

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35861

ENTERED
Office of Proceedings
November 19, 2014
Part of
Public Record

CALIFORNIA HIGH SPEED RAIL AUTHORITY

SUPPLEMENT TO RAIL UNIONS' AMENDED CERTIFICATE OF SERVICE

The amended certificate of service filed and served by the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED"), the Brotherhood of Railroad Signalmen ("BRS"), the International Association of Sheet Metal, Air and Transportation Workers Mechanical Division (SMART/MD), the American Train Dispatchers Association ("ATDA"), the Brotherhood of Locomotive Engineers and Trainmen/IBT ("BLET"), the National Conference of Firemen and Oilers District of Local 32BJ, SEIU ("NCFO"), and the International Brotherhood of Electrical Workers ("IBEW") stated that the unions' reply to the California High Speed Rail Authority's petition for a declaratory order was attached to the amended certificate of service. Unfortunately, the reply was not attached to the amend certificate. The unions therefore submit this supplement to the amended certificate of service, to which the reply is attached.

Respectfully submitted,



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Date: November 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Reply of Brotherhood of Maintenance of Way Employes Division/IBT and Brotherhood of Railroad Signalmen to California High-Speed Rail Authority's Petition for Declaratory Order by First Class Mail, to the following:

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35861

CALIFORNIA HIGH SPEED RAIL AUTHORITY

**RAIL UNIONS' REPLY TO CALIFORNIA HIGH-SPEED RAIL
AUTHORITY'S PETITION FOR DECLARATORY ORDER**

The Brotherhood of Maintenance of Way Employees Division/IBT (“BMWED”), the Brotherhood of Railroad Signalmen (“BRS”), the International Association of Sheet Metal, Air and Transportation Workers Mechanical Division (SMART/MD), the American Train Dispatchers Association (“ATDA”), the Brotherhood of Locomotive Engineers and Trainmen/IBT (“BLET”), the National Conference of Firemen and Oilers District of Local 32BJ, SEIU (“NCFO”), and the International Brotherhood of Electrical Workers (“IBEW”) are the labor unions that respectively represent railroad maintenance of way employees, signal workers, sheet metal workers, train dispatchers, locomotive engineers, shop laborers, and electrical workers on a national basis on the nation’s Class I rail carriers. These Unions support the petition of the California High-Speed Rail Authority (“Authority”) for a declaratory order that the Board has exclusive jurisdiction over the Authority’s planned construction of a high speed rail line between Fresno and Bakersfield, California such that persons who oppose or seek to delay construction of the line cannot obtain an injunction under the California Environmental Quality Act (“CEQA”) blocking or delaying construction of the line.

When the Board asserted jurisdiction over the California High Speed Rail project under 49 U.S.C. §10901 because the Authority would be constructing and operating a line of railroad that would be part of the interstate rail system, the Board assumed exclusive jurisdiction over construction of the line (49 U.S.C. §10501). It has been clear for decades that the Interstate

Commerce Commission had, and the Board has, exclusive jurisdiction over construction of rail lines that are, or will be, part of the interstate rail system, transactions concerning ownership and control of such lines, and abandonment of such lines; and Congress has consistently increased the agency's jurisdiction over lines that are, or will be, part of the interstate rail system.

The reason for this broad and expanding grant of authority is that rail lines were built in a haphazard manner in the 19th and early 20th centuries. The result in the early 20th century was an incoherent and irrational system. During World War I, the government found that rail traffic could not be efficiently moved across the country. When the railroads were returned to private control after the War, Congress resolved to promote a more rational and effective rail network. The Transportation Act of 1920 gave the Commission authority to shape a more coherent system. The Commission's authority was increased in the 1940 Transportation Act and then in subsequent statutes. This authority and jurisdiction was continued in the Interstate Commerce Commission Termination Act. Moreover, that statute, which generally gave the STB a smaller role than the ICC, specifically vested the Board with greater authority and exclusive jurisdiction over matters involving intra-state rail lines, sidings and crossings. *Franks Investment Co. v. Union Pacific R.R.* 534 F. 3d 443, 445-446 (5th Cir. 2008); *CSX Transp. v. Georgia Public Service Comm.*, 944 F. Supp. 1573 (N.D. Ga 1996); *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F. Supp 1288 (D. MT 1997). At this point there is simply no gap in the Board's exclusive jurisdiction to allow for state regulation of the construction of rail lines that will be part of the interstate rail network.

Accordingly, it would be fundamentally inconsistent with the ICCTA, and contrary to decades of precedent, for a state court to enjoin the Authority's construction of a rail line that has been authorized by the Board.

It also does not matter that the line the Authority is building will be used for passenger rail transportation, not freight. During the first eighty plus years of the Interstate Commerce Act there

was no distinction between passenger railroads and freight railroads; there were only railroads. Rail lines were used for both forms of rail transportation; and the Commission's jurisdiction was no different as to lines used for intercity passenger rail transportation than it was for intercity freight transportation. Furthermore, the same considerations about developing a coherent and effective interstate rail network for rail transportation generally apply with regard to developing high speed passenger rail lines. If construction of high speed passenger lines can be blocked, limited or rerouted by state courts applying state law without regard for the considerations that persuade the Board to authorize a transaction, then 21st century passenger rail transportation will be beset with the same problems as hobbled early 20th century rail transportation.

For these reasons, and for the more detailed reasons stated in the Authority's petition, the Unions respectfully submit that the Board should grant the petition and declare that it has exclusive jurisdiction over the construction of the Fresno-Bakersfield line. Absent that declaration, opponents of the line approved by the Board will continue to seek state court injunctive relief, this time under the CEQA, to block, delay or reroute the line, frustrating this Board's properly-exercised authority in the process.

Respectfully submitted,

/s/ Richard S. Edelman

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Date: November 6, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Reply of Brotherhood of Maintenance of Way Employes Division/IBT and Brotherhood of Railroad Signalmen to California High-Speed Rail Authority's Petition for Declaratory Order by First Class Mail, to the following:

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