

LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

By E-Filing

November 15, 2010

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

**RE: Finance Docket No. 35380, San Luis & Rio Grande Railroad
Petition for a Declaratory Order**

Dear Ms. Brown:

I am writing on behalf of the San Luis & Rio Grande Railroad ("SLRG") in connection with the above-captioned proceeding. SLRG asks the Board to deny the request for an oral hearing contained in a signed "Petition" filed by Clean Water, Inc. ("Clean Water") on November 5, 2010. Additionally, SLRG requests that the Board strike as late-filed both that Petition and another document entitled "Complaint and Petition for Review of Federal Agency Action" ("the Complaint") submitted November 8, 2010, by Clean Water.

Regarding the former, there is no basis for Clean Water's field hearing request and it should be denied. Most proceedings at the Board including this one involve the presentation of evidence and argument by written pleadings. Historically, this process was known as "modified procedure." The Board's modified procedure rules state

“(a) Requests. Requests for oral hearings in matters originally assigned for handling under modified procedure must include the reasons why the matter cannot be properly resolved under modified procedure. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) Disposition. Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.” 49 CFR 1112.10.

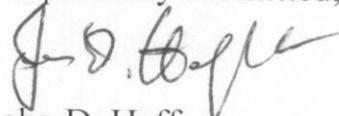
As the Board is well aware, this case presents two basic legal and policy issues: (1) whether the sealed bags and metal containers used for transportation here are “original shipping containers” and therefore exempt from the Clean Railroads Act amendment to the I.C.C. Termination Act and (2) if so, whether SLRG’s transloading operations satisfy the Board’s preemption precedent such as The City of Alexandria, Virginia-Petition for Declaratory Order, STB Finance Docket No. 35157, STB served February 17, 2009 and Borough of Riverdale-Petition for Declaratory Order, STB Finance Docket No. 35299, STB served Aug. 5, 2010. If the Board finds that the sealed bags and metal containers used here meet the definition of an “original shipping container,” and SLRG’s operation of its transload facility meets the Board’s preemption precedent, the Conejos County Land Use Code does not apply.

Clean Water’s hearing request fails because it does not explain why written submissions are inadequate. Moreover, there are no material facts in dispute. The questions presented here involve legal and policy considerations rather than factual determinations. Accordingly, it would make little sense for the Board to spend its limited resources to conduct any sort of field hearing.

There is a second reason for rejecting both filings. The Board set October 12 as the date for filing public comments with October 27, 2010, as the deadline for filing replies. As SLRG did not submit anything on October 12, Clear Water has no right to reply on October 27. Moreover, the “Complaint” concerns litigation that Clear Water filed in federal court alleging that the Department of Energy failed to comply with the National Environmental Policy Act in its efforts to dispose of waste matter generated by the Los Alamos National Laboratory’s facility near Conejos County, CO. Neither the Board nor SLRG are parties to that litigation and the matters involved are beyond the jurisdiction of the Board.

Accordingly, SLRG requests that the Board deny Clean Water's request for an oral field hearing and strike both the signature Petition and the "Complaint" as late-filed. Furthermore, SLRG requests that the Board reject the Complaint as seeking relief outside the Board's jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner". The signature is written in a cursive style with a prominent initial "J".

John D. Heffner

cc: All parties