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VIA ELECTRONIC FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Chief Counsel
September 23, 2026
Part of
Public Record

***Re: Channel Pacific Railroad—Operation Exemption—In West
Sacramento, Yolo County, Cal.
FD 36932***

**CHANNEL PACIFIC RAILROAD'S OPPOSITION TO THE
SGES' REQUEST FOR LEAVE TO FILE A REBUTTAL**

To the Chief of Case Administration:

Channel Pacific Railroad ("CHPR") respectfully opposes the unsupported request for a waiver of 49 C.F.R. § 1104.13(c) embedded at the outset of the unauthorized "Rebuttal" submitted in the above-referenced docket by the City of West Sacramento and the Sacramento-Yolo Port District (collectively, the "SGEs") on September 8, 2026. Because the SGEs offer no cognizable basis to allow for their otherwise-prohibited filing, the Board should, in denying the waiver request, reject the Rebuttal in its entirety. CHPR further requests that the Board promptly deny the Petition to Revoke that the SGEs filed on July 31, 2026.

The SGEs acknowledge the Board's rule against replies to replies but sidestep the recognized prohibition to their Rebuttal via a perfunctory paragraph at the outset of the proffered filing. Whether presented as a clearly demarcated, formal preface to the Rebuttal or, more appropriately, as a standalone motion for leave to file, the SGEs bypass the ordinary motions process and downplay the fact that they are seeking relief from well-recognized procedural rules. The Board should not reward the SGEs for their disregard of contemporary agency practice.

The optics of the SGEs' filing confirm its true character. While the SGEs' initial petition-in-chief contained 19 pages of substantive argument, their unauthorized Rebuttal spans 20 pages. This Rebuttal is no narrow response to

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unforeseeable “new facts.” It is, rather, an impermissible, do-over designed to plug evidentiary holes in the SGEs’ original filing and to secure the last word. A reply to a reply cannot be used to submit a second, longer case-in-chief under the fig leaf of a supposed evidentiary update as the SGEs would do here, and the Board should not indulge this transparent attempt to circumvent applicable pleading limits.

BACKGROUND

The administrative record exposes the evidentiary challenges the SGEs confront by way of CHPR’s August 20 Reply filing. Specifically, in its Reply, CHPR detailed the SGEs’ anti-rail hostility reflected in communications from City Manager Aaron Laurel, Planning Manager Tristan Osborn, and Port General Manager Rick Toft. To better contest (and contextualize) the SGEs’ revocation maneuver, CHPR took the added step of having Dan Campbell verify the facts contained in the Reply.

The SGEs’ September 8, 2026 Rebuttal attempts to challenge CHPR’s specific, verified recitation of facts regarding the City’s preemptive hostility, yet it does so without any sworn counter-declarations to dispute the record. Instead, the SGEs rely on bare insistence and unsworn argument regarding permits that CHPR supposedly could request and that the SGEs presumably could, in turn, deny (as representatives of the SGEs previously have indicated they would do).

Meanwhile, CHPR continues apace with its common carrier plans and is actively working toward an operational start date of November 1, 2026. Since the filing of its Reply, CHPR has executed a locomotive lease (with delivery expected shortly), formally reserved its AAR-issued reporting mark (CPA), and is currently finalizing arrangements for railroad operating and maintenance personnel. Furthermore, CHPR is actively advancing business development discussions with multiple third-party customers for the transloading and warehousing of various commodities, including construction materials, fuels, and liquid asphalt.

ARGUMENT

The Rebuttal fundamentally violates 49 C.F.R. § 1104.13(c).

As the SGEs recognize, 49 C.F.R. § 1104.13(c) strictly prohibits a reply to a reply. The Board has recently committed to rigorous enforcement of this rule to facilitate administrative discipline and promote the orderly and efficient

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development of procedural records. *See Sunflower State Indus. Ry.—Pet. for Declaratory Ord.*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (“*Sunflower*”). Since *Sunflower*, the Board has consistently and judiciously applied this strict prohibition to reject unauthorized sur-replies and rebuttals such as this one. *See, e.g., Colorado Pacific Rio Grande R.R. LLC—Aban. Exemption—in Rio Grande Cnty., Colo.*, Docket No. AB 1344X, slip op. at 5 (STB served Apr. 15, 2026) (rejecting sur-reply as an impermissible reply to a reply); *Kansas & Oklahoma R.R., LLC—Lease and Operation Exemption with Interchange Commitment—Union Pacific R.R. Co.*, Docket No. FD 36849, slip op. at 7 n.10 (STB served Mar. 20, 2026) (denying motion for leave to file surrebuttal and reiterating the rule’s strict enforcement); *The Great Walton R.R. Co.—Pet. for Declaratory Ord.*, Docket No. AB 1242 (Sub-No. 1), slip op. at 7 n.18 (STB served Feb. 27, 2026) (denying request for leave to file rebuttal and refusing to accept sur-rebuttal into the record, noting that information could have been included in an initial filing).

The Board has indicated that it will abide by Section 1104.13(c)’s prohibition except where relief from the regulation is warranted to allow a party to address genuinely unforeseeable new facts. But no such basis for waiver exists here. Rather, the SGEs seek to offer rehashed arguments and rhetorical points that were, or could have been, addressed previously.

The SGEs fail to offer any persuasive justification for a waiver.

The SGEs fail to meet the high threshold for a waiver, relying instead on an array of flimsy excuses for its sole ambition to have the last word.

The SGEs complain that CHPR opposed their August 12, 2026 discovery requests (erroneously alleging at Rebuttal page 20 that they served this discovery on August 8th, despite the August 12th date reflected on the discovery document itself—Rebuttal, Exhibit A) eight days later in CHPR’s August 20, 2026 Reply, rather than by separate (and earlier) formal objection. But the SGEs’ timeline and expectations concerning CHPR’s response to their (apparent) procedural inattention are matters of the SGEs’ own making, are unsupported by any agency precedent, and do not reflect any Board rules or agency discovery practice.

The SGEs demanded a formal response to their discovery by August 28, 2026. CHPR provided a timely, categorical procedural objection—its answer—albeit one incorporated into its Reply. The SGEs openly admit they did not serve this discovery until August 12 (Rebuttal at 20)—nearly two weeks after filing their

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Petition, in direct violation of 49 C.F.R. § 1121.2, which requires discovery to be filed at the same time as the petition to revoke. CHPR has responded in full (via categorical objection) to untimely discovery, and, contrary to the SGEs' argument, that objection does not manufacture a "new issue" that entitles the SGEs to file a 20-page Rebuttal. Nor does CHPR's response permit for a re-litigation of post-petition discovery nearly a month after the SGEs attempted to serve it.

Beyond attempting to leverage its procedurally defective run at discovery as a basis for leave to file an impermissible reply to a reply, the bulk of the Rebuttal recycles the SGEs' primary—and entirely unavailing—argument that CHPR is a transloader rather than a common carrier, arguing, in essence, that CHPR *cannot* be a railroad common carrier, despite detailed actions to implement common carrier service and hold itself out accordingly. As a review of their July 31 Petition reveals, the SGEs dedicated over three pages to arguing the application of *Hi Tech Trans* (Petition at 15–18). Improperly using the pleading to re-litigate the exact same case law relied upon in their case-in-chief proves the proffered Rebuttal is not a response to alleged new issues. A sur-reply is no vehicle for restating arguments already made. For this reason, the Rebuttal must be rejected.

Additionally, the SGEs attempt to use an entirely unverified reply to a reply to address detailed and verified Reply evidence of the SGEs' obvious anti-rail stance, paying lip service to an alleged *appreciation* of the economic value of railroad service. (They do so, incidentally, by demanding CHPR surrender its federal preemption to submit to vaguely explained local discretionary permitting.) This glaring logical disconnect—offering abstract praise for railroads while conspicuously dodging Mr. Campbell's verified testimony that City leadership clearly signaled their intent to block railroad activity at this specific site—exposes why the Rebuttal is procedurally abusive: the SGEs are in no way addressing unforeseeable new facts that would justify a waiver under the Board's strict standards. Rather, they attempt to deploy unsworn attorney rhetoric to gloss over compelling facts.

Finally, the SGEs resort to citing CHPR's supposed "misuse of terms like 'rail terminal complex'" (Rebuttal at 1) and the absence of a redacted copy of its interchange agreement with Union Pacific Railroad Company (id.) as grounds for a waiver to file an extensive and unabashed re-litigation of the revocation petition under the guise of a "rebuttal." Complaining about adversarial framing, semantic grievances, or questioning an opponent's verified reference to the existence of a standard commercial contract does not constitute unforeseeable new evidence justifying a departure from the agency's rules of procedure or a second chance to re-present its unavailing effort to block railroad service entirely in West Sacramento.

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CONCLUSION

For the foregoing reasons, CHPR respectfully requests that the Board deny the SGEs' embedded request for a waiver of 49 C.F.R. § 1104.13(c), reject the unauthorized September 8, 2026 Rebuttal, and promptly deny the underlying July 31, 2026 Petition to Revoke.

Respectfully Submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Channel Pacific Railroad

CERTIFICATE OF SERVICE

I hereby certify that I have on this 23rd day of September, 2026, served a copy of the foregoing reply upon all parties of record in this proceeding.

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Channel Pacific Railroad