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April 18, 2014

VIA E-FILINGMs. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111Re: Finance Docket No. 35803, United States Environmental
Protection Agency – Petition for Declaratory Order

Dear Ms. Brown:

The Board set a schedule for this proceeding whereunder comments by interested parties were due March 28, 2014, and replies to these comments were due April 14, 2014. The U.S. Department of Transportation (“DOT”) filed its initial Comments to the EPA Petition on April 14, 2014. The points raised by DOT could have been presented on March 28, which would have afforded other parties an opportunity to respond. Because DOT did not submit its Comments until April 14, however, that opportunity was lost.

While DOT maintains that it is not taking a position on the ultimate issues in this proceeding, it sets forth arguments that are prejudicial to the interests of the South Coast Air Quality Management District. In the interest of fairness and a complete record, we respectfully request that the Board permit the District an opportunity to present a limited reply to DOT’s Comments.¹

¹ See *Mich. Air-Line Ry. Co. – Abandonment Exemption – in Oakland Cnty., Mich.*, AB 1053 (Sub-No. 1X), slip op. at 1 (STB served May 18, 2011) (STB allowed Railroad to file a reply to respond to allegations first raised by a shipper in its own reply).

Ms. Cynthia Brown
April 18, 2014
Page 2

Enclosed is the Reply of the District to the Comments filed by DOT. The Reply does not address any matters other than the specific concerns raised by DOT.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelvin J. Dowd". The signature is fluid and cursive, with the first name "Kelvin" being the most prominent part.

Kelvin J. Dowd
An attorney for South Coast Air Quality
Management District

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY – PETITION FOR)	Finance Docket No. 35803
DECLARATORY ORDER)	
)	

**REPLY TO COMMENTS OF
THE U.S. DEPARTMENT OF TRANSPORTATION**

The South Coast Air Quality Management District (the “District”) submits this limited Reply to the U.S. Department of Transportation’s (“DOT”) Comments filed in this proceeding on April 14, 2014.

In its Comments, DOT states that it does not “intend to express an opinion” regarding the issues related to ICCTA preemption that are the subject of this proceeding.¹ However, DOT does proffer certain “potential impacts” of District Rules 3501 and 3502 for consideration by the Board.² This Reply addresses these alleged impacts.

I. The Definition of “Unattended” Will Not Cause Confusion

DOT suggests that because Rule 3502 defines “unattended” in a way that is not exactly the same as the FRA’s definition of “unattended equipment,” this will cause confusion and unnecessary setting of handbrakes. However, as the District showed in its

¹ DOT Comments at 2, n. 1.

² *Id.* at 2.

April 14 Reply,³ the definition in Rule 3502 essentially is the same as that used in the 2005 MOU between the Railroads and the California Air Resources Board, to which the Railroads obviously agreed. The MOU, which applies to all locomotives operating in California, defines an “unoccupied locomotive” as a locomotive that has “no personnel on-board.”⁴ The Railroads have been aware of and have proceeded under this agreed definition for almost ten (10) years, so any risk of actual “confusion” is unfounded.

II. Rules 3501 and 3502 will Not Limit Use of Remote Control Locomotives

DOT expresses a concern that Rules 3501 and 3502 do not account for situations where a railroad uses remote control locomotives to perform switching movements. But the Rules only apply to idling locomotives;⁵ if a locomotive is operated remotely to perform switching, it would not be idling and the Rules would have no impact. The Rules only will apply to a remote controlled locomotive if the operator allows it to idle for longer than 30 minutes, the same as with a locomotive that is left unattended.

³ See District Reply at 26.

⁴ See 2005 MOU (C)(1)(e); Rule 3502(c)(16) (“[u]nattended means where no crew member is on board a locomotive”).

⁵ See Rule 3502(c)(6) (a moving locomotive would not qualify as an “idling or idling event.”).

III. Rule 3502 Will Not Impact Critical Safety Tests or Inspections

DOT questions whether Rule 3502 will make it difficult for train crews to perform brake tests and inspections, because they will not be allowed to idle the engine for longer than 30 minutes in all circumstances. DOT states that it came to this conclusion because while Rule 3502 allows idling for “maintenance or diagnostic purposes,” it defines this work as work performed by a mechanic. However, DOT’s example effectively makes the unreasonable assumption that only one crew member would be staffing the train. In the more realistic scenario, one crew member could man the locomotive, while the other performed the brake inspection. DOT also assumes that the inspector always would need to *walk* the length of the train. In actuality, however, railyards frequently make use of motorized vehicles to perform inspections, in order to expedite the departure of priority trains, which include typically the longer 100+ car trains.

DOT also fails to take into account that 95% of the locomotives operating in the Los Angeles Basin are equipped with anti-idling devices,⁶ and therefore would be exempt from the Rules if they re-started the engine to maintain air brake pressure.⁷ It is also likely that the remaining 5% that are not equipped with AESS are not road locomotives used to haul 100+ car trains. Even in the improbable event that the brake

⁶ See Reistrup Reply V.S., p.3 (“BNSF and UP have equipped over 95 percent of their locomotives operating in the Basin with AESS devices, and that the standard shut down time setting is 15 minutes”).

⁷ See 3502(c)(1).

inspection is being performed by a crew member working alone, on foot, with a locomotive that is not equipped with AESS, it is highly unlikely that a notice of violation (NOV) would be issued in the scenario described by DOT, because the purpose of Rule 3502 is to prevent unnecessary idling when locomotives are not operating, not to inhibit their preparation to enter service.⁸

IV. Rule 3502 Will Not Negatively Impact the Integrity or Operation of Air Brake Systems

DOT suggests that Rule 3502 will increase the amount of time that locomotive air brake systems would be “off air,” and that this would result in an increase in the number of brake inspections that would need to be performed.⁹ Again, DOT has raised an issue which even hypothetically could only apply to at most the 5% of locomotives not already equipped with idling control devices. Also, as acknowledged by DOT, a brake inspection only would be required if a locomotive was off-air for more than four hours. It is not reasonable to permit an unattended locomotive to idle in excess of four hours just so that rail operators can avoid performing a brake inspection. And if there *is* a delay of over four hours, it will not be the result of complying with Rule 3502.

DOT also raises the concern that sending a crew member to attend a locomotive so the train can continue to idle will violate Rule 3502(h), which prohibits the deliberate circumvention of the idling requirement. While Rule 3502(h) does prohibit

⁸ See 3502(a) (“[t]he purpose of this rule is to minimize emissions from unnecessary idling of a locomotive.”).

⁹ The argument that Rule 3502 will negatively impact operations because air brake pressure will not be maintained was addressed in the District’s Reply at 26-27, and in its March 28, 2014 Supplemental Comments at 41.

moving the train in order to de-activate the anti-idling device or to prevent idling for more than 30 minutes, it is not offended if steps are taken to ensure that a locomotive is not unattended. Additionally, Rule 3502(c)(1) provides specifically that the anti-idling device may be programmed to re-start the engine in order to maintain brake pressure.

**V. Rule 3502 Will Not Cause Delays or Inefficiencies
Related to the Recharging of Air Brakes**

Finally, DOT suggests that recharging air brakes after a locomotive has been re-started will cause unnecessary delays. It is understood that recharging the brakes can take time, but that is why Rule 3502(c)(1) specifically allows the anti-idling devices to be programmed to maintain brake pressure. Since 95% of the locomotives operating in the Los Angeles Basin are equipped with anti-idling devices, DOT's concern at most would have very limited application.

Moreover, for the remaining 5% of trains that may not be equipped with anti-idling devices, it is by no means certain that recharging air brakes will cause train delays. Brakes do not lose their charge instantly, which is why FRA regulations do not require a brake check until the brake system has been "off-air" for over four hours.¹⁰ Moreover, if a train has been left unattended for several hours and then is scheduled to resume operation, recharging the air brakes easily can be incorporated into the preparation process. As discussed *supra*, if there is a lengthy delay that requires the operator to recharge the brakes and perform a brake inspection, it would not be caused by Rule 3502.

¹⁰ See 49 C.F.R. 232.205(a)(3).

CONCLUSION

The Board should affirm that District Rules 3501 and 3502 are enforceable as part of the California SIP under the CAA, and are not preempted by the ICCTA.

Respectfully submitted,

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2014, I served copies of the forgoing Reply of the South Coast Air Quality Management District on all known parties of record to this proceeding by first class U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read 'Kelvin J. Dowd', written over a horizontal line.

Kelvin J. Dowd