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August 1, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Finance Docket No. 35155, *FPN-USA, Inc.—Operation Exemption—
Tijuana-Tecate Shortline*

Dear Acting Secretary Quinlan:

The San Diego & Imperial Valley Railroad Co. (“SDIV”) files in support of the Petition to Reject of the San Diego & Arizona Eastern Railway Company (“SD&AE”) that was filed with the Surface Transportation Board (the “Board”) on July 24, 2008. SD&AE owns and SDIV is authorized to operate the portion of a rail line in the United States between San Diego and Plaster City, CA (the “US Line”).

FPN-USA, Inc. (“FPN-USA”) filed a notice of exemption under 49 C.F.R. 1150.31 on July 11, 2008 (the “Notice”) that states that it or its affiliate is seeking Mexican authority to operate the line of railroad in Mexico owned by Mexican authorities between south of San Ysidro and south of Division, CA (the “Mexican Line”). The Mexican Line that FPN-USA seeks to operate is solely within Mexico. The line of railroad in the United States that connects to the Mexican Line is owned by SD&AE and authorized to be operated by SDIV and the Carrizo Gorge Railway, Inc. (“Carrizo”).

Pursuant to agreements between SD&AE and SDIV, and among SD&AE, SDIV, and Carrizo, no additional operator can be admitted to operate over any portion of the US Line without the consent of SD&AE and SDIV. Without such consent, an operator of the Mexican Line cannot operate in the United States. Neither SD&AE nor SDIV has consented to FPN-USA operations over the US Line or within the United States. There is no agreement between SD&AE and SDIV on the one hand and FPN-USA on the other authorizing FPN-USA operations in the United States.

FPN-USA states that it “also requests incidental trackage rights inside the United States between MP 59.6 at Division and MP 65.8 at Campo because there is no place to interchange at Division.” Notice at 5. FPN-USA does not identify who it is seeking incidental trackage rights from. Incidental trackage rights do not include interchange. “Incidental trackage rights include the grant of trackage rights by the seller, or the

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assignment of trackage rights to operate over the line of a third party that occur at the time of the exempt acquisition or operation.” 49 C.F.R. §1150.31(a)(4). As owner and operator of the US Line, SD&AE and SDIV, respectively, have not entered into an agreement with FPN-USA to grant or assign trackage rights within the United States. Therefore, there is no transaction proposed within the Board’s jurisdiction under 49 U.S.C. §10501(a)(2).

The Board has rejected a notice where there are too many unanswered questions as is the case in this proceeding. *Pro-Go Corp.—Operation Exemption—in Suffolk County, NY*, STB Finance Docket No. 35120 (STB served March 13, 2008). SDIV urges the Board to reject the notice in the instant proceedings for the same reason. In addition, FPN-USA has not demonstrated that it is proposing a transaction within the Board’s jurisdiction in its potential operation within Mexico. Therefore, SDIV also urges the Board to dismiss the notice for lack of jurisdiction.

SDIV is efilng this letter in support of SD&AE. Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours



Louis E. Gitomer
Attorney for: San Diego & Imperial Valley
Railroad Co.

Cc: Parties of Record