

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

241929

ENTERED
Office of Proceedings
October 31, 2016
Part of
Public Record

STB Docket FD 36065

**SAN PEDRO PENINSULA HOMEOWNER'S UNITED INC.
AND JOHN TOMMY ROSAS, TRIBAL ADMINISTRATOR, TONGVA ANCESTRAL
TERRITORIAL TRIBAL NATION- PETITION FOR DECLARATORY ORDER**

REPLY TO PETITION FOR DECLARATORY ORDER

Plains All-America Pipeline (“Plains”) and its wholly owned subsidiary, Rancho LPG Holdings, LLC (“Rancho”) hereby submit this Reply to Petition for Declaratory Order filed in this proceeding on September 12, 2016. For the reasons set forth below, the Surface Transportation Board’s (“STB” or “Board”) should summarily deny the Petition because it does not present the Board with a cogent request for a ruling on any particularized issue, controversy, or uncertainty.¹

I. Identity and Interest of Plains All-America Pipeline and Rancho LPG Holdings, LLC

The exact relief sought by the petitioners is far from clear. However, the Petition makes certain allegations related to railroad tracks associated with operations conducted at a liquefied petroleum gas (“LPG”) storage facility located in the Port of Los Angeles area of San Pedro, California that is owned and operated by Rancho (the “Facility”). Rancho is subsidiary of Plains Midstream Canada, which is in turn a subsidiary of Plains. Plains is headquartered in Houston, Texas. Thus, the Petition directly concerns the rights and interests of Plains and Rancho.

¹ The Petition contains no page numbers. To avoid confusion, Plains has assigned numbers to its copy of the Petition, with Page One being the page following the cover page.

The Facility was originally constructed in 1973 by a predecessor company to Rancho, and stores butane and propane petroleum products that are used to fulfill local energy demands. The Facility site contains two 12.5 million gallon low-pressure LPG cold tanks, and five 60,000 gallon LPG pressurized horizontal storage tanks. Rail service to the facility is provided by Pacific Harbor Line, Inc. (“PHL”) a short line railroad owned by Anacostia Rail Holdings Company (“Anacostia”). PHL conducts common carrier switching operations on the Port’s behalf over tracks purchased by the Port from Southern Pacific Lines in 1994. PHL received operating rights from this Board over the Port’s tracks in 1997² and conducts those operations pursuant to Permit No. 1989 granted by the Port to PHL in 1997.

Rail service is provided into the Facility by PHL via its operating rights and over the Facility’s industry track, which was constructed by the original owner of the facility, and which is now operated and maintained pursuant to a permit designated Revocable Permit No. 10-05.³ Under the current arrangement, loaded tank cars of LPG are delivered by PHL onto two railcar loading/unloading tracks inside the Facility for butane or propane the Facility by PHL, and PHL then comes onto the Facility spur track to pick up empty tank cars for delivery back into the interstate railroad system.

² STB Finance Docket No. 33411, *Pacific Harbor Line, Inc. – Operation Exemption – Port of Los Angeles*, filed November 7, 1997.

³ The Petition is neither consistent nor accurate in describing the rail tracks at issue or relevant permits issued by the Port. It variously refers to a “Temporary Rail Permit” (Petition at 1), “temporary rail spur permit” (*Id.* at 4), and “Revocable Rail Spur Permit No. 110” (Petition at 5). None of these are specifically identified in the Petition or its Exhibits thereto, and indeed permits bearing these names don’t exist. The Petition also confuses the rail permits pertaining to the rail spur track of the Facility with the tracks over which the PHL has been granted authority to operate by the Port. Nevertheless, some of the relevant factual information regarding the railroad tracks at issue may be gleaned from the Exhibits to the Petition. *See*, in particular, Exhibit 3, May 31, 2012 Memorandum of the Executive Director of the Port of Los Angeles to the Board of Harbor Commissioners.

II. The Petition Alleges no Specific Controversy or Uncertainty for the Board to Decide

The Petition must be denied because it presents no cogent or defined controversy to be eliminated or uncertainty to be removed pursuant to the Board's authority under 5 U.S.C. §554 and 49 U.S.C. §721. In the first place, the Petition does not identify either the "San Pedro Peninsula Homeowner's United Inc.," or "Tommy Rosas, Tribal Administrator, Tongva Ancestral Territorial Tribal Nation," let alone describe what interest or rights either of these entities might have related to the subject matter of the Petition. Plains and Rancho are aware of the petitioners through their opposition to the presence of the Facility and other industries in the San Pedro area. However, the Petition contains no statement as to why, even if a cogent controversy or uncertainty was described therein, the interests of these particular entities require the Board to take any action, let alone on an expedited basis, as the Petition requests.

Second, it is not at all clear what the petitioners are actually asking this Board to do. The Petition is composed of disjointed, unverified factual assertions regarding the Facility and related tracks, and summary statements about the Board's authority under 49 U.S.C. §10501(b), but it does not cogently explain the petitioners' view of the relationship between these two concepts. For example, the Petition states in one place that "[a] Board declaration is appropriate to eliminate any controversy and remove uncertainty regarding the authority of the Port of Los Angeles extending a 'temporary rail spur permit' for 42 years." Petition at 2. In another, the Petition states that the petitioners "requests [sic] the STB to issue an order regarding the use of the rail spur revocable permit without an updated EIR⁴ from Plains All America/Rancho and the Port of Los Angeles." *Id.* at 5. Consistent with the lack of any alleged specific controversy or

⁴ The term "EIR" is not defined in the Petition. However, Exhibit 3 to the Petition confirms that EIR is the abbreviation for an Environmental Impact Report sometimes required under California state law for certain state and local activities or construction.

uncertainty, the Petition's penultimate "Conclusion" and request for relief is simply for "the Board to issue an order regarding Revocable Rail Spur Permit No. 110," without any assertion of what that "order" should address. *Id.* Compounding this vagueness is that neither the Petition nor any of the exhibits attached to it contain any references or citations to a "Revocable Rail Spur Permit No. 110." Neither this Board nor any party potentially affected by a petition for declaratory relief should be forced to guess what questions or issues a petitioner is asking the Board to rule on. The Petition should therefore be denied because it is impermissibly vague.

III. The Apparent Substantive Issues Raised in the Petition do not Require Issuance of a Declaratory Order to Resolve

While the Petition's actual request for Board action is unclear, it proceeds from the general premise that the tracks utilized by PHL to serve the Facility are subject to the Board's jurisdiction pursuant to 49 U.S.C. §10501(b) and that therefore the Board has exclusive jurisdiction over use of the tracks at issue. Petition at 5. The Petition also infers that the Board has exclusive jurisdiction over the application of state environmental laws to the tracks at issue. Rancho and Plains concur the Board does have exclusive jurisdiction over the spur track serving the Facility, which has the characteristics of a spur track falling under 49 U.S.C. §10906. However, it is well established that the Board's exclusive jurisdiction over spur tracks covered by §10906 means that such track is not subject to state or local regulation. STB FD No. 35477, *Allied Industrial Development Corp. – Petition for Declaratory Order* (served September 7, 2015); STB FD No. 35765, *Wichita Terminal Association, BNSF Railway Co., & Union Pacific Railroad Co. – Petition for Declaratory Order* (served June 23, 2015) at 6-7. The Petition appears at bottom to ask the STB to use its declaratory order authority to impose state law remedies and actions, apparently on Rancho and/or the Port of Los Angeles. *See* Petition at 4 (vaguely stating a "Board declaration" is needed addressing the authority of the Port to extend a

“temporary rail spur permit”) and *Id.* at 5 (obliquely referring to an “order regarding the use of the rail spur revocable permit without an updated EIR from Plains All America/Rancho and the Port of Los Angeles”). These state law actions would regulate the rail operations of PHL over the tracks at issue. Because Board precedent clearly establishes that such state law actions would be preempted, there is no need for a declaratory order affirming this precedent, and Petition should be denied on that basis as well.

III. Conclusion

For all the reasons set forth hereinabove, Plains and Rancho respectfully request that the Board (1) summarily deny the Petition for Declaratory Order filed by petitioners in this docket, and (2) terminate this proceeding.

Respectfully submitted,



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Dated: October 31, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 31th day of October, 2016, I have served copies of the foregoing Reply to Petition for Declaratory Order by email and/or by first class mail on all parties of record on the official service list for this proceeding.

Thomas W. Wilup
