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July 7, 2016

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## **BY E-FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

ENTERED  
Office of Proceedings  
July 7, 2016  
Part of  
Public Record

Re: STB Docket No. FD 36036  
Valero Refining Company - California Petition for Declaratory Order

Dear Ms. Brown:

On behalf of Phillips 66 Company, I write in support of the Valero Petition for Declaratory Order (“Petition”) in the above referenced docket. Phillips 66 operates a refinery in California for which the company has submitted an application for local government approval to extend a rail spur and build crude oil offloading facilities. While local government review of the Phillips 66 rail spur project is at a different stage than that of the Valero Benicia project, in both cases the local governments are wrestling with essentially the same issue. They are attempting to define the degree to which they may take into account uprail activities – and concerns about their impacts – in making local land use decisions, and the extent of their authority to regulate or otherwise address the impacts of the rail carrier’s uprail transportation operations.

Local government uncertainty or misunderstanding regarding the extent of their jurisdiction can manifest itself in several ways. In the case of Valero’s project, the City of Benicia Planning Commission denied certification of the Environmental Impact Report and denial Valero’s land use application for a crude oil off-loading facility petition based on the Commission’s objections to uprail operations and their impacts. Valero’s petition requests that the Board institute a proceeding and declare that the Planning Commission’s actions are preempted under the Interstate Commerce Commission Termination Act (“ICCTA”) because ICCTA does not permit the City of Benicia Planning Commission to indirectly regulate uprail transportation. Assuming the Board declares the Benicia Planning Commission’s mainline rail-driven denial is improper due to ICCTA preemption, the City of Benicia will require guidance regarding its authority to include in the local land use permit conditions that are aimed at controlling, influencing or

compensating for the impacts of uprail operations. This is the same question currently being considered by San Luis Obispo County for the Phillips 66 project.

Phillips 66 seeks local government approval to extend a rail spur and construct a crude oil unloading facility at its refinery currently served by Union Pacific Railroad in San Luis Obispo County, California. Phillips 66 submitted an application in 2013. The County initiated environmental review, and in November 2013 released a draft environmental impact report for public comment. Although the 2013 draft EIR included some analysis of environmental impacts from mainline rail operations, the County decided to prepare a revised draft environmental impact report because “County decision makers need to be made aware of impacts of the Project beyond the project site along the mainline UPRR route, beyond the County of San Luis Obispo, and to the border of California.”<sup>1</sup> The revised draft environmental impact report was released in October 2014, nearly one year after the release of the initial draft environmental impact analysis. Public comments were taken, and a final environmental impact report was completed in December 2015. The final report includes an expanded analysis of impacts of mainline rail operations under many environmental topics, including air emissions from locomotives in transit, risk of accident in transit, the potential for release of crude oil in event of an accident and consequences to biological, historical and cultural resources along the mainline, etc. For some topics, the expanded analysis examines mainline rail operations as far as the Canadian border. The revised environmental impact report also includes mitigation measures to address impacts that the report identifies as potentially significant, including in some cases mitigation measures related to mainline rail transport from the point the cargo is loaded onto a train until it reaches its destination thousands of miles away in California.

The staff of the County Planning Department recommended denial of the project in large measure because of the uprail impacts associated with Union Pacific Railroad’s operations. The San Luis Obispo County Planning Commission commenced hearings on the application in February 2016, but has not yet acted on the application. A majority of the Commission currently appears disinclined to adopt the staff recommendation and deny the project outright. However, the Commission has directed staff to prepare comprehensive conditions. Conditions presented in the environmental impact report include many that we believe are contrary to the ICCTA’s preemptive provisions. We offer the following summaries to illustrate the issues that arise as local governments design conditions with an eye on uprail impacts, and why the Board should institute a proceeding and provide guidance. We can provide additional detail in the context of a Board proceeding.

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<sup>1</sup> County of San Luis Obispo Staff Report to Planning Commission, File No. DRC2012-00095, for meeting date February 4, 2016, p. 8.

Conditions proposed for the land use permit for the Phillips 66 rail spur extension would:

- Prevent the customer, Phillips 66, from receiving rail service unless it enters into a contract with UPRR. This is contrary to ICCTA's provisions mandating common carrier services upon reasonable terms where the carrier and customer have not voluntarily entered into a contract. The proposed conditions would mandate the inclusion of terms in the contract regulating UPRR's mainline rail operations. Per the proposed mandated terms, Phillips 66 would not be allowed to receive rail service unless the contract with UPRR specifies that UPRR will (1) use Tier 4 locomotives on the main line, (2) install positive train control on all California mainline routes that could be used to deliver crude to Phillips 66's refinery; (3) prepare an oil spill contingency plan for all mainline rail routes in California that could be used to deliver crude to the refinery; (4) prepare emergency contingency plans for cultural and historical resources along all mainline rail routes in California that could be used to deliver crude to the refinery; (5) conduct training with first response agencies along the mainline route no less than four times per year; (6) provide UPRR contact information and real-time information regarding the cargo to first responders along the mainline routes.
- Require an annual analysis of safety and security risks along all potential mainline routes, and mandate the use of the route with the lowest risk.
- Require the customer to provide advanced notice of all crude shipments as well as quarterly reports to qualified first response agencies along the mainline rail routes within California that would be used to deliver crude to the refinery.
- Require the customer to work with UPRR to schedule freight trains so that they do not interfere with passenger trains using the line.
- Require the customer to annually fund 40-hour railcar emergency training programs for no fewer than 20 first responders along the mainline rail routes within California that could be used to deliver crude to the refinery.
- Require the customer to offset air emissions and greenhouse gas emissions from the locomotives traveling on the main line, either to the California border, or to the point of origin of the crude cargo.

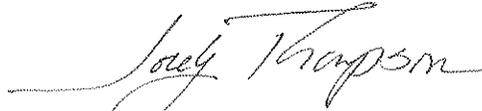
The environmental impact report notes that proposed measures may be preempted, but it does not differentiate among them or take a firm position that any are preempted. The Planning Commission has requested its legal counsel to provide further guidance on ICCTA preemption and how it affects the conditions that the Planning Commission may impose. Hearings are scheduled to resume September 22, 2016, for a discussion of the proposed conditions. Phillips 66 respectfully requests the Board

July 7, 2016

Page 4

institute a proceeding and grant Valero a declaratory order affirming Valero's right to receive rail service. A Board decision will help guide San Luis Obispo County as it considers conditions for the Phillips 66 project.

Very truly yours,

A handwritten signature in cursive script that reads "Jocelyn Thompson". The signature is written in black ink and is positioned above the printed name.

Jocelyn Thompson

**ALSTON & BIRD LLP**

JT:amm

cc: See attached Certificate of Service.

1 **CERTIFICATE OF SERVICE**

2 I, Anthonie Meister, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is  
4 Alston & Bird LLP, 333 South Hope Street, 16<sup>th</sup> Floor, Los Angeles, CA 90071. I am over the age  
5 of eighteen years and not a party to the action in which this service is made.

6 I certify that on July 7, 2016, I served copies of the document(s) described as **July 7, 2016**  
7 **Letter to Cynthia T. Brown of the Surface Transportation Board by Phillips 66 in Support of**  
8 **Valero Refining Company – California Petition for Declaratory Order** on the interested parties  
9 in this action as follows:

10 **SEE ATTACHED SERVICE LIST.**

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13 ordinary course of business, the correspondence would be deposited with the United  
14 States Postal Service at Alston & Bird LLP, 333 South Hope Street, 16<sup>th</sup> Floor, Los  
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18 Service such envelope at Alston & Bird LLP, 333 South Hope Street, 16<sup>th</sup> Floor, Los  
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21 UPS with delivery fees fully provided for or delivered the envelope to a courier or  
22 driver of UPS authorized to receive documents at Alston & Bird LLP, 333 South Hope  
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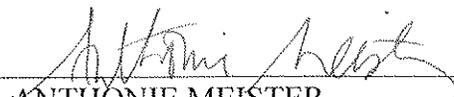
24  BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s)  
25 at the following number(s) in accordance with the written confirmation of counsel in  
26 this action.

27  BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I  
28 transmitted the above-mentioned document by electronic mail transmission with  
attachment to the parties at the electronic mail transmission address set forth on the  
attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 7, 2016, at Los Angeles, California.

  
ANTHONIE MEISTER

Surface Transportation Board Docket FD No. 36036

**SERVICE LIST**

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