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November 30, 2016

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

Re: STB Docket FD 36077 North Coast Railroad Authority and Northwestern Pacific
Railroad Company - Petition for Declaratory Order

Dear Ms. Brown,

Enclosed for filing in the above-referenced docket, please find Sonoma-Marín Area Rail Transit District's ("SMART") Motion to Compel Discovery from the Northwestern Pacific Railroad Company.

Also enclosed for filing, please find SMART's Reply to the North Coast Railroad Authority and the Northwestern Pacific Railroad Company Motion for Protective Order and SMART's Motion for an Alternative Protective Order.

If you have any questions, please let me know.

Respectfully Submitted,

A handwritten signature in black ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel for Sonoma-Marín
Area Rail Transit District

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36077

**NORTH COAST RAILROAD AUTHORITY AND NORTHWESTERN PACIFIC
RAILROAD COMPANY – PETITION FOR DECLARATORY ORDER**

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT’S MOTION TO COMPEL
DISCOVERY FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY**

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SURFACE TRANSPORTATION BOARD**

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**NORTH COAST RAILROAD AUTHORITY AND NORTHWESTERN PACIFIC
RAILROAD COMPANY – PETITION FOR DECLARATORY ORDER**

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT’S MOTION TO COMPEL
DISCOVERY FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY**

Sonoma-Marín Area Rapid Transit District (“SMART”) hereby requests pursuant to 49 C.F.R. § 1114.31(a) that the Board issue an order directing the Northwestern Pacific Railroad Company (“NWPCo”) to respond to the discovery requests that SMART served on NWPCo on November 25, 2016 (“SMART’s Discovery Requests”)¹.

SMART’s Discovery Requests are designed to obtain the factual information necessary for SMART to respond to the Board’s November 3, 2016 decision requesting briefing from the parties on whether the Railroad’s storage of loaded LPG tank cars at Schellville constitutes “transportation by rail carrier” and whether the provision prohibiting the storage of hazardous materials in the Operating & Coordination Agreement for the Northwestern Pacific Line (“Coordination Agreement”) entered into between the North Coast Railroad Authority (“NCRA”) and SMART unreasonably interferes with interstate commerce. SMART’s Discovery Requests are also necessary and appropriate because the Railroad² has argued in its opening statement that it provides an “integrated” transportation and storage service at Schellville which constitutes (in the Railroad’s view) “transportation by rail carrier” and that the provision of the Coordinating Agreement restricting the storage of loaded LPG tank cars at Schellville should be

¹ SMART’s Discovery Requests are attached hereto as Exhibit A.

² NCRA and NWPCo are collectively referred to herein for convenience as the “Railroad.”

preempted by ICCTA. SMART needs to obtain the information sought through its Discovery Requests in order to develop a complete factual record for the Board on the issues that the Railroad has raised in its pleadings in this proceeding. As further explained below, the Railroad has informed SMART that it believes discovery is not appropriate in this proceeding and it has not produced any of the information sought by SMART in the Discovery Requests.

PROCEDURAL BACKGROUND

On November 3, 2016, the Board issued a procedural schedule in this proceeding and directed the Railroad to submit an opening statement by November 23, 2016 providing specific information requested by the Board to determine if the storage of loaded LPG cars at Schellville constitutes “transportation by rail carrier” within the meaning of 49 U.S.C. § 10501 and whether the provision in the Coordination Agreement prohibiting the storage of hazardous materials at Schellville unreasonably interferes with interstate commerce. Among other items, the Board requested information regarding the following topics:

- i. Whether the storage at Schellville is a service that NWPCo provides at the request of and/or for another railroad or a shipper, and how that service is marketed.
- ii. The typical route, from origin to ultimate destination, for loaded LPG tank cars stored at the Schellville yard. Include a description of NWPCo’s role in that movement.
- iii. How long loaded LPG cars are typically scheduled to be stored at the Schellville yard. If there is no typical time period, provide a range of time the cars will be stored and a final date by which they would depart the yard for final destination.
- iv. Evidence, such as bills of lading, demonstrating that NWPCo uses the Schellville yard to transport goods in interstate commerce as part of a rail movement.³

The Board also requested information relating to the following issue:

³ *North Coast R.R. Authority and Northwestern Pac. R.R. Co., – Petition for Declaratory Order*, STB Finance Docket 36077, slip op at 4 (STB served Nov. 3, 2016).

- ii. Discuss the feasibility of NCRA/NWPCo storing loaded LPG tank cars elsewhere, either on tracks they currently own or lease or on tracks they could lease from other parties, or moving loaded LPG tank cars directly from their origin to their ultimate destination, thus avoiding entirely temporary storage at Schellville or elsewhere.⁴

In the November 3 decision, the Board ordered SMART and other parties to submit a reply by December 5, 2016. However, after receiving the Railroad's opening submission, it became evident to SMART that the Railroad failed to provide the Board or the other parties to this proceeding with sufficient factual information to address the transportation by rail carrier and preemption issues before the Board. Although the Board specifically asked for evidence (such as bills of lading) demonstrating that the Railroad uses the Schellville tracks to transport goods in interstate commerce as part of a rail movement, and also asked for information on the length of time that loaded LPG tank cars are stored at Schellville, the routings for the movements of such loaded LPG tank cars to and from Schellville and the Railroad's involvement in those routings, the Railroad submitted redacted copies of only three waybills relating to the movement of two specific LPG loaded tank cars to and from Schellville during the relevant period. Moreover, although the Railroad's entire opening brief is premised on the theory that it provides an "integrated" storage and transportation service to two shippers (Tesoro and Valero) and makes more than five specific references in that brief to its contracts with Tesoro and Valero, the Railroad did not submit a copy of those contracts with its opening brief (in redacted form or otherwise). The Railroad also provided little if any information on its marketing of this service or its involvement in the routing of the movements to and from Schellville to final destination (as requested by the Board).

⁴ *Id* at 4-5.

In light of the paucity of factual information provided in the Railroad's opening brief, and SMART's need to obtain that factual information in order to prepare its reply brief in this fact-intensive proceeding, SMART determined that it needed to serve discovery requests on NWPCo.

On November 25, 2016, SMART served NWPCo with the following requests for production of documents:

1. Please produce all documents relating to your transportation and storage of LPG loaded tank cars on the NWP Line, including but not limited to communications relating to the marketing of such service by NWP, the sale of such service by NWP, and any other communications by NWP relating to the transportation of LPG loaded tank cars and the storage of such cars at Schellville or at other places on the NWP Line.
2. Please produce all documents relating to the routing of the LPG loaded tank cars that have been stored at the Schellville yard, including but not limited to communications relating to the origin, storage destination and ultimate destination of such cars and NWP's role in the movement of such cars.
3. Please produce all documents relating to the length of time that the LPG loaded tank cars are scheduled to be stored at the Schellville yard, including but not limited to communications between NWP and the shipper, owner or other entity controlling the final destination or disposition of such cars and their movement from Schellville to such final destination.
4. Please produce all copies of bills of lading relating to the LPG loaded tank cars that NWP has moved to the Schellville Yard since July 28, 2016.
5. Please produce all copies of contracts with Valero Marketing Supply Company and Tesoro Refining & Marketing Company LLC for the storage of LPG loaded tank cars.
6. Please produce all copies of contracts with any other shipper for the storage of LPG loaded tank cars or for the storage of any other hazardous material.
7. Please produce copies of the lease agreements that NWP has established pertaining to the tracks in Schellville on which it has stored the LPG loaded tank cars.
8. Please produce all documents identified in response to the Interrogatories below, and all documents used or consulted in the course of the preparation of your response to each of those Interrogatories.

Additionally, SMART served the following interrogatories on NWPCo:

1. Identify and describe all communications relating to the lease agreements or arrangements that NWP has established pertaining to the tracks in Schellville on which it has stored the LPG loaded tank cars.
2. Identify and describe all communications relating to the purported voluntary hold that NWP has placed or arranged on approximately 30 LPG loaded tank cars that were bound for Schellville yard.
3. Identify and describe all communications with the FRA and CPUC regarding the movement and storage of the LPG loaded tank cars on the NWP Line.
4. Identify by name, title, and corporate affiliation all persons, including NWP employees, consultants, contractors, and any non-NWP employees, who authored, contributed to, or were otherwise responsible, in whole or in part, for any of the documents produced in response to the foregoing Document Requests, and identify, for each person, the document(s) for which they were responsible.

In its letter response to SMART dated November 28, 2016, the Railroad provided its objections to SMART's discovery requests.⁵ In that letter, the Railroad stated that it believes that discovery is not appropriate in this proceeding. Nonetheless, the Railroad offered in that letter to provide SMART with all of the waybills relating to the movement of the loaded LPG tank cars to and from Schellville, and also offered make an officer of NWPCo available for a deposition in order to answer any questions that SMART might have about those waybills. However, the Railroad otherwise refused to produce any other documents or information in NWPCo's possession, custody and control that may be responsive to SMART's Discovery Requests.

On November 29, 2016, the Railroad and SMART held a meet and confer teleconference to attempt to resolve the objections set forth in the Railroad's November 28 letter. The Railroad's primary objection is to SMART's request for the contracts that NWPCo purportedly entered into with Valero Marketing Supply Company and Tesoro Refining & Marketing Company LLC (the "Valero and Tesoro Contracts"). The Railroad claims that these contracts

⁵ A copy of this letter was submitted as Exhibit B to the Railroad's Opposition to SMART's Motion for an Extension of the Procedural Schedule filed with the Board on November 28, 2016.

are not relevant to the transportation by rail carrier and preemption issues before the Board and expresses concern over the confidential nature of the Valero and Tesoro Contracts. Additionally, the Railroad asserts that it has fully complied with the information requests set forth in the Board's November 3 order and therefore does not believe that SMART is entitled to any discovery in this proceeding. NWPCo's counsel stated during the meet and confer teleconference that it would not produce the Valero and Tesoro Contracts to SMART (even though SMART offered to receive those documents under the protection of an appropriate protective order) unless it is ordered to do so by the Board, and that it would not produce any other documents or responsive information (including the waybills) to SMART until all outstanding discovery issues were resolved.

SMART is filing this motion within one day of determining, after receiving the Railroad's November 28 objection letter and arranging the November 29 meet and confer teleconference, that the Railroad will not produce the Valero and Tesoro Contracts unless it is ordered to do so by the Board, and will not comply with SMART's other discovery requests until all outstanding discovery issues between the parties are resolved.

ARGUMENT

The scope of what is discoverable in a Board proceeding is expansive; indeed, parties are entitled to discovery "regarding **any matter**, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1) (emphasis added). The definition of "relevant" is similarly expansive in scope, broadly defined as any "information [that] might be able to affect the outcome of a proceeding." *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, STB Finance Docket 35557, slip op at 2 (STB served March 19, 2012) (quoting *Waterloo Ry.—Adverse Aband.—Lines of Bangor and Aroostook R.R. and*

Van Buren Bridge Co. in Aroostook Cnty., Me., AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2003)). Moreover, a party's unilateral determination as to what is not "relevant" is no grounds for objecting to a discovery request. *See Seminole Elec. Coop. Inc. v. CSX Transp., Inc.*, STB Finance Docket 42110, slip op. at 2 (STB served Feb. 17, 2009) ("[the party seeking discovery] is entitled to all relevant and potentially admissible information... not only the information that the [non-moving party] believes is sufficient.") Furthermore, "[i]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2).

Moreover, confidentiality is not an appropriate basis for objecting to discovery. Even if the material is deemed "confidential", such relevant material is nevertheless discoverable and the party seeking to protect confidential material should instead move for a protective order to ensure this information will be used solely for the involved proceeding. *See The Springfield Terminal Ry. Co. – Petition for Declaratory Order – Reasonableness of Demurrage Charges*, Docket No. NOR 42108, slip op at 4 (STB served June 16, 2010) (granting a motion to compel confidential information in discovery finding that a protective order sufficiently shields confidential but discoverable information from being used for purposes other than the involved proceeding).

1) **The Board Should Require the Railroad to Produce Documents Responsive to SMART's Requests for Production 1-8 Because Those Documents Are Relevant to the Factual and Legal Questions Posed by the Board in the November 3, 2016 Decision.**

The Board should compel the Railroad to produce documents responsive to SMART's Requests for Production 1 – 8 because these document requests are reasonably calculated to lead to the discovery of admissible evidence that is directly relevant to the questions posed by the

Board in its November 3, 2016 decision. Moreover, SMART's document requests are narrow in scope, limited in time and not burdensome in any meaningful respect – they relate only to the shipper contracts, commercial arrangements, track leases, marketing arrangements, and other communications directly relating to the LPG tank cars that the Railroad began storing at Schellville in late July 2016.

Requests for Production number 1 requests documents relating to the transportation and storage of loaded LPG tank cars at Schellville, including communications relating to the marketing and sale of such service by NWPCo. In its November 3 decision, the Board asks the parties to provide information on “whether the storage at Schellville is a service that NWPCo provides at the request of and/or for another railroad or a shipper, and how that service is marketed.”⁶

SMART's Request for Production number 2 requests documents related to the routing of the loaded LPG tank cars that have been stored at the Schellville yard, including communications relating to the origin, storage, destination and ultimate destination of such cars. In the Board's November 3 decision, the Board asks for information related to the typical route, from origin to ultimate destination, for loaded LPG tank cars stored at the Schellville yard and the Railroad's involvement in that routing.⁷

SMART's Request for Production number 3 asks for documents relating to the length of time that the loaded LPG tank cars are scheduled to be stored at the Schellville yard. In the Board's November 3 decision, the Board asks for information related to “[h]ow long loaded LPG cars are typically scheduled to be stored at the Schellville yard.”⁸ The Board asked the Railroad

⁶ *North Coast R.R. Authority and Northwestern Pac. R.R. Co., – Petition for Declaratory Order*, STB Finance Docket 36077, slip op at 4 (STB served Nov. 3, 2016).

⁷ *Id.*

⁸ *Id.*

to provide a range if there is no typical time period and to include a final date the tank cars would leave for final destination.

SMART's Request for Production number 4 asks for all bills of lading for the loaded LPG tank cars. SMART's Request for Production number 5 seeks the Valero and Tesoro Contracts. SMART's Request for Production number 6 seeks any other contracts with other shippers related to loaded LPG tank cars that may be stored at Schellville. SMART's Request for Production number 7 seeks any lease agreements that the Railroad has established pertaining to the tracks in Schellville on which it has stored the loaded LPG tank cars. Similarly, the Board requested evidence "such as bills of lading, demonstrating that NWPCo uses the Schellville yard to transport goods in interstate commerce as part of a rail movement."⁹

The Railroad informed SMART that the Board did not specifically request the Valero and Tesoro Contracts in its November 3 order and therefore the Railroad refuses to produce these contracts to SMART in the absence of a Board order compelling such production. We believe the Railroad is misinterpreting the significance of the Board's November 3 decision and its relevance to SMART's Discovery Requests. The Board identified certain categories of factual information that it wanted to receive from the parties, but the Board did not indicate that those categories exclusively defined what additional factual evidence may be admissible and relevant in this proceeding. In addition, the fact that the Board did not explicitly specify that it wanted the Railroad to submit copies of the Valero and Tesoro Contracts (for example) does not mean that those contracts are not relevant to the factually intensive determination that the Board must make in this proceeding. The Valero and Tesoro Contracts are directly relevant and germane to the transportation by rail carrier and preemption issues in this proceeding because they may contain information as to the economic relationship between the Railroad and the

⁹ *Id.*

shippers regarding the nature of the transportation and storage services, whether the Railroad is leasing the track for storage and on what terms and conditions, whether title to the lading passes to the Railroad or stays with the shipper during the storage at Schellville, and what the risk of loss and other relevant provisions may indicate about the relationship between the storage and the transportation provided by the Railroad at Schellville. These contracts may provide SMART and the Board with the factual information needed to determine whether the transportation service provided by the Railroad to the shippers ends when the loaded LPG tank cars arrive at Schellville and then a separate rail transportation movement begins again when the loaded LPG tank cars are moved out of Schellville upon request by the shippers.

Any concerns that the Railroad may have about the confidential or proprietary nature of the Valero and Tesoro Contracts can be resolved through a standard protective order that contains a highly confidential designation level. SMART is filing separately herewith a Motion for an Alternative Protective Order which would provide the Railroad with a greater level of confidentiality protection than the protective order filed by the Railroad in conjunction with its opening brief. A protective order with a highly confidential designation level will also facilitate discovery in this matter.

Likewise, to the extent the Railroad has entered into track leases with any shippers to store loaded LPG tank cars (which the Railroad has neither confirmed nor denied), this information is also encompassed within the Board's request for information "demonstrating that NWPCo uses the Schellville yard to transport goods in interstate commerce as part of a rail movement."¹⁰ The details of these track leases are directly relevant to the transportation by rail carrier and preemption questions about storage that have been raised in this proceeding.

¹⁰ *Id.*

2) **The Board Should Require the Railroad to Produce Documents Responsive to SMART's Requests for Production 1-8 Because Those Documents Are Relevant to the Arguments Presented By the Railroad in its November 25 Opening Brief.**

The Railroad asserts that only the information specifically requested by the Board in its November 3 decision is relevant to this proceeding and believes that it fully satisfied its obligation to provide that information in its opening submission (which SMART respectfully disagrees with on numerous levels). However, the Railroad also premised its entire legal argument in that opening submission on factual assumptions that it failed to support with specific and reliable evidence which is within its possession and control. SMART's Discovery Requests are reasonably and narrowly designed to obtain that factual evidence in order to enable the Board to have a complete factual record in this proceeding.

The Railroad argues in its opening brief that it performs "an integrated transport and storage service" for shippers, together consisting of "transportation by a rail carrier." November 25 Opening Brief at 5. However, the question of whether the Railroad's storage service is part of the rail transportation provided by common carriers subject to ICCTA is a fact intensive inquiry that depends on the exact nature of the commercial arrangements between the Railroad and its shippers and the precise details of the storage that the Railroad has been providing at Schellville. Therefore, SMART's Discovery Requests are designed to obtain the factual information necessary for SMART and the Board to evaluate whether the indefinite storage of loaded LPG tank cars at Schellville qualifies as "transportation" under the preemption statute.

3) **The Board Should Require the Railroad to Produce Responses to SMART's Interrogatories 1-4 Because Those Interrogatories Are Necessary to Develop the Factual Record In This Proceeding.**

The Board should compel the Railroad to produce information responsive to the four interrogatories that SMART served on the Railroad because those interrogatories seek factual

information that is directly relevant to the transportation by rail carrier and preemption determination before the Board and the development of an adequate, accurate and complete factual record in this proceeding.

SMART's Interrogatory 1 seeks information about the lease agreements or arrangements that NWPCo purportedly has established pertaining to the tracks in Schellville on which it has stored the loaded LPG tank cars. NWPCo has neither confirmed nor denied the existence of these track leases or clarified whether they are separate from or part of the contracts that it has with Tesoro and Valero. In its Petition for Declaratory Order, NWPCo submitted an FRA inspection report which makes reference to these purported "track leases." The FRA inspection report, in the comments section, indicates that the track leases were not available at the time of the inspection but would be provided by NWPCo to the FRA at a later date. At this point in time, SMART does not know whether these track leases exist, what they provide in terms of lease arrangements or storage rights, or whether they were ever provided to the FRA. The existence of and terms of these track leases, if they exist, are directly relevant to the argument made by SMART in its reply to the Railroad's Petition for Declaratory Order that only certain types of track leases would allow NWPCo to store loaded LPG at Schellville for indeterminate periods of time, and any such track leases are required to be approved by SMART pursuant to the terms of its agreement with NCRA. Thus, the information about the track leases sought through Interrogatory 1 is directly relevant to the issues before the Board in this proceeding.

Interrogatory 2 seeks information about all communications relating to the purported "voluntary hold" that NWPCo placed on approximately 30 LPG loaded tank cars that were bound for Schellville yard around the time the dispute arose between the parties about storage of such materials on the line. During the conference call with Board staff on October 11, 2016

(which is reflected in the Board summary issued on November 3, 2016), NWPCo's counsel represented that 30 additional loaded LPG tank cars were en route to Schellville and were placed on voluntary hold by NWPCo as a result of the dispatching decisions of SMART. SMART's Interrogatory 2 is designed to understand the specific communications that were exchanged between the Railroad and the shipper or shippers of those cars as to the ultimate disposition of that traffic (including whether it was returned to the shipper's plant for storage there) and whether alternative storage locations on the NWPCo operating property were discussed. This is the type of information that the Board requested in its November 3 decision.

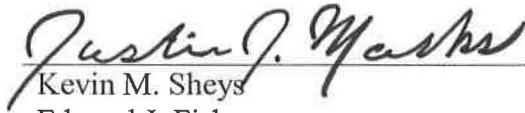
SMART's Interrogatory 3 seeks information about all communications with the FRA and CPUC about the movement and storage of the LPG loaded tank cars on the subject line. The Railroad argued in its opening brief that it obtained "FRA approval" to store the loaded LPG tank cars at Schellville. However, SMART continues to believe that the storage taking place at Schellville is either inconsistent with FRA and PHMSA regulations or is pursuant to track leases which were required to be approved by SMART under the agreement between SMART and NCRA. Thus, the extent of any communications that the Railroad has had with FRA inspectors, the FRA Office of Chief Counsel and the CPUC is directly relevant to the transportation by rail carrier and preemption issues before the Board in this proceeding. It is distinctly possible, for example, that NWPCo has made representations or admissions in its submissions to the FRA about the length of intended storage of the loaded LPG which conflict with the reality of the situation or the representations it has made before the Board. SMART believes it is entitled to discovery of these any communications directly relating to the storage of the loaded LPG tank cars at Schellville in the interest of developing a complete factual record in this proceeding.

Finally, SMART's Interrogatory 4 is designed to identify any relevant individuals at NWPCo (including contractors) who may have prepared the documents responsive to SMART's discovery requests or may have other pertinent information. For example, we understand from discussions with the Railroad that all marketing of its services is handled by third parties. This is a standard interrogatory that is included in the event that further factual development on these issues may be warranted, depending on the sufficiency of the information ultimately produced in response to the other requests. At this point, the Railroad is not even willing to provide SMART with copies of its contracts with Tesoro and Valero, full copies of the waybills relating to the loaded LPG tank cars which have been stored at Schellville, or any other information responsive to its document requests.

CONCLUSION

For the reasons set forth herein, SMART respectfully requests that the Board compel the Railroad to produce documents and other information responsive to its Discovery Requests as outlined above.

Respectfully submitted,



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*Counsel for Sonoma-Marín Area Rapid
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Dated: November 30, 2016

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36077

**NORTH COAST RAILROAD AUTHORITY AND NORTHWESTERN PACIFIC
RAILROAD COMPANY – PETITION FOR DECLARATORY ORDER**

DISCOVERY REQUESTS OF SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

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November 25, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36077

**NORTH COAST RAILROAD AUTHORITY AND NORTHWESTERN PACIFIC
RAILROAD COMPANY – PETITION FOR DECLARATORY ORDER**

DISCOVERY REQUESTS OF SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Pursuant to 49 C.F.R. Part 1114, subpart B, the Sonoma-Marin Area Rail Transit District ("SMART") hereby serves these Discovery Requests upon Northwestern Pacific Railroad Company ("you"). Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof in accordance with the Board's regulations. You are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

INSTRUCTIONS

1. These Discovery Requests ("Discovery Requests" or "Requests," and each of them a "Discovery Request" or "Request") call for all documents and information in the possession, custody, or control of Northwestern Pacific Railroad Company or its employees, officers, agents, or affiliates.
2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request shall clearly indicate the subdivision, part, or portion of the Request to which it is directed.
3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," "any," "all," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to bring into the scope of each Discovery Request all information which might otherwise be construed as outside the scope of the Request.
5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.
6. If you believe that any Request or definition or instruction applicable thereto is ambiguous, please specify the language that you believe is ambiguous and the interpretation that you are using in responding to the Request.
7. If any document covered by a Request is withheld for whatever reason, including any privilege, furnish a written document identifying all withheld documents in the following manner:
 - a. the specific Request to which the document is responsive;
 - b. the date of the document;
 - c. the name of each author or preparer;
 - d. the name of each person who received the document and the name of such person's employer at the time the person received the document;
 - e. a brief description of the subject matter of the document and any withheld attachments or appendices;

- f. the specific factual and legal basis for withholding; and
 - g. the number of pages withheld.
- 8. Identify all persons who provided information and/or documents for each response.
- 9. For any part of an Interrogatory for which you cannot provide a full answer, after exercising due diligence to secure the information needed to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have responsive to such part.
- 10. Where an Interrogatory seeks identification or information as to the existence or content of any document or study, producing or furnishing a copy of the document or study will be accepted as an adequate response to the Interrogatory.
- 11. Please make legible, complete, and exact copies of documents responsive to each Document Request and transmit them to the undersigned counsel. The originals of responsive documents should be retained in the files of you, your counsel, or the consultants or others who have assisted you in connection with this proceeding and have documents in their possession, and made available if requested.
- 12. If and to the extent that documents responsive to any Document Request are in electronic form, produce them in a format that can be read by widely available Windows-based software.
- 13. Documents responsive to each document request should be produced separately with a clear indication of which request they are responsive to, except that documents responsive to multiple requests need only be produced once. Subject to the foregoing, documents should be produced in the groupings in which they are maintained in the ordinary course of business.

DEFINITIONS

1. "Board" or "STB" means the United States Surface Transportation Board.
2. "CPUC" means the California Public Utilities Commission.
3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, analyses, projections, forecasts, summaries, or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term "document" includes:
 - a. both basic records and summaries of such records (including computer runs);
 - b. both original versions and copies that differ in any respect from original versions;
and
 - c. both documents in your possession, custody, or control and documents in the possession, custody or control of consultants or others who have assisted you in connection with this proceeding.
4. "FRA" means the "Federal Railroad Administration" of the U.S. Department of Transportation.

5. "NWP Line" means the line of railroad operated by NWP including all main line track, yard track, industrial track, and relevant sidings.
6. "Identify," when used in relation to an individual, corporation, partnership, or other entity, means to state the name, address, and telephone number thereof. "Identify," when used in relation to a document, means to:
 - a. state the nature of the document (e.g., letter, memorandum, etc.);
 - b. state the author, each addressee, each recipient, date, number of pages, and title of the document; and
 - c. provide a brief description of the contents of the document.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents relating to your transportation and storage of LPG loaded tank cars on the NWP Line, including but not limited to communications relating to the marketing of such service by NWP, the sale of such service by NWP, and any other communications by NWP relating to the transportation of LPG loaded tank cars and the storage of such cars at Schellville or at other places on the NWP Line.
2. Please produce all documents relating to the routing of the LPG loaded tank cars that have been stored at the Schellville yard, including but not limited to communications relating to the origin, storage destination and ultimate destination of such cars and NWP's role in the movement of such cars.
3. Please produce all documents relating to the length of time that the LPG loaded tank cars are scheduled to be stored at the Schellville yard, including but not limited to communications between NWP and the shipper, owner or other entity controlling the

final destination or disposition of such cars and their movement from Schellville to such final destination.

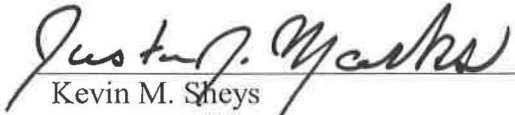
4. Please produce all copies of bills of lading relating to the LPG loaded tank cars that NWP has moved to the Schellville Yard since July 28, 2016.
5. Please produce all copies of contracts with Valero Marketing Supply Company and Tesoro Refining & Marketing Company LLC for the storage of LPG loaded tank cars.
6. Please produce all copies of contracts with any other shipper for the storage of LPG loaded tank cars or for the storage of any other hazardous material.
7. Please produce copies of the lease agreements that NWP has established pertaining to the tracks in Schellville on which it has stored the LPG loaded tank cars.
8. Please produce all documents identified in response to the Interrogatories below, and all documents used or consulted in the course of the preparation of your response to each of those Interrogatories.

INTERROGATORIES

1. Identify and describe all communications relating to the lease agreements or arrangements that NWP has established pertaining to the tracks in Schellville on which it has stored the LPG loaded tank cars.
2. Identify and describe all communications relating to the purported voluntary hold that NWP has placed or arranged on approximately 30 LPG loaded tank cars that were bound for Schellville yard.
3. Identify and describe all communications with the FRA and CPUC regarding the movement and storage of the LPG loaded tank cars on the NWP Line.

4. Identify by name, title, and corporate affiliation all persons, including NWP employees, consultants, contractors, and any non-NWP employees, who authored, contributed to, or were otherwise responsible, in whole or in part, for any of the documents produced in response to the foregoing Document Requests, and identify, for each person, the document(s) for which they were responsible.

Respectfully submitted,



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Dated: November 25, 2016

CERTIFICATE OF SERVICE

I certify that on November 30, 2016 a true copy of the foregoing was served via electronic and first class mail upon the following counsel of record:

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