

BEFORE THE
SURFACE TRANSPORTATION BOARD

242120

ENTERED
Office of Proceedings
November 23, 2016
Part of
Public Record

DOCKET NO. FD 36077

NORTH COAST RAILROAD AUTHORITY and
NORTHWESTERN PACIFIC RAILROAD COMPANY

v.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

MOTION FOR PROTECTIVE ORDER

Douglas H. Bosco
Law Office of Douglas Bosco
3558 Round Barn Blvd., Suite 201
Santa Rosa, CA 95403
(707) 525-8999

Counsel for Petitioner
Northwestern Pacific Railroad Company

Christopher J. Neary
NEARY and O'BRIEN
110 S Main Street, Suite C
Willits, CA 95490
(707) 459-5551

Counsel for Petitioner
North Coast Railroad Authority

North Coast Railroad Authority and Northwestern Pacific Railroad Co., (“the Railroad”), pursuant to 49 C.F.R. § 1104.14(b), files this Motion for Protective Order (the “Motion”) for approval to file under seal the unredacted certain Waybills. Redacted copies of the waybills are attached hereto as Exhibits A-D, respectively.

Concurrent with the filing of this Motion, the Railroad is filing a Brief in Support of Petition for Declaratory Order.

The unredacted Waybills contain information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to the Railroad for transportation. The release of such information is proscribed by 49 U.S.C. § 11904. Public disclosure of the unredacted waybills is not necessary for the consideration of the disposition of the Petition for Declaratory Order.

For the reasons set forth above, the Railroad respectfully requests that the Board grant this motion and adopt the protective order attached hereto.

Dated: November 23, 2016

/s/ Douglas Bosco
DOUGLAS BOSCO
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3558 Round Barn Blvd., Suite 201
Santa Rosa, CA 95403
(707) 525-8999
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*Counsel for Petitioner
Northwestern Pacific Railroad Company*

/s/ Christopher J. Neary
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Willits, CA 95490
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*Counsel for Petitioner
North Coast Railroad Authority*

APPENDIX TO MOTION FOR PROTECTIVE ORDER

PROTECTIVE ORDER

1. For purposes of this Protective Order “Confidential Information” means the four unredacted Waybills filed under seal on November 23, 2016 in Docket No. FD 36077, redacted copies of which are attached to this motion as Exhibits A-D respectively..
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to NCRA/NWPCo of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board Proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.
3. Confidential Information shall not be disclosed in any way or to any person without the written consent of NCRA/NWPCo or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.
4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on NCRA/NWPCo, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.
5. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.
6. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.
7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Exhibit 1

UNDERTAKING-CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2016, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. FD 36077, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36077, any related proceedings before the Surface Transportation Board (“Board”), an/or any judicial review proceedings in connection with STB Docket No. FD 36077 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding or administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Name: _____

Affiliation: _____

Dated: _____

EXHIBIT A

50

Shipment Information

Equipment ID [REDACTED]
 Car Kind [REDACTED]
 Load / Empty Load
 Commodity [REDACTED]
 Rail Destination SCHILLVILLE, CA

Billing Information

Waybill # 612106
 Waybill Date [REDACTED]
 Receipt Time 01/02 08:03
 Waybill Type CROWN-WB
 Equipment Use Single
 BCL # 0282596N
 Payment Prepaid
 Type Shipper
 MV Auth [REDACTED]

Weight Information

1 car
 Net Weight 145431 lbs
 Tare Weight 90400 lbs
 Gross Weight 245031 lbs

Additional Reference Identification

BOL Bill of Lading Number: 0282596N

Seal Information

[REDACTED]

Price Documents

Rate Authority [REDACTED]

Customer Information

Shipper [REDACTED]
 Consignee [REDACTED]
 Send Freight [REDACTED]
 V [REDACTED] LY
 P [REDACTED]
 S [REDACTED]

Route Information

[REDACTED]
 UP SCHLV (RV381)
 HWP, DELVY

Loading Description

Hazardous Materials
 [REDACTED]

Shipment Special Condition Information

N01 JOHN ZAPANTA
 WA WEIGHT AGREEMENT
 03 PLACARDED FLAMMABLE GAS
 71 ALERT SHIPMENT

EXHIBIT B

*****DANGEROUS***Shipping Document - Straight Bill Of Lading

Shippers BOL No.
0284848N

Revision
0

FOR EMERGENCY CONTACT IN U.S. CALL CCN23609 800-424-9300

Car No: CTCX 780077 Bill Type: REVENUE Ship Date: 11/09/2016
Destination: BENICIA, CA Origin: SCHELLVILLE, CA
Routing: UP
Switching Info: ORG-NWP-SCHLV

Care Of/Ship To

Shipper

Consignee

Freight Charges

Lessee:

Sect 7: NO

Freight: PREPAID

Fob:

Rule-11:

Reference No

RR Contract:

Product: NORMAL BUTANE, NON-ODORIZED
STCC Code: 4905752

HAZMAT Information
UN1075// LIQUEFIED PETROLEUM GAS//2.1//

Placards: FLAMMABLE GAS

No. Of Packages: 1 RAILCAR

Seal No's:

Car Capacity Gallons	Outage			Loaded - ORIGIN WEIGHTS						CERTIFIED OR TARIFF WEIGHT (SUBJECT TO CORRECTION)	
	TABLE	INS	GAL+VC	GALLONS	UM	GRAVITY	TEMP	VCF	GALS@60		LBS/GAL
33,810 GAL		0	3,268		GAL				30,342	4.8000	145,642

Comments:

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

ANI BARRENA
SIGNATURE

EXHIBIT C

7/27/16 CFNR
10:03:23

Yard Report

Page 1 of 5
RSRAPFR

FORMAT: Switch List #15

Cars Printed Front To Back

=====

Track: NWP DEL	NWP DEL	Station: LOMBARD	LOMBARD
----------------	---------	------------------	---------

=====

Seq	Car	LE	HZ	Switch	To	SI	Track	Sp	Comodty	I/B	Road	AI	Cmt
-----	-----	----	----	--------	----	----	-------	----	---------	-----	------	----	-----

1				NWP		BRA			WHEAT,O	7/25	UP	AV	
2	RCOX	5042	L	*	NWP	BRA			PETROLE	7/26	UP	AV	

Waybill: 580476 Date: 7/19/16

* HAZARDOUS *

EMERGENCY CONTACT:

[REDACTED]

1 Carload

UN1075

PETROLEUM GASES,

LIQUEFIED

Class: 2.1

EMERGENCY CONTACT:

CHEMTREC (CCN 22013)

8004249300

HAZMAT STCC=4905752

I HEREBY DECLARE THAT THE CONTENTS OF TH
FULLY AND ACCURATELY DESCRIBED ABOVE BY
NAME, AND ARE CLASSIFIED, PACKAGED, MARK
LABELED/PLACARDED, AND ARE IN ALL RESPEC
CONDITION FOR TRANSPORT ACCORDING TO APP
INTERNATIONAL AND NATIONAL GOVERNMENTAL

***** END OF HAZMAT DATA

TO/CONSIGNEE

[REDACTED]

SONOMA CA

FROM/SHIPPER

DELIVERY SWITCH

3	TILX	307544	L	*	NWP	BRA			PETROLE	7/26	UP	AV	
---	------	--------	---	---	-----	-----	--	--	---------	------	----	----	--

Waybill: 580476 Date: 7/19/16

* HAZARDOUS *

EMERGENCY CONTACT:

CHEMTREC (CCN 22013)

[REDACTED]

1 Carload

UN1075

PETROLEUM GASES,

LIQUEFIED

Class: 2.1

EMERGENCY CONTACT:

CHEMTREC (CCN 22013)

8004249300

HAZMAT STCC=4905752

I HEREBY DECLARE THAT THE CONTENTS OF TH
FULLY AND ACCURATELY DESCRIBED ABOVE BY

EXHIBIT D

 *** DANGEROUS ***

ELECTRONIC BILL OF LADING

Page 1 of 2



Initial and Number RCOX 5042			Load/Empty L		No. Cars 8		B/L Number SCHEL490-161017		B/L Date 2016-08-17		
STCC Number 4905782			BOL Type Rail		Section 7		Seals 0943883				
Pkgs	Qual	STCC	Description of Articles					Weight	Q	Volume	Q
1	CLD	4905782	Non-Odorized Propylene					128012	E	29363	G
Reference Numbers:											
To Station			State		From Station			State			
					72118 SCHELLVILLE			CA			
Billed at			Station		State						
Consignee						Shipper:					
Additional Parties Party Type Name Address PARTY TO RECEIVE FREIGHT BILL IN CARE OF PARTY NO. 1 PARTY TO BE BILLED(AA ACCOUNTING RULE 11) MEXICAN CUSTOMS BROKER FREIGHT FORWARDER											
Route : NWP- LOMBA-						Weighed at:			Tariff Authority:		
						Net: 128012			Responsible		
						Tare:			Carrier:		
						Gross:			Ref No:		
Weight Unit Code : * L - Pounds									Item:		
Gross Gallons :						Qual :			Method of Payment:		
									11		
Special Instructions :											

*** DANGEROUS ***

ELECTRONIC BILL OF LADING

Page 2 of 2



HAZARDOUS INFORMATION

1 Carload

UN1077 / PROPYLENE / CLASS 2.1 / PG

EMERGENCY CONTACT:

CHEMTREC (CCN 22013) - 800-424-9300

HAZMAT STCC: 4905782

This is to Certify that the above-named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the department of transportation.

Trailing Cars (Initial, Number, Net Weight, Gross Volume, Net Volume, Seals)

CHRISTOPHER J. NEARY
cjneary@pacific.net

JENNIFER M. O'BRIEN
jennifer_m_obrien@yahoo.com

NEARY AND O'BRIEN

ATTORNEYS AT LAW

110 SOUTH MAIN STREET, SUITE C
WILLITS, CALIFORNIA 95490

FAX: (707) 459-3018
WWW.CJNEARY.COM

(707) 459-5551

November 23, 2016

Surface Transportation Board
395 E Street SW
Washington, DC 20423

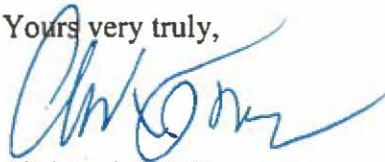
Re: FD 36077

Dear Board,

Petitioners BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER;
DECLARATION OF MITCH STOGNER IN SUPPORT OF PETITION FOR
DECLARATORY ORDER; DECLARATION OF JACOB PARK IN SUPPORT OF PETITION
FOR DECLARATORY ORDER and MOTION FOR PROTECTIVE ORDER are herewith filed
electronically.

In a separate submission by Federal Express are confidential documents associated with
Petitioner's Motion for Protective Order; FedEx TRK #7777 8569 7902.

Yours very truly,



Christopher J. Neary
Attorney for Petitioner

CJN/cm

cc: Tom Lyons
Kevin M. Sheys, Edward J. Fishman, Justin J. Marks

**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

CERTIFICATE OF SERVICE

I, Cyndi Mason, declare:

I am a citizen of the United State and resident of Mendocino County, California, I am over the age of eighteen and not a party to the within entitled action; my business address is 110 S Main Street, Suite C, Willits, California 95490.

On November 23, 2016, I served

BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER; DECLARATION OF MITCH STOGNER; DECLARATION OF JACOB PARK; MOTION FOR PROTECTIVE ORDER

on the parties in said action by placing a copy of the above-described documents in sealed envelopes, with postage thereon fully prepared for First-Class Mail, addressed to the parties as set forth below, for collection and mailing at Willits, California, following ordinary business practices. I am readily familiar with the practice of Neary & O'Brien for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service on the same day as it is placed for processing.

Tom Lyons
General Counsel
Sonoma-Marín Area Rail Transit District
5401 Old Redwood Hwy., 2nd Floor
Petaluma, CA 94954

Kevin M. Sheys
Edward J. Fishman
Justin J. marks
Nossaman LLP
1666 K Street, NW, suite 500
Washington, DC 20006

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2016, at Willits, California.

/s/ Cyndi Mason
CYNDI MASON

**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

AMENDED CERTIFICATE OF SERVICE

I, Cyndi Mason, declare:

I am a citizen of the United State and resident of Mendocino County, California, I am over the age of eighteen and not a party to the within entitled action; my business address is 110 S Main Street, Suite C, Willits, California 95490.

On November 23, 2016, I served

BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER; DECLARATION OF MITCH STOGNER; DECLARATION OF JACOB PARK; MOTION FOR PROTECTIVE ORDER

on the parties in said action by placing a copy of the above-described documents in sealed envelopes, with postage thereon fully prepared for First-Class Mail, addressed to the parties as set forth below, for collection and mailing at Willits, California, following ordinary business practices. I am readily familiar with the practice of Neary & O'Brien for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service on the same day as it is placed for processing.

Tom Lyons
General Counsel
Sonoma-Marín Area Rail Transit District
5401 Old Redwood Hwy., 2nd Floor
Petaluma, CA 94954

Kevin M. Sheys
Edward J. Fishman
Justin J. marks
Nossaman LLP
1666 K Street, NW, suite 500
Washington, DC 20006

On November 25, 2016, I served

BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER; DECLARATION OF MITCH STOGNER; DECLARATION OF JACOB PARK; MOTION FOR PROTECTIVE ORDER

on the parties in said action by causing an electronic copy of the above-described documents to be transmitted by e-mail to the addresses known by or represented to me to be the receiving e-mails of the parties noted below.

William D. Ross
Law Offices of William D. Ross

James D. Squeri
Goodin, MacBride, Squeri & Day, LLP

Email: wross@lawross.com

Email: jsqueri@goodinmacbride.com

Megan Somogyi
Goodin, MacBride, Squeri & Day, LLP

Email: msomogyi@goodinmacbride.com

On November 28, 2016, I served

BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER; DECLARATION OF MITCH STOGNER; DECLARATION OF JACOB PARK; MOTION FOR PROTECTIVE ORDER

on the parties in said action by placing a copy of the above-described documents in sealed envelopes, with postage thereon fully prepared for First-Class Mail, addressed to the parties as set forth below, for collection and mailing at Willits, California, following ordinary business practices. I am readily familiar with the practice of Neary & O'Brien for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service on the same day as it is placed for processing.

William D. Ross
Law Offices of William D. Ross
400 Lambert Avenue
Palo Alto, CA 94306

James D. Squeri
Megan Somogyi
Goodin, MacBride, Squeri & Day, LLP
505 Sansome Street, Suite 900
San Francisco, CA 94111

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 28, 2016, at Willits, California.

/s/ Cyndi Mason
CYNDI MASON