that warrant a Rebuttal are addressed in the sections that follow.

1. List of Inaccuracies, Changed Circumstances, New or Misleading Information in the Notice of Exemption, and New Inaccuracies Appearing for the First time in Channel Pacific’s Reply.

The Board’s governing statute provides authority to reopen, reconsider or change a Board action because of “material error, new evidence, or substantially changed circumstances”. 49 U.S.C.A. § 1322. If the notice of exemption contains false or misleading information, the exemption is void ab initio. 49 C.F.R. § 1150.34. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. An exemption under 49 C.F.R. part 1150 subpart D is void ab initio if the verified notice contains false or misleading information that is material to the

authorization process. 49 C.F.R. § 1150.32(c); Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995). Information is material if the transaction would not otherwise have qualified for an exemption. Berkshire, 52 F.3d at 381. The failure to disclose material information can render a verified notice misleading by omission. Eastside Cmty. Rail, LLC—Acquis. & Operation Exemption—GNP Rly Inc., FD 35692 et al., slip op. at 3-4 (STB Dec. 22, 2020). Channel Pacific’s Reply, while raising new inaccuracies, confuses the demonstrated inaccuracies, misrepresentation or incomplete facts in the NOE that were set forth in the SGEs’ Petition.

- The Board was not made aware of ongoing efforts by Channel Pacific’s corporate parents, Greencycle and Teichert, relating to permits for storage tanks, air quality compliance, protection of navigable water of the United States, and land use at the Greencycle site. Nor did the NOE disclose that the proposed storage tank infrastructure is physically removed from the rail spurs to such an extent that is it not “closely related” to any railroad operation (pp. 3-4 of Petition). *This omission is material as it would inform the Board’s analysis of whether the transload storage and maritime activities are “closely related” to railroad transportation.*
- The Board was not made aware of the fact that Channel Pacific’s corporate affiliates are also seeking a 28-year lease from the Sacramento-Yolo Port District to have ships utilize the land adjacent to this facility for the offloading and storage of asphaltic oil, which is a petroleum byproduct that would be stored in the massive storage tanks elsewhere on the property (pg. 4 of Petition). Additionally, the Board was not made aware of the fact that Channel Pacific would be required to make improvements to the maritime dock affixed to the Port-owned land to handle the petroleum byproduct, which would require additional state permits through the California State Lands Commission Marine Oil Terminal

Engineering & Maintenance Standards. (Ex. D. of Petition). *This omission is material as it also would inform the Board's analysis of whether the storage tanks receiving product from ships and associated transload activities is "closely related" to railroad transportation.*

- The Board was not made aware of the fact that this so-called "common carrier" activity would be a behind the gate operation pursuant to an industrial track lease with Union Pacific that, in every way other than this Board's Exemption would look like a typical rail shipper or receiver with some loading tracks (pg. 4 of Petition). *This informs the Board's consideration of whether Channel Pacific is a railroad or, is, at best, a rail shipper an important distinction in the Board's cases².*
- The Notice of Exemption repeatedly referred to a "rail terminal complex" and represented that Channel Pacific would provide commodity handling, transloading, and related services within a terminal complex owned by Greencycle. However, the NOE did not disclose that Greencycle, Channel Pacific's parent company, would be the only entity with physical access to the rail lines and that the purported "rail terminal complex" consisted solely of that affiliated shipper. Nor did it disclose that CHPR's 982 linear feet of track could serve only Channel Pacific's corporate parents. *This omission is material because it bears directly on whether Channel Pacific functions as a railroad or, at best, as a rail shipper, a distinction that is dispositive under Board precedent.*

² Hi Tech Trans, LLC-Petition for Declaratory Order-Newark, NJ, STB Finance Docket No. 34192, slip op., at 16-17 (STV served Aug. 14, 2003), aff'd, Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 309 (3d Cir. 2004),

Furthermore, Channel Pacific's Reply discloses two new factual inaccuracies. Firstly, in its Reply Channel Pacific said:

Furthermore, CHPR is a distinct operating entity leasing the rail and terminal facility from its affiliate, Greencycle, pursuant to a triple net property lease effective July 1, 2026, under the ultimate corporate umbrella of Teichert. Such an inter-corporate relationship between a noncarrier facility owner and its leasehold common carrier affiliate is standard Board practice.

Reply at pg. 27 emphasis added.

However, in the May 13, 2026 NOE Channel Pacific stated that the agreement was already in place:

Greencycle (the owner of the Track) and CHPR have reached an agreement pursuant to which CHPR will – (1) acquire the right to conduct railroad common carrier service over the Track; and (2) assume responsibility for the provision of associated commodity-handling and transloading services within the terminal complex owned by Greencycle.

That is, the May 13, 2026 NOE proclaimed they had reached an agreement and the August 20, Reply stated that the Agreement was only effective July 1, 2026, which is different than what was stated in the NOE. This is a material misrepresentation as it seems that the NOE inaccurately described Channel Pacific's readiness to perform railroad operations.

A second factual inaccuracy appearing in the Reply concerns the repeated use of the term "continuous" rail operations with respect to the Greencycle property. throughout (see e.g. pp. 3,4, and 18).³ While the Reply itself seems to recognize that "continuous" is not entirely accurate when it describes a "brief and routine transactional transition period undertaken solely to accommodate a commercial property sale." The fact is that Port records show that there has not been rail service at the facility since 2022 or at the latest 2023 when the site was decommissioned. Combined with

³ While certainly not factually accurate the most colorful use of this assertion of "continuous" rail operations may be at pages 17-18 of the Reply, "Their invocation of local police powers is exposed as a transparent smokescreen when measured against the facility's half-century history of *continuous* rail operations." (emphasis added).

the repeated invocation of images of multi modal rail parks or logistics parks with the repeated imagery of a “rail terminal complex,” the Channel Pacific and its corporate parents would have this Board believe the facility is such a rail park where a switch carrier performs first mile-last mile service to various rail served businesses or warehouses. In reality, there is not a rail terminal complex, there is not an industrial park, there is not a railroad and there has not been “continuous” rail operations. Each of these factual inaccuracies and omissions is material and could have impacted the Board’s handling of the NOE. But "Pay no attention to that man behind the curtain! The Great Oz has spoken!"⁴

2. Channel Pacific Has Not Disputed That it is Simply a Prospective Rail Customer but the NOE’s Factual Inaccuracies and Omissions might lead the Board to Believe Otherwise.

On at least seven (7) occasions throughout the Petition the SGEs asserted that Channel Pacific was not a “railroad” but rather merely a rail shipper like the entity found to be outside the Board’s jurisdiction in Hi Tech Trans, LLC-Petition for Declaratory Order-Newark, NJ, STB Finance Docket No. 34192, slip op., at 16-17 (STV served Aug. 14, 2003), aff’d, Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 309 (3d Cir. 2004) (Petition at pg 3, 4 and 6-13). Channel Pacific factually does not dispute that its steel wheel operations, if ever commenced, would simply be that of a rail customer. Indeed, Channel Pacific seems to acknowledge as much in its Reply where, after discussing its efforts to be a rail served facility like other customers, it then asserts that it was compelled to be a railroad by the SGEs: “CHPR’s invocation of the Board’s class exemption procedures was triggered by the City’s “no trains” stance” (Reply at pg. 5).

The Reply contains several similar assertions about “no trains” or that the SGEs were “anti-rail” and this entire discussion is misleading as the Greencycle/Teichert group never applied for

⁴ An additional factual inaccuracy disclosed in the CHPR Reply concerns the alleged “anti-rail stance of the SGEs. This factual inaccuracy is part of the reason for this Rebuttal and is discussed in Section 5 below.

the land use permit it complains of so fiercely. This misconception, including the assertion that the Petition is “anti-rail” or depends on a “no trains” theory, is addressed in Section 4 below and underscores the necessity of this Rebuttal. But at this stage, it is important for the Board to recognize that the Reply does not refute Petitioners’ contention that Channel Pacific is merely a rail served facility. Nor does Channel Pacific’s Reply even address the Board decision and subsequent affirming decision from the Third Circuit Court of Appeals, Hi Tech Transportation, that the SGEs Petition discussed at length and said was the “most analogous to the instant situation involving Channel Pacific.”⁵ The interplay between these important Board decisions and court cases and the NOE’s factual inaccuracies or omissions are briefly discussed below.

3. The NOE and Reply omit or confuse the clear facts: Channel Pacific cannot physically access other shippers and the Greencycle facility is not a rail served industrial park. As such, under Board precedent, Channel Pacific is not a jurisdictional “railroad”

ICCTA defines “rail carrier” as “a person providing common carrier railroad transportation for compensation.” 49 U.S.C. § 10102(5). All of the 2,132 feet of Channel Pacific track are on land owned by Greencycle. This is not a rail park where the switch carrier accesses multiple shippers. There is no other entity to provide rail transportation to. Despite the attempt to re-brand as a rail terminal complex, this is not like an operation in an industrial park where multiple entities might pay a railroad a fee for rail switching services. Further, as was demonstrated in the Petition, this is not a case where the transload is closely related to the railroad. While the asphaltic oil that will someday move through the Greencycle facility, which could originate from ships or railcars, may leave the Greencycle facility via truck, this type of multi-modal operation would not be an operation where the transload is closely related to rail. Rather, this situation mirrors the operations

⁵ Petition at pg. 17.

in the Hi Tech Transportation case. The SGEs acknowledge that it is certainly possible for a relatively small carrier to operate over less than a mile of track and charge shippers or receivers along the line for the transportation services it provides and be properly deemed a common carrier. Here, however, there are no shippers along the short lengths of Channel Pacific's roughly 2000 linear feet of track in the Greencycle facility. Nor can there be an industrial park or "terminal complex" without replotting the Greencycle property for thirds parties. This would be a different type of operation which was present in several of the cases cited by Channel Pacific but was not mentioned or proposed in the NOE.

The Channel Pacific cites several class III exemption cases at pages 16-17 of its Reply in an apparent effort to confuse and obfuscate the point that there are no "public" rail served customers within the Greencycle facility. The Reply states, "[t]he conversion of private track to a common carrier line of railroad is not inherently controversial, and the Board routinely allows conversions of small lengths of unregulated track, private or otherwise, to federally authorized common carrier lines of railroad." Reply at pg. 16.

As a general proposition, the SGEs agree with the above statement from the Reply. But the cases cited in support of that statement are inapplicable here because the railroads in those cases could provide common carrier rail transportation or switching services to third parties. These cases are readily distinguishable from the Channel Pacific/Greencycle situation because the tracks on the Greencycle property do not provide access to any current or potential third party customers. The Board's decisions consistently find that rail service only for a corporate affiliate is not common carriage by rail. The Board decision in B. Willis, C.P.A., Inc.-Petition for Declaratory Ord., No. 34013, 2001 WL 1168090, at *2 (S.T.B. Oct. 1, 2001) arose in the context of a line construction dispute but squarely addressed the common carrier question:

Under the statute, the Board has jurisdiction over “transportation by rail carrier,” 49 U.S.C. 10501(a)(1), with the term “rail carrier” defined as “a person providing common carrier railroad transportation for compensation,” 49 U.S.C. 10102(5).

In other words, there is a category of rail operations that falls outside the Board's statutory jurisdiction. It consists of private tracks, typically built and maintained by a shipper (or for a shipper at the shipper's expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper's own goods, so that there is no “holding out” to serve other shippers for compensation. Private tracks constitute a narrow, limited category of rail operations. But as long as rail track is constructed and operated in a manner that does not constitute common carriage...(it is) in private status not subject to the Board's jurisdiction.

B. Willis, C.P.A. at *2. See also, Hanson Nat. Res. Co.--Non-Common Carrier Status--Petition for A Declaratory Ord., No. 32248, 1994 WL 673712, at *15 (I.C.C. Nov. 15, 1994) (“A railroad is a private carrier railroad if its railroad operations are performed solely as an arm of its, or an affiliate's, non-transportation business”).

Obviously, unlike the carriers in those cases, Channel Pacific states that it wants to provide common carrier rail service, but as demonstrated in the Petition and elsewhere, its 2,132 linear feet of track are all on the Greencycle facility and it cannot provide service to “the public” or to any entity other than Greencycle. See, Smith v. Rail Link, Inc., 697 F.3d 1304, 1309 (10th Cir. 2012) (“common carrier status is about what a company actually does, not what it says it does”).

The Reply cites Pioneer Rail & Transload of Hawthorne, Fla.—Operation Exemption—Line in Hawthorne, Fla., FD 36748 (STB served Jan. 12, 2024). However, unlike the Channel Pacific/ Greencycle situation, the NOE in Pioneer Rail discussed its potential third party customers along its existing industry track:

PRTF states that it plans to convert the Line from private track to a common carrier line of railroad and to provide common **carrier switching services for the owner of the facility as well as other customers located or to be located within the facility.**

Decision at pg. 1 (emphasis added).

Similarly, in another case cited by CHPR’s Reply, Empire River Rail LLC—Operation Exemption—in Brooke Cnty., W Va., FD 36750 (STB Jan. 5, 2024) that carrier proposed to utilize its .464 miles of track to serve a logistics facility that contained warehouses, barge services and transloading.

According to the verified notice, the Line is part of a logistics facility that boasts barge, warehousing, truck, transloading, and railroad service capabilities owned by Empire Trimodal Terminal LLC d/b/a Port of West Virginia...

Decision at pg 1. The Reply also, and oddly, cites Unity Line, LLC—Operation Exemption—Rail Lines in Manitowoc Cnty., Wis., FD 36928 (STB May 22, 2026) (“Unity Line”). It is an odd citation because the status in the Unity Line case is still very much in question and because the same law firm representing Channel Pacific in the instant docket challenged that so-called “railroad” exemption on behalf of the interchange trunk carrier, Wisconsin Central (“WCL”). See letter from Fletcher and Sippel dated June 3, 2026 in FD 36928 which seems to doubt whether that so-called “carrier” can ever commence railroad operations.

WCL would, of course, provide reasonable interchange facilities for receipt of traffic from MP&TR should MP&TR **otherwise be able to commence operations.** See 49 U.S.C. § 10742. MP&TR, however, would also need to provide reasonable interchange facilities for receipt of traffic from WCL, **and it has not explained how it will do so using the three tracks it proposes to operate.**

Fletcher & Sippel Letter in FD 36928 dated June 3, 2026 (emphasis added).

In an apparent role reversal, the WCL and their counsel at Fletcher and Sippel express concerns about the viability of that proposed rail operations over three short lines of “former”

industry track and also express concerns about the tracks only serving the corporate parent and whether the proposed class III is an actual railroad or capable of commencing operations. See also, letter from Fletcher and Sippel in FD 36928 dated May 11, 2026:

These questions, together with the fact that MP&TR has not approached WCL to formulate a plan for its intended operations or otherwise discuss its intentions, cast doubt on the feasibility of the service MP&TR states it will perform. On the current record, this does not appear to be a routine case arising under Effingham R. Co. – Pet. For Declaratory Order, 2 S.T.B. 606 (1997), aff’d sub nom. United Transp. Union-III. Legis. Bd. v. STB, 183 F.3d 606 (7th Cir. 1999).

Given the chaos surrounding that still unresolved docket, and questions about whether that so-called railroad might ever commence operations, it is unclear what value its citation has to the Channel Pacific’s Reply.

The actual railroads in the other cases cited in the Reply had one thing that Channel Pacific/Greencycle does not have: third party rail served customers along its former private track other than their corporate parent. As discussed in Section 4, the SGEs do have a concern that if all that is required to avoid state and local law and become a railroad are some private industry track and an intra-corporate agreement, this practice could become a trend or tactic to skirt state and local laws that are otherwise respected by this Board.

Indeed, some of the cases cited by Channel Pacific in their Reply actually support the SGEs’ concern. At page 8 of the Reply the CHPR cites Ashland Railroad, Inc.—Lease and Operation Exemption—Rail Line in Monmouth County, NJ, FD 34987, *et al.* (STB served Aug. 16, 2007). The Reply ostensibly cites this case for the proposition that the “Reject” portion of the SGEs’ Petition to Reject or Revoke is untimely. However, that case did revoke an exemption that, according to that Decision, seems strikingly similar to the instant situation involving Channel Pacific. The Board in that case revoked the Ashland Railroad exemption stating:

To come within the Board's jurisdiction (and thus be covered by the Federal preemption in 49 U.S.C. 10501(b)), an activity must constitute transportation provided by, or under the auspices, of a "rail carrier." See 49 U.S.C. 10501. The February and April 2007 decisions asked ASRR and Mr. Crane to answer basic questions regarding their proposed operations and, in particular, explain why ASRR would become a rail carrier. However, they have failed to respond or have provided only vague and confusing answers to address the specific questions posed and the concerns raised by the opposing parties. They have failed to adequately describe the shippers that they will serve, the operations that they will conduct, the arrangements that they will have with rail carriers, or the environmental impacts of the proposed activities ...Accordingly, we will reject the notices of exemption.

Decision at pg 4.

There are several helpful cases that discuss whether an entity performing activities on rail tracks is actually a railroad. While arising in the context of an injury claim under the railroad specific Federal Employer's Liability Act, the case of Willard v. Fairfield S. Co., 472 F.3d 817, 821 (11th Cir. 2006) contains a useful discussion and summary of what constitutes a common carrier by rail.

[C]ourts have noted that a common carrier is one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and hence is regarded in some respects as a public serv[a]nt.

Willard at 821 quoting Kieronski v. Wyandotte Terminal R.R. Co., 806 F.2d 107, 108 (6th Cir.1986). The Willard court went on to discuss how in-plant operations are typically not common carriers:

[T]he evidence shows that Fairfield is an in-plant railroad that transports products within the confines of its property. "Industries operating in-plant rail facilities for their own benefit and not offering transportation to the public for a fee are not considered common carriers." Iverson v. So. Minn. Beet Sugar Co-op, 62 F.3d 259, 263 (8th Cir.1995). In a situation where an industry maintains a complicated intra-plant railroad system, such rail operations will be regarded as plant facilities rather than those of a common carrier. See, Lone Star Steel Co. v. McGee, 380 F.2d 640, 644 (5th Cir.1967).² "The movement of freight within the plant is not common carriage but rather industrial plant usage." Id.

Willard v. Fairfield S. Co., 472 F.3d at 822. The Lone Star factors are whether (1) the entity is actually performing rail service; (2) the service being performed is part of the total rail service contracted for by a member of the public; (3) the entity is performing as part of a system of interstate rail transportation by virtue of common ownership between itself and a railroad or by a contractual relationship with a railroad and hence such entity is deemed to be holding itself out to the public; and (4) remuneration for the services performed is received in some manner, such as a fixed charge from a railroad or by a percent of the profits, from a railroad. *Id.* at 647.

In summary, to come within the Board's Jurisdiction transload operations must be "closely related" to railroad operations which is not the case here because there are no railroad operations. Channel Pacific's efforts to obfuscate the facts to say there is or will be a railroad, or there is an interchange agreement with Union Pacific but not produce a redacted copy of such alleged agreement is gamesmanship at best and potentially misleading at worst.⁶ But in either event for Channel Pacific to argue that federal law preempts state and local law while this transload operation scrambles to cobble together a railroad is a "tail wagging the dog" argument that should not be endorsed by this Board.

4. The SGEs are not "anti-rail", but they do not believe the STB processes and federal preemption should be misused by an entity that is not a railroad.

The Reply woefully laments how the multi-billion-dollar corporate parents of Channel Pacific had to become a railroad because of the alleged "anti-rail" stance of the SGEs.

In short, the SGEs are here for one reason, and one reason only, the City opposes railroad service to or from the Terminal, including via UP tracks to the facility, and

⁶ At page 13 of the Channel Pacific Reply they state, "As detailed elsewhere in this Reply, CHPR and UP successfully negotiated and executed a formal interchange agreement, effective July 14, 2026. Moreover, UP and CHPR are forging ahead with other interline service arrangements consistent with UP's acceptance of CHPR's intended common carrier status." But the Interchange Agreement is not "detailed elsewhere", excerpted or attached. The SGEs' efforts to obtain discovery of any such agreements is discussed in Section 5 *infra*.

the City wants to be able to impose its zoning and permitting authority to ensure that rail service is comprehensively prohibited. Against this backdrop, CHPR filed its verified notice of exemption (the “Notice”) on May 12, 2026, to ensure the Terminal's historic rail connections remained active and protected.

Reply at pg. 5. Factually, however, Channel Pacific’s corporate parents were never denied the requisite land use permits, were not discouraged from filing for those permits and never even applied for such a permit. And, rhetorically speaking, why should they file for state and local permits if all that this Board requires to become a “railroad” and wield the preemptive power of ICCTA preemption is some private track, the filing of a Notice of Exemption and the payment of a fee? This characterization of the Petition as anti-railroad is a narrative advanced by Channel Pacific and its corporate parents and is not supported by the facts.

Again, Channel Pacific’s corporate parents were never denied the requisite land use permits and never even applied for such a permit. But in other cases this Board has rightly required more than allegations that “local government is anti-rail” for ICCTA preemption to apply. For example, in Sea-3, Inc. Petition for Declaratory Ord., No. FD 35853, 2015 WL 1215490 (Mar. 16, 2015) the transloader in that case unsuccessfully sought a declaratory judgment that the City of Portsmouth’s appeal of another municipality’s zoning decision concerning construction of additional rail berths at a liquefied petroleum gas transload facility was preempted by federal law. In that case, SEA-3, which admittedly was not a carrier, argued that any attempts by localities or states to impose preclearance requirements on transload facilities are federally preempted under § 10501(b). Decision at *2.

In its thoughtful and detailed discussion of ICCTA preemption related to transload operations the Board distinguished between local regulation of non-carrier transload operations served by a railroad (generally not preempted) and transload operations conducted by a carrier and closely related to rail transportation (which generally would be preempted). In that case SEA-3

relied heavily, but unsuccessfully, on Norfolk Southern Railway v. City of Alexandria (Alexandria), 608 F.3d 150 (4th Cir. 2010), and Boston & Maine Corp.—Petition for Declaratory Order (Winchester), FD 35749 (STB July 19, 2013) and argues that any attempt by localities or states to impose preclearance requirements on rail served facilities are federally preempted under § 10501(b). In rejecting SEA-3's request the Board drew a sharp distinction between transload operations that are not closely related to a rail carrier's transportation services and those that are closely related to rail transportation.

However, the facts in the cases relied on by SEA-3 and the Petition Supporters are very different from those at issue here. The cited cases involved local regulation of transloading performed by the rail carrier or under its auspices (Alexandria and Ayer), or local regulation of the railroad's ability to conduct common carrier transportation (Winchester). Alexandria involved an ethanol transload facility constructed and owned by Norfolk Southern Railway Company and operated under its auspices. Ayer involved the construction and operation of an automobile unloading facility by Boston and Maine Corp. and Springfield Terminal Railway Co., and their corporate parent, Guilford Transportation Industries, Inc. (now Pan Am). SEA-3 and the Petition Supporters do not allege that SEA-3 is a rail carrier, or that its transloading is performed under the auspices of a rail carrier, as was the case in Alexandria and Ayer. Sea-3, Inc. Petition for Declaratory Ord., No. FD 35853, 2015 WL 1215490, at *5 (footnotes omitted). The Board further discussed this distinction as follows:

Winchester involved a local regulation that would have prohibited a rail carrier (Pan Am) from operating trains over the line in question. The Board determined that § 10501(b) preempted this regulation because it prevented the rail carrier from conducting its operations in interstate commerce. Here, SEA-3 and the Petition Supporters have not identified an attempt by Portsmouth to regulate Pan Am's operations, as was the case in Winchester. Instead, Portsmouth's litigation challenging the Planning Board's decision involves permitting of the expansion of

SEA-3's facility, and as noted, it is undisputed that SEA-3 is not a rail carrier or acting under the auspices of a rail carrier.

The only distinction between the transload operator in SEA-3 and Channel Pacific is that Channel Pacific filed a Notice of Exemption and requested expedited handling. Like the operator in SEA 3, the CHPR's parent, Greencycle's understood that there were state and local zoning concerns. But in the case of Greencycle/Channel Pacific instead of actually applying for the necessary land use permits they filed a gossamer thin NOE and, despite having no rail customers or prospects for rail customers, claimed railroad status and, deemed the state and local zoning laws preempted by ICCTA. The SGEs are decidedly not anti-rail. The SGEs are, however, pro-reality and here, the reality is that Channel Pacific is not a railroad, has no prospects for third party customers given the layout of Greencycle facility and, unlike the situation in Winchester, supra, the SGEs have not attempted to interfere with Union Pacific's rail service to Greencycle or elsewhere.

Indeed, railroad operations are a significant source of revenue for the Port and railroad served industries in the Port area. In addition to the many Yolo County and City of West Sacramento residents directly employed by BNSF, Union Pacific and Sierra Northern, there are hundreds of other jobs and tax paying employers in the City who depend on rail service. The SGEs understand and appreciate that rail is the most fuel efficient and environmentally friendly form of surface transportation, and the SGEs appreciate that for the most part railroads build and maintain their transportation infrastructure without taxpayer or governments subsidies. Given the state of highway congestion and the status of many highways and bridges in the highway system, any local government that is "anti- rail" would be quite short -sighted.

However, both the City and the Port believe that landowners otherwise subject to state and local police power should not be able to “opt out” by improperly designating themselves as a “railroad” or that such improper designations should be misused as a way to preempt state and local authority. The property in question is located in the middle of the City, and the City is especially concerned that activities on the property such as the storage, heating, transfer, and transportation (including transportation by truck and maritime) be conducted in compliance with laws that are intended to protect the City's residents. Both entities are also concerned that these activities are undertaken in a way that protects adjacent waterways, which feed into the Sacramento Delta and navigable waters of the United States.

At page 5 of the Reply it was asserted,

In short, the SGEs are here for one reason, and one reason only, the City opposes railroad service to or from the Terminal, including via UP tracks to the facility, and the City wants to be able to impose its zoning and permitting authority to ensure that rail service is comprehensively prohibited.

Against this backdrop, CHPR filed its verified notice of exemption (the “Notice”) on May 12, 2026, to ensure the Terminal's historic rail connections remained active *and protected*.

This is not true. As stated throughout (and conveniently ignored in the Reply), the Channel Pacific’s corporate parents never applied for the permits in question. If it were the case that the SGEs were attempting to block Union Pacific's access to a rail-served facility, this matter would be more akin to Winchester, where the challenged actions were found to be preempted. However, the SGEs have never sought to block Union Pacific's access to the facility, rendering that comparison inapposite. The fact is that the SGEs are not “anti-rail,” and it remains the case that Channel Pacific is not a common carrier by rail.

5. Discovery Issues Raised in the Rebuttal.

The Reply does accurately report that the SGEs served discovery on August 8, 2026 which was after the filing of the Petition. To the extent that the discussion at pg. 19 of the Petition did not put Channel Pacific on notice that there were potential outstanding factual issues, the SGEs' undersigned counsel must humbly concede that we assumed that the general discovery rules in 49 C.F.R. §§ 1114.26, 1114.27, and 1114.30, had been complied with by serving its discovery requests within fifteen (15) days of serving the petition. We further believed that requests for relief that are made under 49 C.F.R. § 1150.42(c) (void ab initio) and 49 U.S.C. § 1322(c) (reopening based on material error or changed circumstances) were both governed by the general discovery rules.

The SGEs' modest discovery requests are attached as Ex. A. in the event that the Board would like to consider them for its own inquiries as it did in *Ashland Railroad, Inc.—Lease and Operation Exemption—Rail Line in Monmouth County, NJ*, FD 34987, *et al.* (STB served April 14, 2007) where the Board directed the proposed carrier “to provide additional and specific information with respect to the nature of the proposed operations, whether the proposed facility will operate as a solid waste rail/truck transload facility, the nature of the freight, the nature and volume of the shipments, the identity and nature of the shippers...and other information relevant to a determination of whether ASRR will be a rail carrier.”

In any event it is unclear how Channel Pacific may have been prejudiced by the 12-day gap between the filing of the Petition and the Service of the discovery requests and Channel Pacific is advised to preserve relevant records while the Board determines the appropriate next steps. The SGEs further advise Channel Pacific to preserve relevant records while we consider next steps and reserve all rights to seek or compel discovery pending further developments.

Respectfully submitted,

/s/ Charles Shewmake
Charles Shewmake
Holland & Knight
1722 Routh St, Suite 1500
Dallas, TX 75201
(214) 969-2122
Charles.shewmake@hklaw.com

Jeffrey Mitchell
Kronick Moskovitz Tiedemann & Girard
1331 Garden Highway 2nd Floor
Sacramento, CA 95833

Attorneys for West Sacramento

CERTIFICATE OF SERVICE

I certify that I have served copies of the City of West Sacramento's Request for Leave to File Rebuttal by electronic delivery or by first-class mail, postage prepaid, via their counsel:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

/s/ Charles Shewmake
Charles Shewmake

Dated: September 8, 2026

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36932

CHANNEL PACIFIC RAILROAD — OPERATION EXEMPTION —

IN WEST SACRAMENTO, YOLO COUNTY, CAL. —

**THE CITY OF WEST SACRAMENTO AND
THE PORT OF SACRAMENTO’S FIRST SET
OF DISCOVERY REQUESTS TO CHANNEL
PACIFIC RAILROAD**

Pursuant to 49 C.F.R. §§ 1114.26, 1114.27 and 1114.30, the City of West Sacramento, California and the Sacramento-Yolo Port District (collectively these Sacramento area government entities are hereafter referred to as the “SGEs”) hereby requests that Channel Pacific Railroad (“Channel Pacific” or “CHPR”) respond to and produce documents responsive to the following discovery requests to Holland & Knight LLP One Arts Plaza, 1722 Routh Street, Suite 1500 Dallas, Texas 75201 no later than August 28, 2026.

DEFINITIONS

1. “Channel Pacific” and “CHPR” means the so-called Channel Pacific Railroad as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

2. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

3. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

4. “Corporate Parents” means Greencycle Inc and Teichert Inc, as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

5. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained.

6. “Greencycle Site” means the roughly 23 acre property in Yolo County California purchased by Channel Pacif’s Corporate Parents in 2024 and that may have been referred to as a “Rail Terminal Complex” in Your May 12, 2026 Notice of Exemption filed with the STB in FD 36932.

7. The term “Identify”:

- a. When used in reference to an individual, shall require a statement of the individual’s full name; present and/or last known position, employment, job title and/or business affiliation; and present and/or last known business address and telephone number.
- b. When used in reference to businesses or corporations, shall mean to state the business or corporation’s legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), its present and/or last known address.
- c. When used in reference to Documents, shall require a statement of the date thereof, the type of Document, the author or speaker (and if different, the signer or signers, and the addressee), the substance

thereof, its present or last known location or custodian, and all other means of identifying it.

- d. When used in reference to any Communication, meeting, act, occurrence, statement, or conduct (hereinafter collectively “act”) requires you to:
 - i. Describe the substance of the event or events constituting such an act;
 - ii. Identify each and every person participating in such act;
 - iii. Identify all other persons present when such act occurred;
 - iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents, or any other record relating to the act was made;
 - v. State whether such record now exists; and
 - vi. Identify the person presently having possession, custody, or control of such record.

8. “SGEs” means the City of West Sacramento, California and the Sacramento-Yolo Port District.

9. “STB” or “Board” means the Surface Transportation Board.

10. “Transaction” means the establishment or operation of Channel Pacific as described in the Notice of Exemption filed May 12, 2026 in Finance Docket No. 36932.

11. “UP” means Union Pacific Corporation and Union Pacific Railroad Company and their predecessors and successors in interest, as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on

their behalf.

12. “You” or “Your” refers to Channel Pacific, its Corporate Parents and any present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

INSTRUCTIONS

1. Responsive Documents to all requests should be produced to the undersigned counsel by August 28, 2026 which is more than fifteen days after the date of service of these Requests. Production of Documents may be accomplished through electronic means.

2. If Channel Pacific or its Corporate Parents objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If Channel Pacific or its Corporate Parents has objections, Channel Pacific or its Corporate Parents’ counsel are requested to promptly confer with undersigned counsel for the SGE’s so that such objections can be promptly addressed and resolved.

3. If Channel Pacific and/or its Corporate Parents asserts a claim of privilege as to Documents sought in these Requests, You should list, for each such Document, the Document’s date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit the SGEs to assess the applicability of the privilege claimed.

4. If any of the requested Documents was but is no longer in Your possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

5. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers.

6. Each Discovery Request should be responded to upon Channel Pacific and/or its Corporate Parents entire knowledge from all sources and all information and Documents in Your

possession or otherwise available to Channel Pacific and/or its Corporate Parents, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

7. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

8. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

FIRST SET OF DISCOVERY REQUESTS

1. Produce copies of all Documents or Communications between Channel Pacific and/or its Corporate Parents and UP concerning rail service at the Greencycle Site. To the extent that confidential rate or shipment information is present, such as a confidential quote or contract rate, the numerical values may be redacted.

2. Produce copies of all Documents evidencing the lease, purchase, acquisition or use of railroad locomotives, trackmobiles, rolling stock, cars or other equipment that shall or is intended to be used by Channel Pacific in its operations at the Greencycle Site.

3. Produce copies of all Documents or Communications between Channel Pacific and/or its Corporate Parents evidencing its establishment as a common carrier as that term is used in Your May 12, 2026 Notice of Exemption filed with the STB.

4. Produce copies of all Documents or Communications between Channel Pacific and/or its Corporate Parents concerning Channel Pacific's participation in the Interline Settlement System maintained and operated by Railinc, a subsidiary of the American Association of Railroads, for the settlement of interline rail movements.

5. Produce copies of all Documents or Communications between Channel Pacific and/or its Corporate Parents concerning Channel Pacific's participation in electronic data interchange of waybills or other shipment information with UP or other railroads.

6. Produce copies of all Documents or Communications between Channel Pacific and/or its Corporate Parents concerning Channel Pacific's operation of the Greencycle Location.

7. Produce copies of all Documents or Communications between Channel Pacific or its Corporate Parents and any other railroad concerning rail services or proposed rail services at the Greencycle Location.

8. Produce copies of all Documents or Communications that you believe are some evidence that Channel Pacific is a part of the interstate rail network.

9. Produce all Communications between Channel Pacific and/or its Corporate Parents and UP regarding: (a) the quoting of interline rates, (b) operational integration, (c) the operation of Channel Pacific, or (d) whether Channel Pacific is or shall be a shortline railroad operating with UP.

10. In Your Notice of Exemption dated on or about May 12, 2026 You stated,

“Greencycle (the owner of the Track) and CHPR have reached an agreement pursuant to which CHPR will – (1) acquire the right to conduct railroad common carrier service over the Track; and (2) assume responsibility for the provision of associated commodity-handling and transloading services within the terminal complex owned by Greencycle. Under the arrangement, CHPR will offer comprehensive, railroad-oriented transportation services within the subject facility, including, among other things, the inbound and outbound transportation of railroad-borne shipments.

11. Identify any Documents or other Communications concerning the statements in the above quoted paragraph.

12. Identify the date Channel Pacific came into existence.

13. Identify any tariffs, rates, quotes, contracts or other terms offered by Channel Pacific to any Party for common carrier rail services or rail transportation.

14. Identify any tariffs, rates, quotes, contracts or other terms established or agreed to by Channel Pacific to any Party for common carrier rail services or rail transportation.

15. Identify any and all state or local governmental laws or regulations, including but not limited to laws or regulations promulgated or enforced by the SGE's that You believe are preempted by virtue of Channel Pacific's status as a railroad or common carrier.

16. Identify the date of the first shipment by rail to the Greencycle location since the May 12, 2026 Notice of Exemption filed with the STB in FD 36932 and Identify the date of any other shipments by rail to the Greencycle Location since June 11, 2026.

17. Identify the date of the most recent shipment by rail to the Greencycle location since the May 12, 2026 Notice of Exemption filed with the STB in FD 36932.

18. With respect to the railroad tracks referenced in the May 12, 2026 Notice of Exemption filed with the STB in FD 36932, Identify any facilities, persons or entities who are physically accessed by those tracks other than 1) UP or 2) any Channel Pacific's Corporate Parents.

FIRST SET OF REQUESTS FOR ADMISSION

1. Admit that as of August 12, 2026 Channel Pacific and/or its Corporate Parents do not participate and have not participated in the Interline Settlement System maintained and operated by Railinc, a subsidiary of the American Association of Railroads.

2. Admit that as of August 12, 2026, Channel Pacific and/or its Corporate Parents do not participate and have not participated in electronic data interchange of waybills or other shipment information with UP or other railroads.

3. Admit that as of August 12, 2026, Channel Pacific has not provided any rail transportation services at the Greencycle Location to any party.

4. Admit that as of August 12, 2026, Channel Pacific has not provided any rail transportation services at the Greencycle Location to any party other than Channel Pacific's Corporate Parents.

5. Admit that the railroad tracks referenced in the May 12, 2026 Notice of Exemption filed with the STB in FD 36932 do not physically access or connect to the property or facilities of any person or entity other than 1) UP or 2) any Channel Pacific's Corporate Parents.

6. Admit that the Channel Pacific's operation at the Greencycle Location involves or will involve the transfer of petroleum product from storage tanks to trucks or tanks attached to trucks.

7. Admit that the operation at the Greencycle Location involves or will involve the transfer of petroleum product from ships to on site storage tanks.

8. Admit that as of August 12, 2026, Channel Pacific or its Corporate Parents have not met with any representatives of the Federal Railroad Administration with respect to rail operations at the Greencycle Location.

9. Admit that as of August 12, 2026, Channel Pacific or its Corporate Parents have not hired or retained any employees who are covered by the US Railroad Retirement Tax Act as is more fully described in 45 USC 231 et seq. or the Railroad Unemployment Insurance Act as is more fully described in 45 USC 251 et seq.

10. Admit that as of August 12, 2026, Channel Pacific has not provided any rail transportation services to any person or party other than Channel Pacific's Corporate Parents.

Respectfully submitted,

/s/ Charles Shewmake

Charles Shewmake
Holland & Knight LLP
1722 Routh St, Suite 1500
Dallas, TX 75201
(214) 964-9500

*Attorney for the City of West
Sacramento, California and the
Sacramento-Yolo Port District*

CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, August 12, 2026, I have caused the foregoing *City of West Sacramento and the Port of Sacramento's First Set of Discovery Requests* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/Charles Shewmake
Charles Shewmake

*Attorney for the City of West Sacramento,
California and the Sacramento-Yolo Port
District*