



**American Short Line and
Regional Railroad Association**

The Voice of America's Independent Railroads

November 13, 2015

239542

Chairman Daniel R. Elliott III
Vice Chairman Ann D. Begeman
Commissioner Deb Miller
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
November 13, 2015
Part of
Public Record

Re: Petition of Union Pacific Railroad Company For Declaratory Order; FD No. 35960

Dear Chairman Elliott, Vice Chairman Begeman and Commissioner Miller:

The American Short Line and Regional Railroad Association (“ASLRRA”) urges the Board to issue the declaratory order sought by Union Pacific Railroad Company (“UP”) in its petition in the above-referenced matter (the “Petition”). ASLRRA is a trade association representing approximately 550 Class II and Class III railroads throughout North America. Nineteen member railroads operate in California.

As set forth in UP’s Petition, a pipeline owner has filed suit against UP in California seeking to avoid contractual obligations related to the use of its railroad right-of-way designed to enable UP to adequately and efficiently conduct its rail operations. ASLRRA is very concerned that an adverse decision from a state court in that action could result in an unreasonable burden on interstate commerce and permit state courts everywhere to manage or govern railroad transportation in a way that would significantly interfere with the railroad operations of our members. Because Class II and Class III railroads operate throughout the United States, we are further concerned that an adverse decision in California could lead to a patchwork of decisions impacting portions of railroad right-of-ways differently.

ASLRRA agrees with the concerns raised by UP in the Petition. A particularly detrimental impact would result from a misguided state court decision favorable to the pipeline owner which would then be used by other railroad rights-of-way users in California and elsewhere as support to disregard industry-standard safety and operational requirements in contained existing and future agreements. ASLRRA members have thousands of agreements containing safety and operational requirements where the other parties could then declare such requirements unenforceable.

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For instance, these agreements contain important requirements, such as prior notice before entering right-of-ways. Prior notice is crucial for railroads to coordinate such work with their rail operations and to ensure that their trains operate safely in areas where work is being performed. Also, their agreements contain construction and maintenance standards for facilities and structures constructed under, on, over and adjacent to rail infrastructure, but, in the past, ASLRRRA members have received objections to railroad construction and maintenance standards by third parties. Therefore, in the event of a ruling favorable to the pipeline owner, ASLRRRA believes that any railroad standards will be disregarded in the future. This will likely result in subgrade, surface and overhead facilities designed and constructed without regard for the safety of railroad operations and railroad employees. As a consequence, all the risks associated with each facility installed within railroad right-of-ways will be absorbed by short line railroads, resulting in an unreasonable burden on them and with potential impacts on rail service. Thus, issuing the order requested by UP will ensure the safety of the rail operations of UP and all other railroads having agreements with any other third party related to the railroad right-of-way.

For these reasons ASLRRRA urges the Board to enter an order in this matter declaring that the state court action in California brought by the pipeline owner is preempted by 49 U.S.C. §10501(b) and the subject matter is under the exclusive jurisdiction of the Board.

Respectfully,

A handwritten signature in cursive script that reads "Keith T. Borman".

Keith T. Borman
Vice President & General Counsel