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ENTERED
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March 8, 2016
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VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: Docket No. FD 35960, *Petition of Union Pacific Railroad Company for Declaratory Order*

Dear Ms. Brown:

We write on behalf of SFPP, L.P. ("SFPP"), in response to the letter filed by Union Pacific Railroad Company ("UP") on February 17, 2016 ("Letter"),¹ providing the Board with notice of the California Superior Court's Ruling of February 9, 2016 ("Ruling"). SFPP replies to several omissions and mischaracterizations in UP's Letter.

First, UP omits the court's conclusion that "there is no exclusive jurisdiction by the STB over claims for rescission of contract or unjust enrichment," and that this action does not involve "the application of complex regulations." Ruling at 4. UP also omits the important finding that the matter "does not simply involve a single instance of competing rights between the parties," or "very narrow circumstances" as those "[i]n other preemption cases, [where] the nature of the dispute between the parties was **already known**." *Id.* (emphasis added). Instead, the court found that the matter will require "**hypothesiz[ing]** about the many possible burdens" allegedly caused by SFPP's pipeline "before determining whether those burdens, **real or not**, are unreasonable." *Id.* at 5 (emphasis added). "[B]ecause of its somewhat **speculative nature**," and what the court stated were "unique issues" and "unusual circumstances," the court granted a stay. *Id.* at 4-5 (emphasis added).

Second, the pending action, in actuality, involves UP's attempts to invoke ICCTA to compel another federal common carrier to remain in a contract, to pay rent and expenses under the contract, and to perform relocations **under the specific terms of the contract**, which the California Court of Appeal ("COA") has determined may be invalid, and to block SFPP's ability

¹ UP's pleading is addressed to the Board members rather than to the Office of Proceedings as required under the Board's rules (49 C.F.R. 1104.1(a)).

Ms. Cynthia T. Brown

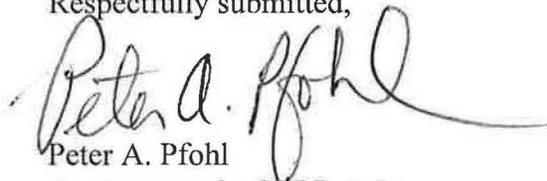
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to effectuate the COA Opinion, which raised contract validity. In addition to seeking to compel SFPP to be subject to provisions of a contract whose validity the COA has placed in doubt, UP also seeks the unilateral "right to eject" SFPP (Pet. at 7), another federal common carrier, from property over which UP has not established an ownership interest. UP further omits that the contract at issue is not the only source of UP's rights, and even if the contract is rescinded in the future, UP will still be entitled to all applicable protections from this Board and the ICCTA.

SFPP respectfully requests that the above be given full consideration in reviewing the Ruling and determining whether UP has met its burden to demonstrate circumstances warranting issuance of a declaratory order, or a finding of preemption.

Respectfully submitted,



Peter A. Pfohl
An Attorney for SFPP, L.P.

Enclosure (certificate of service)

cc: Chairman Daniel R. Elliott III
Vice Chairman Deb Miller
Member Ann D. Begeman

CERTIFICATE OF SERVICE

I hereby certify that this 8th day of March 2016, I served copies of the foregoing by First Class United States Mail and/or more expedited means upon counsel/parties of record as identified on the STB's electronic service list for this docket.

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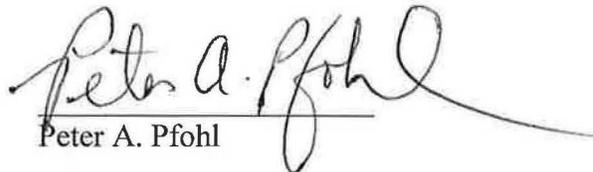
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