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December 2, 2016

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
December 2, 2016
Part of
Public Record

Re: **Docket No. FD ³⁶⁰⁷⁷~~63077~~**
**North Coast Railroad Authority and Northwestern Pacific Railroad
Company v. Sonoma-Marín Area Rail Transit District**

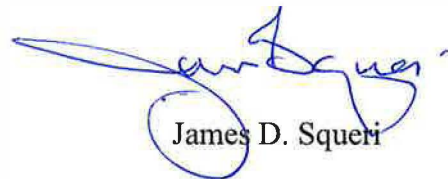
Dear Ms. Brown:

Enclosed for filing in the above-referenced docket, please find the reply of the City of American Canyon and American Canyon Fire Protection District (collectively "American Canyon") to the opposition of North Coast Railroad Authority and Northwestern Pacific Railroad Company to American Canyon's motion for an extension of the procedural schedule.

Please do not hesitate to contact me with any questions.

Very truly yours,

GOODIN, MACBRIDE,
SQUERI & DAY, LLP



James D. Squeri

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. FD 36077

**NORTH COAST RAILROAD AUTHORITY AND
NORTHWESTERN PACIFIC RAILROAD COMPANY v. SONOMA-
MARIN AREA RAIL TRANSIT DISTRICT**

**REPLY OF THE CITY OF AMERICAN CANYON AND
AMERICAN CANYON FIRE PROTECTION DISTRICT TO
OPPOSITION TO MOTION FOR EXTENSION OF THE
PROCEDURAL SCHEDULE**

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Dated: December 2, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. FD 36077

**NORTH COAST RAILROAD AUTHORITY AND
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MARIN AREA RAIL TRANSIT DISTRICT**

**REPLY OF THE CITY OF AMERICAN CANYON AND
AMERICAN CANYON FIRE PROTECTION DISTRICT TO
OPPOSITION TO MOTION FOR EXTENSION OF THE
PROCEDURAL SCHEDULE**

The City of American Canyon and the American Canyon Fire Protection District (collectively “American Canyon”) submit this reply to the North Coast Railroad Authority and Northwestern Pacific Railroad Company’s (collectively “Railroad”) opposition to American Canyon’s motion to extend the procedural schedule (“Railroad’s Opposition”).

The Railroad’s Opposition, like its November 23 Brief purporting to address the questions asked by the Board, takes the position that the Board and the parties to this proceeding must be satisfied with the Railroad’s assertion that its transportation and storage of tank cars filled with liquid petroleum gas are in compliance with all federal safety regulations. Railroad’s Opposition, *passim*; Railroad’s Brief at 9–10, 12. Any question as to the specifics of the Railroad’s compliance must, it says, be referred to the FRA. Railroad’s Opposition at 3–4.

The Board’s jurisdiction properly encompasses the concerns raised by American Canyon and SMART related to the Railroad’s transportation and storage of hazmat cars on the Lombard segment and at the Schellville yard. Transportation, which the Railroad acknowledges the Board regulates, includes the movement of property and passengers, and their receipt, delivery, and storage. 49 U.S.C. § 10102(9)(B); Railroad’s Opposition at 3. The Railroad’s common

carrier obligation requires it to transport hazardous materials, including liquid petroleum gas, for which comprehensive federal regulations have been promulgated. 49 U.S.C. § 11101; *Riffin v. Surface Transportation Board*, 733 F.3d 340, 346 (D.C. Cir. 2013). One of the stated purposes of the ICCTA is to “operate transportation facilities and equipment without detriment to the public health and safety.” 49 U.S.C. § 10101(8). It is therefore within the Board’s purview to determine that the Railroad is meeting its common carrier obligation, which includes compliance with safety regulations, in transporting the liquid petroleum gas at issue in this contract dispute.

American Canyon does not seek to “regulate” the Railroad’s transportation and storage of volatile chemicals on the Line and at Schellville yard. Railroad’s Opposition at 3. Having been stonewalled by the Railroad in its private attempts to determine whether the Railroad’s new practice of transporting and storing liquid petroleum gas in close proximity to its community complies with the extensive federal safety regulations, American Canyon seeks to obtain that same information in this proceeding where the question of the Railroad’s compliance is relevant to its common carrier obligation. The Railroad has not only refused to provide more than a cursory statement that it is generally compliant with the FRA hazmat regulations, but it failed to answer a number of factual questions about its transportation and storage of liquid petroleum gas it was ordered to answer by the Board. *N. Coast R.R. Auth. v. Sonoma-Marin Area Rail Transit Dist.*, FD 36077 (STB Served November 3, 2016) at 5, question 2(b)(i)–(iii). These facts would have provided the Board and other parties with an understanding of the Railroad’s transportation, storage, and marketing of hazmat services, which would in turn have informed the Board’s and parties’ understanding of the safety implications. But the Railroad instead withholds relevant information and claims no party can have a “legitimate interest” in the Railroad’s compliance with safety regulations outside a proceeding at the FRA. Railroad’s Opposition at 3.

Though the Railroad will not provide the Board with relevant information, American Canyon has recently observed between 12 and 41 liquid petroleum gas

on the three-track rail siding immediately to the west of State Route 29. The number of rail cars present at that location varies within a 24-hour period and day-to-day. American Canyon has also observed that the area where the rail cars are located is not secured. American Canyon is the water provider in the area described and there are no oversize water main hydrants located on the railroad area. These observations raise serious questions as to whether the Railroad's transportation of liquid petroleum gas meets *all* relevant safety regulations required for increased transportation of hazardous materials on a particular line. *CSX Corporation and CSX Transportation, Inc. et al.*, 3 S.T.B. 196 (STB Served July 20, 1998) (1998 STB LEXIS 1559) at *364.

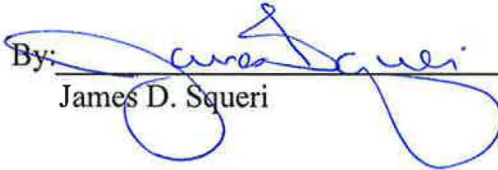
The continued lack of evidence in the record prevents the Board from properly determining the contours of the Railroad's common carrier obligation with respect to the liquid petroleum gas tank cars or the propriety of SMART's refusal to issue track warrants. The Railroad's compliance with federal safety regulations is relevant to these inquiries that are squarely within the Board's jurisdiction. American Canyon submits that an extension of the procedural schedule is warranted to allow for discovery by all parties.

Alternatively, American Canyon requests the Board direct the Railroad to supplement its November 23 Brief to address all the factual questions in the Board's November 3 Decision and to provide additional information regarding safety compliance.

Respectfully submitted,

Dated: December 2, 2016

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Certificate of Service

I hereby certify that the foregoing Reply to North Coast Railroad Authority and Northwestern Pacific Railroad Company's Opposition to American Canyon's Motion for Extension of the Procedural Schedule was served via first-class US mail, postage prepaid, upon:

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Dated: December 2, 2016