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February 28, 2012

Rachel Campbell
Director of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Buddy and Holley Hatcher-Petition for Declaratory Order*
STB Docket No. 35581

Dear Director Campbell:

Union Pacific Railroad Company (UPRR) submits this letter to inform the Board of a change in the status of the civil action underlying the Hatchers' Petition. UPRR does not believe that the change in status affects the Board's jurisdiction to consider and decide the Petition.

As noted in the Petition and Replies filed in this matter, the civil action was originally filed in the Tulare County Superior Court and removed to the United States District Court for the Eastern District of California. Recently, the District Court remanded the case back to the Superior Court. In doing so, the District Court did not address the scope or effect of ICCTA preemption as it relates to the Hatchers' claims. Following remand, the RailAmerica parties filed a motion in the Superior Court to stay proceedings pending action by the Board on the Petition.

UPRR takes the position that the remand should have no effect on the Board's determination of the preemption issues raised before it. ICCTA preemption may be asserted as an affirmative defense in and determined by both the Federal and State courts. *Mid-America Locomotive and Car Repair, Inc.-Petition for Declaratory Order*-STB Finance Docket No. 34599, (decided 6/06/05). UPRR asserted ICCTA preemption in its answer to the State court complaint filed before removal and intends to pursue preemption as an affirmative defense. RailAmerica asserted ICCTA preemption in its Motion to Stay, so it appears it too will rely on it as an affirmative defense in the State court action. Therefore, the issues raised in the Petition and Replies remain ripe for determination and notwithstanding the remand, the Board should retain

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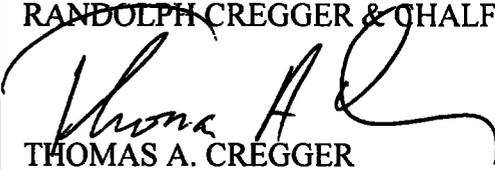
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jurisdiction over the Petition and rule on the effect of ICCTA preemption on the underlying claims.

Very truly yours,

RANDOLPH CREGGER & CHALFANT, LLP



THOMAS A. CREGGER

cc: All Parties via U.S. Mail

TAC:caa