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BEFORE THE
SURFACE TRANSPORTATION BOARD

SAN PEDRO PENINSULA HOMEOWNER'S UNITED INC
JOHN TOMMY ROSAS, TRIBAL ADMINISTRATOR, TONGVA ANCESTRAL
TERRITORIAL TRIBAL NATION

DOCKET NO. FD 36065

REPLY TO REQUEST FOR GUIDANCE
BY CITY OF LOS ANGELES

On October 31, 2016, the City of Los Angeles (acting by and through the Harbor Department's Board of Harbor Commissioners) (the "City") responded to the Petition for Declaratory Order filed in this proceeding by San Pedro Peninsula Homeowner's United Inc. and John Tommy Rosas, Tribal Administrator, Tongva Ancestral Territorial Tribal Nation (the "Petitioners"). In its filing, the City requests guidance (the "Request") as to whether the City would be preempted from taking certain actions that would regulate or impede the rail traffic of Rancho LPG Holding LLC ("Rancho"). Pursuant to 49 C.F.R. 1104.13(a), Pacific Harbor Line, Inc. ("PHL") hereby replies to the Request.

In its Request, the City states that based on various facts cited in its Request, the City concluded that the subject tracks are: " 1) regulated by the STB, 2) serviced by a common carrier recognized by the STB, 3) preempted from allowing the Port ending or suspending rail service to [Rancho], or 4) instituting additional regulation of the rail tank cars beyond those imposed by federal law for PHL to adhere to in the servicing of [Rancho]". Request, at 7.

None of the filings in this proceeding have disputed that the subject railroad tracks are under the jurisdiction of the Surface Transportation Board (the "Board"). As discussed in PHL's prior filing in this proceeding, track that is under the Board's jurisdiction is subject to preemption under section 10501 of the ICC Termination Act of 1995 ("ICCTA"), and ICCTA preemption applies regardless of whether the track is section 10906 spur/industrial track or section 10901 rail line track.

Thus, for all track under the STB's jurisdiction (both 10906 track or 10901 track), ICCTA preemption would prevent the City from (a) "intrud[ing] upon matters that are directly regulated by the Board (*e.g.*, railroad rates, services, construction, or abandonment)", (b) "imposing requirements that, by their nature, could be used to deny a railroad's right to conduct rail operations or proceed with activities the Board has authorized, such as a construction or abandonment", or (c) taking action "in a manner that has the effect of unreasonably burdening or interfering with rail transportation". See Finance Docket No. 35832, *CSX Transportation, Inc. - Petition for Declaratory Order*, served February 29, 2016. Moreover, the Board has made clear that a non-railroad party to an operating agreement cannot, without Board authority, force a railroad to cease providing rail service over regulated track, even if the agreement has expired. Again, this is true regardless of whether the track at issue is 10906 track or 10901 track. See Finance Docket No. 35468, *Pinelawn Cemetery - Petition for Declaratory Order*, served April 21, 2015, *appeal filed for judicial review*, June 15, 2015 (noting that "the Supreme Court long ago held that rail lines cannot be removed from the national rail system without authorization from the ICC even if their underlying leases have expired" and that the same principle applies to section 10906 track).

In addition, no party disputes that PHL is a class III common carrier railroad. In November 1997, PHL filed for Board authority as a newly-formed class III rail carrier to provide common

carrier service in the Port. *See Pacific Harbor Line, Inc. -- Operation Exemption -- Port of Los Angeles*, STB Finance Docket No. 33411, served Dec. 2, 1997.

PHL has provided rail service to the facility occupied by Rancho since it took over rail operations in 1998. The San Pedro Bay Harbor Rail Operating Agreement (also known as Permit 1989) between the City and PHL, dated December 1, 1997, is the primary agreement governing PHL's operations over City track.¹ This agreement expressly covered rail service to the facility where Rancho is now located (formerly, the AmeriGas facility). *See* Section 2.4 (providing that PHL could use rail infrastructure in the Port to serve "America Gas (sic)", even though AmeriGas was not a tenant or other occupant of the Port).

For the reasons set forth above, PHL requests the Surface Transportation Board rule that, under section 10501 of ICCTA, neither the Petitioners nor the City may take any action to prevent or unreasonably interfere with PHL's continued rail service to the Rancho facility.

Respectfully submitted,

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Dated: November 21, 2016

¹ A copy of this agreement was appended to the City's Request as Exhibit 11.

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, the foregoing Reply was served by first-class mail, postage prepaid on the following parties:

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