

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35929

238565

PENINSULA CORRIDOR JOINT POWERS BOARD
--PETITION FOR DECLARATORY ORDER--

ENTERED
Office of Proceedings
June 8, 2015
Part of
Public Record

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
PENINSULA CORRIDOR JOINT POWERS BOARD'S
PETITION FOR DECLARATORY ORDER**

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Pursuant to the Board's decision served June 1, 2015 instituting a declaratory order proceeding, Union Pacific Railroad Company ("Union Pacific") submits these Reply Comments to the Verified Petition for Declaratory Order filed on May 19, 2015 ("Petition") by the Peninsula Corridor Joint Powers Board ("JPB"). Union Pacific has a significant interest in this proceeding because Union Pacific serves freight customers and holds the exclusive right to provide intercity passenger service on the corridor that JPB seeks to electrify, and has ownership interests in track and real estate along the corridor.

JPB seeks a declaration that the application of the California Environmental Quality Act (Cal. Public Resources Code §21000 *et seq.*) ("CEQA") to JPB's electrification project is preempted by the ICC Termination Act ("ICCTA"). Petition at 1. The Petition was prompted by litigation brought against JPB concerning application of CEQA to the electrification project. *Id.* at 3. Union Pacific takes no position on the substantive preemption issues raised by the Petition. Rather than submit comments that could duplicate arguments submitted by other interested parties, we will focus our comments on a unique perspective – the potential effect on freight operations. The purpose of our comments is to ensure that freight service on the line is not adversely affected by the outcome of this proceeding or the underlying litigation.

The line that JPB seeks to electrify runs from San Francisco to San Jose, California. Petition at 2. In 1991, JPB acquired this line from Southern Pacific Transportation Company (“Southern Pacific”), Union Pacific’s predecessor. *Id.* This transaction resulted in three distinct operating arrangements:

- 1) From San Francisco to Santa Clara, at a point known as CP Coast, (“Peninsula Segment”), JPB acquired the real estate and track structure.¹ Southern Pacific retained a freight operating easement and the exclusive right to provide intercity passenger service on the Peninsula Segment and also received trackage rights over this segment to preserve its ability to provide freight service and intercity passenger service.²
- 2) Between CP Coast and CP Lick, a point south of San Jose (“Lick Segment”), JPB acquired the real estate and a then-under construction second main line track and Southern Pacific retained ownership of the existing main line track for its current and future operations.³
- 3) Along the segment from CP Lick to Gilroy, JPB received a passenger operating easement and trackage rights, but Southern Pacific retained ownership of the track structure and real estate that it uses for rail operations.⁴

JPB seeks to electrify the Peninsula Segment and the segments of track owned by JPB in the Lick Segment. While operations on the corridor vary by segment, Union Pacific operates freight trains on both segments. The Peninsula Segment is a double-track railroad over which

¹ *Peninsula Corridor Joint Powers Board and San Mateo County Transit District--Acquisition Exemption--Southern Pacific Transportation Company*, FD 31980 (decided Jan. 13, 1992).

² *Southern Pacific Transportation Company--Trackage Rights Exemption--Peninsula Corridor Joint Powers Board and San Mateo County Transit District*, FD 31983 (decided Jan. 13, 1992).

³ *Peninsula Corridor Joint Powers Board and San Mateo County Transit District--Acquisition Exemption--Southern Pacific Transportation Company*, FD 31980 (decided Jan. 13, 1992).

⁴ *Peninsula Corridor Joint Powers Board--Trackage Rights Exemption--Southern Pacific Transportation Company*, FD 31985 (decided Jan. 13, 1992).

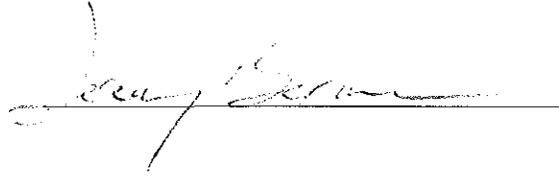
JPB provides commuter rail service and Union Pacific provides freight service on the same tracks. The Lick Segment is primarily a triple-track railroad with some sections, particularly near passenger stations, having more than three tracks. While Union Pacific owns one mainline track and JPB owns the other two mainline tracks, either party may operate over any track at any time depending on operating demands.⁵ By virtue of its exclusive intercity passenger rights, Union Pacific hosts passenger trains on the Lick Segment.

Due to the nature of operations on the corridor, any CEQA conditions, requirements, or mitigation measures placed on JPB's electrification project have the potential to significantly interfere with Union Pacific's freight operations. Without taking a position on the merits, Union Pacific requests that the Board consider freight service on the corridor when issuing its decision in this proceeding. If the Board finds that application of CEQA to JPB's project is not preempted, then the Board should make clear in its decision that any conditions imposed on JPB's project pursuant to CEQA must not interfere with Union Pacific's operations because the application of CEQA to interstate rail operations is clearly preempted by ICCTA.⁶

⁵ Union Pacific's mainline track along the Lick Segment, known as the New Coast Main (and sometimes referred to as "MT1"), is not included in JPB's electrification project. While JPB currently dispatches the entire Lick Segment, the New Coast Main is excluded from the trackage rights agreement that provides JPB dispatching authority over the segment. See Trackage Rights Agreement—Peninsula Main Line and Santa Clara/Lick Line (attached as part of Exhibit 2 to JPB Petition), §§ 1.16, 4.1 (excluding New Coast Main from definition of "Joint Facilities" over which JPB has exclusive dispatching authority).

⁶ See *The City of Alexandria, Virginia--Petition for Declaratory Order*, FD 35157, slip op. at 5 (served Feb. 17, 2009) ("local zoning and other requirements that could interfere with or prevent [transportation by rail carrier] are preempted"); *New York Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (ICCTA preempts "state laws that may reasonably be said to have the effect of managing or governing rail transportation..."); *City of Auburn v. United States*, 154 F.3d 1025, 1031 (9th Cir. 1998) (finding ICCTA preempts state and local regulation of rail lines).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy M. Berman", is written over a horizontal line.

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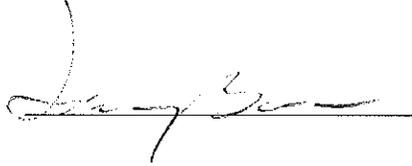
June 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2015, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on:

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A handwritten signature in black ink, appearing to read "Joan L. Cassman", written over a horizontal line.