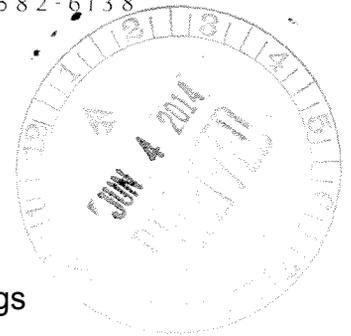


MICHAEL E. LASALLE

13771 EXCELSIOR AVENUE, HANFORD, CA 93230 559-582-6138

lasallem@lightspeed.net



May 29, 2014

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street, SW, Room 100

Washington, DC 20423-0001

236153
ENTERED
Office of Proceedings
June 4, 2014
Part of
Public Record

Re: Finance Docket No. 35724-1, California High-Speed Rail Authority’s Petition for Exemption for its Fresno to Bakersfield section.

Dear Ms. Brown:

I have previously appeared in this sub-docket matter on a number of occasions.

Delay in Board’s Decision.

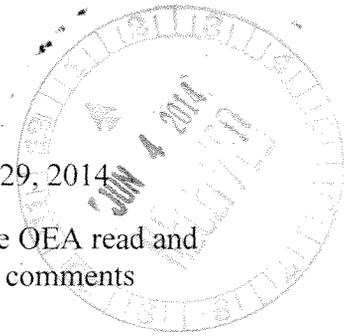
After a number of extensions, your Board established March 7, 2014 as the final deadline for replies to the California High-Speed Rail Authority’s (Authority) Petition for Exemption for its Fresno to Bakersfield HST section. Two and a half months later your Board has not yet issued a decision with respect to the Authority’s Petition for Exemption, the likely reason for which was elaborately set forth in your Decision of December 3, 2013:

In August 2013, the Board became a cooperating agency, as defined by 40 C.F.R. § 1508.5, for the preparation of the project-level EIR/EIS for the Line, as well as for the other remaining segments of the HST system. As a cooperating agency, the Board, through its Office of Environmental Analysis (OEA), will work with the Authority and FRA to fulfill its obligations under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. OEA is currently working with FRA and the Authority in preparation of the Final EIR/EIS for the Line. The entire environmental record for the Line, including the Draft EIR/EIS, will serve as the basis for OEA’s recommendation to the Board regarding whether, from an environmental perspective, the Authority’s construction exemption should be granted, denied, or granted with environmental conditions.

The delay in your Board’s decision suggests that it may have been waiting on the Authority/FRA to finalize and adopt their Final EIR/EIS for the Fresno to Bakersfield section (F-B FEIR). On April 18, 2014, the Authority/FRA released its F-B FEIR and gave the public an opportunity to submit comments up to and including the date of the Authority’s Board meeting held on May 6, 2014. Despite the inadequate time given (18 days), numerous comments were nevertheless submitted in both oral and written form. On May 7, 2014, the Authority approved and certified the F-B FEIR.

Surface Transportation Board

May 29, 2014



Before the OEA makes its recommendation to your Board, it is essential that the OEA read and consider not only the entire F-B FEIR document but also all of the recent public comments submitted in response to the F-B FEIR.

BNSF and UPRR has concerns about the possible impacts of HSR electromagnetic interference with their train control and signaling systems.

We noticed that the BNSF Railroad was one of the parties submitting comments to the Authority/FRA about the F-B FEIR, and we noticed that it had filed a copy of its comments in this proceeding. Although you have it, I enclose a copy for your convenience. As one of the railroads directly impacted by the new Line, its comments deserve special attention and the most careful scrutiny.

It has also come to our attention that the BNSF and the Union Pacific Railroad (UPRR) jointly submitted a document to the California Public Utilities Commission (CPUC) on January, 2014, a document in which they detailed their concerns about the effect that the Authority's HST "electrical systems" might have on their "nearby freight railroad signal systems." Indeed, the Authority/FRA's EIR/EIS for the Merced to Fresno section admitted that the high voltage electrical current that would pass through the HST track and overhead electrical supply lines would produce electromagnetic interference that could jeopardize the normal functioning of the signaling systems on the adjoining freight railroad tracks.¹ The same warning appears in the Authority/FRA's F-B FEIR as well.²

I have been unable to determine whether the document filed by the BNSF and UPRR with the CPUC was submitted by either of them to the Authority/FRA to be made part of the F-B FEIR administrative record. Since it is an important document that raises serious safety issues and significant potential interference with interstate freight rail commerce, I thought it needed to be called to the attention of your Board and the OEA. The document is enclosed herewith. The Authority has been involved with the CPUC regarding these issues for some time, and is aware of the railroads' concerns and opposition. Yet, as the Authority has done so often before, it appears that it has failed to disclose to the Board this issue and these pending CPUC proceedings.

It would seem that this is a matter of major import, an overriding safety concern that needs careful study and resolution by the experts. Until the CPUC concludes its workshops, studies the reports and evidence and adopts its final regulations for minimum clearances and mitigation, the current design and alignments of the new Line – and their environmental impacts – are subject to dramatic change. Any decisions made by the Board prior to these determinations by the CPUC would seem imprudent and premature.

¹ California High-Speed Rail Authority, Final EIR/EIS, Merced to Fresno Section, p. 3.5-16.

² California High-Speed Rail Authority, Final EIR/EIS, Fresno to Bakersfield section, pp. 3.5-18 to 21.

Reconsideration of Merced to Fresno Exemption Decision.

Although the Board had granted the Authority an exemption for its Merced to Fresno (M-F section) on June 13, 2013, I am encouraged that your Board warned the Authority in its December 3, 2013 Decision that “[t]here is also the possibility that the Board could deny the petition for exemption [for the F-B section] notwithstanding a prior conditional grant [for the M-F section].”

As can be seen, a great deal has happened after your Board granted the Authority an exemption for its M-F section in June, 2013.³ There are a number of new facts and circumstances. Because of this and because the composition of the membership of the Board has since changed, a new majority view with respect to this issue may now exist. I believe your Board, on its own motion, is allowed to reopen and reconsider whether an exemption for the M-F section remains appropriate. I earnestly implore your Board, on its own initiative, to reopen the issue of the exemption of the M-F section and to invite updated public comment on the subject.

Not Required to Notify Parties.

Because I am an individual private citizen who has been exempted from giving notice to parties to the proceeding, pursuant to the Board’s Decision of December 20, 2013, I am not sending copies of this letter to any other party. I will assume that the Board will notify anyone it feels should be notified of the matters raised by this letter.

Respectfully submitted,



Michael E. LaSalle

cc:

Office of Environmental Analysis (w/ enclosures)

Union Pacific Railroad Company (w/o enclosures)

BNSF Railway Company (w/o enclosures)

³ Detailed in the numerous replies filed in this sub-docket proceeding.



Richard E. Weicher
Vice President and General Counsel -
Regulatory
richard.weicher@bnsf.com

BNSF Railway Company
547 W. Jackson Blvd. Ste. 1509
Chicago, IL 60661
312-850-5679 Direct
312-850-5677 Fax
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
817-352-2368 Direct
817-352-2399 Fax

May 6, 2014

Mr. Mark McLoughlin
Director, Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Mr. David Valenstein
Chief, Environment and Systems Planning Division
Office of Railroad Policy and Development
Federal Railroad Administration United States Department of Transportation
MS-20, W38-303
1200 New Jersey Avenue SE
Washington, DC 20590

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

**Re: Fresno to Bakersfield Section California High-Speed Train (HST) Final Project
Environmental Impact Report/Environmental Impact Statement (FEIR/FEIS)**

**California High-Speed Rail Authority—Construction Exemption—In Fresno,
Kings, Tulare & Kern Counties, Cal.,
STB Finance Docket No. 35724 (Sub No. 1)**

Ladies and Gentlemen:

BNSF Railway Company ("BNSF") submits these comments in response to the April 18, 2014 Final Environmental Report/ Final Environmental Impact Statement ("FEIR/FEIS") on the Fresno-Bakersfield segment to bring to the attention of the California High Speed Rail Authority ("CHSRA"), Federal Railroad Administration ("FRA"), and the Surface Transportation Board ("STB") several outstanding concerns that BNSF has with respect to that segment of the proposed CHSRA line. BNSF notes that in its April 18, 2014 announcement of the release of the FEIR/FEIS, CHSRA invited public comments on that document at a May 6, 2014 public meeting. BNSF offers these written comments in light of that invitation and to bring to the attention of CHSRA, FRA and STB certain concerns discussed here.

BNSF's interest in this matter is substantial because BNSF currently operates a partially double-tracked freight rail line between Fresno and Bakersfield used by an average of more than

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May 6, 2014
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(3) CHSRA recently informed BNSF that it wants to relocate BNSF's right-of-way in three or four locations, but they did not provide detail. There is no agreement in place between BNSF and CHSRA contemplating such use of BNSF's property, and the FEIR/FEIS is notably deficient in addressing the issues and assessing impacts. For example, as part of the Preferred Alternative's route through Fresno, Kings, and Kern counties, the FEIR/FEIS states that BNSF railway tracks will need to be realigned. Specifically, at page 2-64, the EIS states that "[a]pproximately 5.5 miles of BNSF Railway tracks would be realigned ... to accommodate the HST alignment" through Fresno county. Likewise, the FEIR/FEIS states that "[a]pproximately 0.3 mile of BNSF Railway tracks would be realigned" in Kings county, and "[a]pproximately 4 miles of BNSF Railway tracks would be realigned" in Kern county. See FEIR/FEIS, at pages 2-64 to 2-65. The Alignment Plans provided in Volume III of the FEIR/FEIS appear to identify the location of some of these proposed realignments. See *e.g.*, Appendix 3.1-A, at 91. At no point, however, does the FEIR/FEIS in Chapters 3.2 or 3.13 (those relevant to land use and transportation impacts) assess the impacts associated with the proposed realignment, including the timing/procedures to re-locate the tracks and/or the impacts to BNSF's freight rail service as a result of re-location activities.

(4) The FEIR/FEIS has inconsistent information regarding whether the minimum separation between its track and BNSF is 47 feet or 29 feet. Further, the FEIR/FEIS indicates that "[a] 102-foot separation between the centerlines of BNSF Railway and HST tracks is provided wherever feasible and appropriate. In urban areas where a 102-foot separation could result in substantial displacement of businesses, homes, and infrastructure, the separation between the BNSF Railway and the HST was reduced." FEIR/FEIS, at 2-61. The FEIR/FEIS, however, provides no discussion in Chapters 3.2 or 3.13 (those relevant to land use and transportation impacts) regarding potential impacts to BNSF resulting from a minimal separation, including impacts to BNSF's maintenance, use, and operation of its right-of-way as a result of anything less than a 102-foot separation between the high-speed rail track and BNSF future tracks.

BNSF has explained to CHSRA that in measuring these distances, CHSRA must leave room for BNSF's anticipated future track, meaning that the distances must be measured to the centerline of any future BNSF track. BNSF requires clarification of the diagrams in the FEIR/FEIS that suggest CHSRA's current design plan measures the minimum distances to BNSF's existing track without leaving room for future track to meet increased freight capacity needs. See FEIR/FEIS at 2-62 and 2-63 (Figure 2-32 and Figure 2-33). Further, there are no agreements in place for use of BNSF right-of-way for safety fences, ditches or other improvements associated with the HST project.

(5) BNSF does not know, and CHSRA has not explained in the FEIR/FEIS or elsewhere, what will be done to mitigate the serious problem of potential electromagnetic interference with freight rail signals and PTC. The FEIR/FEIS acknowledges that the operation of the high-speed rail will interfere with signals on adjacent freight rail lines. The document, however, makes no mention of PTC. Clearly, further study is needed to determine the impact on PTC.

The FEIR/FEIS concludes that there will be no impact to freight rail signals, apparently because modifications will be made to freight assets to prevent interference. The FEIR/FEIS states that the "project design includes working with the engineering department of freight railroads that parallel the HST line to apply the standard design practices that a nonelectric railroad must

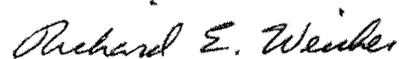
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program associated with any disruptions to service experienced by BNSF ... during construction.”). The FEIR/FEIS acknowledges that “there is a possibility for disruption to or temporary delay of railroad operations. In particular, impacts to rail operations are expected to occur in downtown Fresno at several railroad crossing locations.” FEIR/FEIS 3.2-68. The FEIR/FEIS thus included “[a]voidance and minimization measures for the protection of freight and passenger rail.” *Id.* However, the FEIR/FEIS only included a design feature to “repair any structural damage to freight ... railways, and return any damaged sections to their original structural condition.” *See id.* 3.2-123. The FEIR/FEIS also contemplated “[i]f necessary, during construction, a ‘shoofly’ track would be constructed to allow existing train lines to bypass any areas closed for construction activities. Upon completion, tracks would be opened and repaired; or new mainline track would be constructed, and the ‘shoofly’ would be removed.” *See id.* There is insufficient information to assess the scope of these impacts and BNSF has not agreed to allow any of these kinds of impacts to its facilities and operations.

In raising these issues at this time, BNSF seeks to focus attention on some of the many matters that will require further environmental assessment before any construction commences on the Fresno-Bakersfield or any other segment of the CHSRA line, including the Fresno-Merced segment. We therefore look forward to receiving additional information from CHSRA so that the impacts of the proposed high-speed rail line to BNSF and its customers may be adequately evaluated, and so that BNSF may endeavor to reach an appropriate agreement with CHSRA, if possible. BNSF submits that further environmental impact study will be necessary when additional commercial and operations impacts of the proposed project are disclosed and looks forward to contributing to that process.

Thank you for your attention to these concerns.

Sincerely,



Richard E. Weicher,
Vice President and General Counsel - Regulatory

cc: Ms. Victoria Rutson, Surface Transportation Board
Mr. David Navecky, Surface Transportation Board
Mr. Frank Vacca, Chief Program Manager, CHSRA
Mr. Thomas Fellenz, Chief Legal Counsel, CHSRA

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Whether to
Adopt, Amend, or Repeal Regulations Governing Safety
Standards for the Use of 25kV Electric Lines to Power
High Speed Trains

R. 13-03-009

**JOINT COMMENTS OF UNION PACIFIC RAILROAD COMPANY AND BNSF
RAILWAY COMPANY TO THE TECHNICAL PANEL REPORT**

Melissa Greenidge
Assistant General Attorney
Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747
Tel. (916) 789-6132
Fax (916) 789-6227
mgreenidge@up.com

Attorney for Union Pacific Railroad Co.

Ryan Ringelman
Attorney
BNSF Railway Company
500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131
Tel. (817) 352-2342
Fax (817) 352-2399
ryan.ringelman@bnsf.com

Attorney for BNSF Railway Co.

January 31, 2014

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing Safety Standards for the Use of 25kV Electric Lines to Power High Speed Trains.

R. 13-03-009

**JOINT COMMENTS OF UNION PACIFIC RAILROAD COMPANY AND BNSF
RAILWAY COMPANY TO THE TECHNICAL PANEL REPORT**

I. INTRODUCTION

Pursuant to Rules 12.4 and 14.3 of the California Public Utilities Commission's ("CPUC") Rules of Practice and Procedure, Union Pacific Railroad Company ("Union Pacific") and BNSF Railway Company ("BNSF") jointly submit these comments on the "Technical Panel Report of the Safety and Enforcement Division" and the proposed General Order attached thereto.

II. DISCUSSION

At party workshops designed to discuss the technical support for the proposed General Order, the California High Speed Rail Authority ("CHSRA") failed to present sufficient studies or evidence that its electrification systems will not interfere with freight railroad systems. Union Pacific and BNSF request the Commission to order further technical workshops to address unanswered safety issues before proceeding to the second phase of the rulemaking.

The California High-Speed Train Project (“CHSTP”) is a project that has been defined by its uncertainty: uncertainty about when construction will start, how it will be paid for,¹ where it will run, and how it will achieve its statutory performance requirements. This proceeding is adding to the list of uncertainties and creating the probability that the project will cause unreasonable safety risks and conflicts with other railroad systems.

“[T]here is no railroad in operation in the U.S. that utilizes the new technologies that will be employed on the California High Speed Rail system.”² As such, the CPUC expressly stated its intent to carefully regulate the CHSTP to “protect the public and the environment.”³ When it is completed, the CHSTP will be part of a large rail infrastructure within the state.⁴ To operate efficiently and safely, this infrastructure depends on complex railroad signal systems that must be fully operable at all times. The CPUC should not adopt safety rules that impact the integrity of existing railroad systems without determining with certainty that all technical and safety issues have been resolved. Further technical workshops are needed to explore the degree to which the CHSTP’s electrification systems will create interference with conventional freight signal and Positive Train Control (“PTC”) systems, as well as minimum clearances between the CHSTP and other rail systems, before proceeding to the second phase of this rulemaking.

A. Further Technical Workshops Should Be Held To Address Risks For Electromagnetic Interference With Conventional Freight Railroad Signal Systems

The CHSRA acknowledges that power systems naturally create electric and magnetic fields (“EMFs”) that can cause an electromagnetic interference (“EMI”) that impedes the functioning of other systems.⁵ Prior to this rulemaking, the CHSRA recognized that EMI from its electrification systems could interfere with nearby freight railroad signal systems.⁶ It stated:

¹ See *Tos, Fukuda, County of Kings v. California High Speed Rail Authority*, Case No. 34-2011-00113919-CU-MC-GDS (Sacramento Sup. Ct., Nov. 25, 2013) (pending bond validation proceeding).

² See California Public Utilities Commission, 2012 Annual Report, 33-34 (Feb. 1, 2013), available at <http://www.cpuc.ca.gov/NR/rdonlyres/E47E6D16-C37F-446B-B606-924378794A14/0/CPUC2012AnnualReport.pdf> (hereafter “Annual Report”).

³ *Id.* at 34.

⁴ *Id.* at 28-37.

⁵ California High-Speed Train Project EIR/EIS, Merced to Fresno Section, Chapter 3.5: *Electromagnetic Fields and Electromagnetic Interference*, 3.5-1, available at

The high electrical currents flowing in the overhead contact system and the return currents in the overhead negative feeder, high speed train tracks, and ground could induce 60-Hz voltages and currents in existing parallel railroad tracks. If an adjoining freight railroad track parallels the HST track for a long enough distance (i.e., several miles), the induced voltage and current in the adjoining freight railroad tracks could interfere with the normal operation of the signal system, thereby indicating that there is no freight train present when, in fact, a train is present, or thereby indicating that a train is present when, in fact, no train is present.⁷

These disruptions would undoubtedly impact “safe and dependable operation of the adjacent railroad signal system, resulting in train delays or hazards, or disruption of road crossing signals.”⁸

Over twelve thousand at-grade crossings exist within California’s rail network.⁹ To manage the safety at these crossings, the CPUC developed a rail safety program staffed by specialists in “signal and train control.”¹⁰ But discussion at the technical workshops only briefly focused railroad signals, and the CHSRA has not assured Union Pacific and BNSF that its project will not threaten crossing safety.

To address this safety risk, Union Pacific proposed rules to require the CHSRA to mitigate EMI with nearby rail facilities.¹¹ CHSRA responded by stating that potential for such interference does not exist, but it did not offer definitive studies or evidence to support this conclusion. The CHSRA then revised mitigation language in a way that does not adequately address the risk of a freight signal failure. If there is a loss of communication among any

http://www.hsr.ca.gov/Programs/Environmental_Planning/final_merced_fresno.html (Apr. 2012).

⁶ *Id.* at 3.5-16.

⁷ *Id.*

⁸ *Id.*

⁹ Laura Melendy and Mark Hood, *Tracks, Trains and Automobiles: Safety at Railroad Grade Crossings*, available at <http://techtransfer.berkeley.edu/newsletter/04-4/tracks.php> (hereafter “Melendy and Hood”).

¹⁰ See Annual Report, *supra*, at 29-30; see also Melendy and Hood, *supra*, (California ranks fifth in the nation in the number of highway-rail grade crossing collisions, and third in the nation in the numbers of fatalities and injuries at at-grade crossings.)

¹¹ Compare Union Pacific’s Proposed Cooperation Language (incorporated hereto as Appendix A), with Proposed General Order Sec. 1.3-1.5.

existing freight signal systems the integrity of at-grade crossing systems will be compromised, putting the general public at risk. Additional technical review with experts in railroad signal systems should explore the risks of EMI and determine what rules should be adopted to prevent interferences with existing freight signal systems.

B. Further Technical Workshops Should Be Held To Address Electromagnetic Interference With Federally-Mandated Positive Train Control (“PTC”) Systems.

On September 12, 2008, a Metrolink passenger train collided head-on with a Union Pacific freight train in Chatsworth, California.¹² Twenty-five people died and more than one hundred were injured. An investigation showed that the accident happened because the operator of the Metrolink train ignored a red signal that required him to remain stopped in a station. The operator was exchanging text messages with a rail enthusiast immediately before the accident.

Congress responded to the Chatsworth accident by passing a bill that requires the nation’s railroads to install Positive Train Control (“PTC”) on more than 60,000 miles of track by the end of 2015.¹³ PTC is an automated system that will stop a train to prevent it from bypassing restrictive signals.¹⁴ A functioning PTC system that is interoperable among all railroads will avoid accidents due to human error in responding to signals.¹⁵

But what Congress mandated did not exist at the time. Since enactment of the law, the nation’s railroads have spent more than \$2.7 billion of their own funds to create and implement the technology. Despite the dedication of these resources, it will not be possible to meet the 2015 deadline. The scale of design, permitting, manufacturing, and installation of a system that relies on thousands of wayside communication poles, tens of thousands of radio communication and GPS units, and numerous other components simply makes meeting the schedule impossible except possibly in specific locations.

In the midst of this, CHSRA wants the Commission to approve safety rules for installation of 25kV overhead electrical systems to power trains that will travel in excess of 200 m.p.h. One of the most important questions to address in this proceeding is how to ensure that

¹² Positive Train Control Systems, 75 Fed. Reg. 2598-01, *2602 (Jan. 15, 2010).

¹³ Railroad Safety Improvement Act, Pub. L. No. 110-432, 122 Stat. 4848 (2008).

¹⁴ See 49 C.F.R. §236, subparts H-I.

¹⁵ See 49 U.S.C.A. §20157(a)(2), (i)(1) (all PTC systems must be interoperable).

placing such high-voltage and dynamic facilities in proximity to conventional railroad facilities will not create electromagnetic fields or other conditions that interfere with PTC systems.

PTC is designed to prevent train-to-train collisions, derailments, and improperly lined switches, as well as to warn locomotive engineers of restrictions at at-grade crossings and protect maintenance workers.¹⁶ Its fail-safe condition will be to stop a train. This means that if there is a loss of communication among any of the PTC components, trains will stop. Nothing at the technical panel workshops addressed this risk, and nothing in the proposed rules speaks to how this type of failure will be handled. If the Commission approves rules without knowing what the possible conflicts between PTC and the proposed high-speed electrical facilities are, it will risk creating a condition where the rail network in California is inoperable. This will not only impact California's economy, but will also interfere with a federal mandate. Additional technical review with experts in the area of PTC is necessary to explore these risks.

C. Further Technical Workshops Should Address Minimum Clearances Between CHSTP Electrified Systems And Conventional Railroad Systems

General Order 26-D establishes, among other things, minimum side and vertical clearances, minimum clearances between parallel tracks, and rules relating to conditions and obstructions adjacent to freight railroad tracks. Nothing in General Order 26-D establishes minimum clearances to freight railroad networks where passenger trains will reach speeds proposed by the CHSTP. Nothing in General Order 26-D establishes minimum clearances where electrification systems will create EMI that could interfere with existing freight railroad signal systems. Similarly, nothing in the proposed General Order covers these subject areas. Additional technical review should explore whether it is necessary to adopt rules that establish minimum clearance values between the CHSTP's electrified system and existing freight systems.

D. Railroad-Specific Technical Workshops Should Address The Proposed Safe Working Practices.

Section eight of the proposed General Order contains rules relating to Safe Working Practices. These rules apply not only to the CHSRA's employees, but also to third parties working on or near the CHSTP right-of-way. As written, the rules could be interpreted to give the CHSRA rulemaking authority over freight railroad workers. This is an area of railroad safety

¹⁶ 49 C.F.R. §236.1005.

that is not only covered by federal rules,¹⁷ but also by existing labor agreements. Railroad unions are not parties to this proceeding and have not been present at technical workshops. Since the CHSTP will operate parallel to freight networks for potentially hundreds of miles, it is critical that discussion regarding railroad safety rules includes railroad union and labor representatives.

E. The Scope of the Rulemaking Must Be Clarified.

In its petition, the CHSRA requested the CPUC to institute rulemaking to establish safety rules for electrical systems for the CHSTP.¹⁸ As described in the petition, the proposed rules will cover the operation of high-speed trains in both dedicated and shared rights-of-way.¹⁹ Contrary to its petition, the CHSRA represented to all parties at the first scheduled workshop that it only sought to develop rules for those segments of its plan where high-speed trains will operate over a dedicated right-of-way. The CHSRA claimed that those segments where the CHSTP will share track with other passenger or freight trains, are not covered by the proposed rules. Despite these representations, the CHSRA has not formally amended its petition.

At the technical workshops, the railroads engaged in detailed conversation regarding the purpose and scope of the proposed rules, as well as the definition of “dedicated,” “exclusive,” or “high speed” rights-of-way. Notwithstanding these conversations, there remain internal inconsistencies within the proposed General Order.²⁰ More specifically, the title of the proposed General Order, along with the definition of the “high speed rail right-of-way,” leaves open the potential that the proposed rules will apply where the CHSTP will exist in a shared right-of-way. For instance, there are portions of the CHSTP where high-speed trains will share a right-of-way with Metrolink, Amtrak, Caltrain, or Union Pacific and BNSF freight trains. Metrolink and Amtrak are not parties to this proceeding, and have not participated in any of the technical workshops. Even without their participation, it remains unclear if the proposed rules will be sufficient for high-speed train operation in shared rights-of-way. If the CHSRA does not amend its petition to clearly state the intended scope of the rulemaking, the Commission should order

¹⁷ See 49 U.S.C.A. §20108(a) (“The Secretary of Transportation shall carry out, as necessary, research, development, testing, evaluation, and training for every area of railroad safety.”); see also 49 C.F.R. §§240, 242.

¹⁸ Petition at 1.

¹⁹ *Id.* at 7, 9, 13.

²⁰ See Title and Sections 1.1, 1.2, and 2.22.

further workshops to ensure that the proposed rules are carefully vetted out for application in shared rights-of-way.

III. CONCLUSION

Whether the proposed General Order will be sufficient to address key areas of railroad safety remains uncertain. Further technical review is needed to ensure that conventional freight signal systems and PTC systems are not impaired by EMI from the CHSTP. Additionally, the proposed General Order should prescribe certain minimum clearances between the CHSTP and other railroad systems, and it will be impossible to do so if the Commission is not certain where the CHSTP will exist. For all of these reasons, it would be premature to advance this rulemaking to the second phase. There is nothing in the CHSRA's current construction timeline that suggests an imminent need for these rules.²¹ The Commission has time to carefully scrutinize these safety rules to ensure that the public safety is not compromised. For all of these reasons, Union Pacific and the BNSF renew their request for a third technical panel for freight railroads.²²

Respectfully submitted,

/s/ MELISSA S. GREENIDGE

Melissa S. Greenidge
Attorney for Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747
Telephone: (916) 789-6132
Facsimile: (916) 789-6227

/s/ RYAN RINGELMAN

Ryan Ringelman
Attorney for BNSF Railway Company
500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131
Tel. (817) 352-2342
Fax (817) 352-2399

January 31, 2014

²¹ See California High-Speed Rail Program, Revised 2012 Business Plan at pg. 14 (construction on the first operating segment will not begin until 2018).

²² See Joint Motion of Union Pacific and BNSF To Amend Preliminary Scoping Memo, filed on August 14, 2013.

Appendix A

Union Pacific's Proposed Cooperation Language

Proposed Section 1.3: Design, Construction, Operation, and Maintenance

High speed railroad electrification systems should be designed and constructed for their intended use, regard being given to the conditions under which they are to be operated. Any party contemplating or having existing longitudinal construction of high speed railroad facilities adjacent to, or in close proximity of, other conductive facilities, such as rail, pipeline, or cable, shall use all reasonable means to operate and maintain the electrified systems in such a manner as to minimize electromagnetic interference (EMI) and earth currents under conditions of normal operation, and to avoid transient disturbances.

Proposed Section 1.4: Avoidance Or Mitigation Of Electromagnetic Interference

(a) Co-operation

High speed railroad electrification systems may create EMI and ground currents that cause hazardous voltage, disturbance of railroad signal and communication circuits, or disruption of cathodic protection, of nearby conductive facilities such as rail, pipeline, or cable. Any party contemplating or having existing longitudinal construction of high speed railroad facilities adjacent to, or in close proximity of, other conductive facilities, such as rail, pipeline, or cable, or expects or experiences interference from high speed railroad EMI voltages, shall confer with the entity that may be the source of the EMI voltages. The parties shall cooperate, to the extent practicable, to determine the cause of such interference, and to develop mitigation to avoid, eliminate, or minimize the interference to a level that allows safe and reliable operation of the disturbed facility and meets all requirements of regulating agencies.

(b) Principle of Least Cost

When there are two or more different practicable methods of avoiding or mitigating interference, the method which involves the least total cost shall in general be adopted irrespective of whether the necessary changes are made in the facility of the high speed railroad or in the facility of the other nearby party; provided, however, that preference shall be given to methods of avoiding an interference over methods of mitigating interference; and provided,

further, that as between different methods of mitigation having different degrees of effectiveness, the most effective, the cost of which can be justified, shall be adopted.

Proposed Section 1.5: Commission Resolution

Any party unable to satisfactorily resolve its concerns regarding EMI interference may request resolution by the Commission.