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Train Riders Association of California

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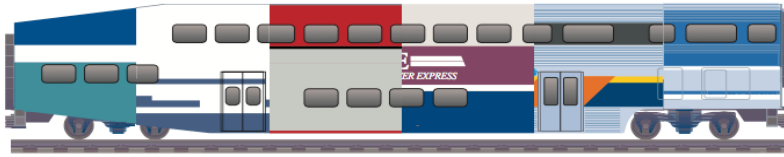
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April 21, 2021

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 22, 2021
Part of
Public Record

Re: Docket # AB-1310X
Northwestern Pacific Railroad Company - Discontinuance of Service
Exemption in Marin, Napa, And Sonoma Counties, CA

Dear Ms. Brown:

The Train Riders Association of California ("TRAC") requests leave to file short responses to NWPCo's filing of April 16, 2021 and SMART's filing of April 20, 2021 in this matter. We believe that correcting several factual errors, offering two Verified Statements, and pointing out that several rhetorical questions had already been answered in our March 31, 2021 submission will aid the Board in reaching a well-founded decision.

Thank you for your consideration of this request.

Sincerely yours,

/s/ DAVID SCHONBRUNN

David Schonbrunn, President
415-370-7250

Reply to NWPCo Letter of April 16, 2021

TRAC disagrees with NWPCo's characterization of its Petition as a "straightforward request..." (Petition at 1.) TRAC's March 31, 2021 submission amply demonstrates that this is not the case.

TRAC asserts that NWPCo erred when it asserted that "TRAC asks the Board to deny the NWPCo proposed discontinuance..." (Petition at 2) TRAC instead called for a full proceeding, rather than an exempt one: "The Train Riders Association of California respectfully requests the Board deny the Petition for Exemption for NWPCO's proposed discontinuance..." (TRAC submission at 6).

TRAC offers a response to NWPCo's statement that "TRAC does not provide any explanation as to how its request is relevant to the proposed discontinuance because the Cloverdale to Willits segment of line is not the subject of the NWPCo Petition." (Petition at 2.): The 300+ miles of the Northwestern Pacific Railroad (as distinguished from NWPCo) should be dealt with holistically. Right now, the disposition of the railroad has been split up into three separate STB dockets¹. TRAC's request to STB was intended to eliminate the need for yet one more docket in the future to resolve the status of the currently out-of-service line from Cloverdale to Willits. The mere fact that NWPCo found it convenient or advantageous to leave the resolution of that segment to the future is not controlling on STB. NWPCo is in the process of going out of business, as is NCRA, and either body could lack the ability or resources in the future to file a new petition. It is in the public interest to resolve all issues relating to this railroad now.

TRAC offers a response to NWPCo's statement that "Nor does TRAC explain how regulation of the discontinuance will have any effect on the Cloverdale to Willits segment because that segment will remain out of service..." (Petition at 3.): Because NCRA has chosen to not include this segment in its railbanking effort, the fate of this segment needs to be determine while all these dockets are before the STB.

TRAC offers a response to NWPCo's statement that "Finally, TRAC does not explain why it could not express these complaints in an abandonment proceeding if and when the Cloverdale to Willits segment were to be subject to an abandonment proceeding before the Board." (Petition at 3.): Good public policy dictates that the fate of this segment be determined while all these dockets, which include all the other segments of the railroad, are before the STB, not at some undefined later date.

TRAC challenges the validity of NWPCo's assertion that "TRAC does not assert that it represents any complaining shippers, rail carriers, or local governments to support its assertions that the requested discontinuance by NWPCo is controversial." (Petition at 3.) TRAC's March 31, 2021 submission clearly presents evidence that shippers have sought freight service on the line. Recent verifications of those requests were provided

¹ AB 1305X, AB 1310X and FD 36481.

specifically for the TRAC submission. That indicates that the shippers sought to convey through TRAC's filing that they continue to seek service.

Exhibit 5e is a letter from Mendocino Railway to NCRA formally requesting freight service. That letter is verified by Exhibit 8. In addition, Exhibit 9 is a letter from the Mendocino Family of Companies, the largest producer of redwood and redwood products in the world, to the NCRA, requesting freight service.

TRAC's statement that "Granting NWPCO the requested exemption would have the effect of transferring NWPCO's common carrier rights to SMART without any further proceedings." (TRAC submission at 2.) is the explanation sought by NWPCo's statement that "TRAC does not explain why this proceeding is the appropriate venue to air its grievances against SMART's acquisition of operating authority or the State of California's future plans related to the Cloverdale to Willits segment." (Petition at 3.) TRAC asserts that the issues of SMART's financial capacity and bad faith are best raised while the operating authority still rests with NWPCo.

Reply to SMART Letter of April 20, 2021

TRAC notes the hyperbole in SMART's assertion that "the second point [TRAC's assertions that SMART is not financially fit to provide freight rail service and is not seeking the freight rail service obligation in good faith] is not supported by any TRAC evidence." (Reply at 4.) SMART provided the citations to TRAC's evidence in the previous sentence: "TRAC Opposition at 2–6, 9–10, 23–25, 96–118." (Reply at 4.)

TRAC will restate its argument, since SMART apparently didn't see it: ("No evidence or argument offered by TRAC demonstrates that STB regulation of the NWPCO discontinuance (through the filing of a discontinuance application) is necessary to carry out the rail transportation policy ("RTP") of 49 U.S.C. § 10101. 49 U.S.C. § 10502(a)." (Reply at 4-5.) TRAC believes that SMART's bad faith is likely to result in the discontinuance of all rail freight service, which would eliminate effective competition between rail and truck, contrary to the RTP. 49 U.S.C. § 10101(4).

The same reason is TRAC's response to SMART's assertion that "TRAC has not met its burden to show that regulation of the transaction that was the subject if [sic] the SMART Exemption is necessary to carry out the RTP. 49 U.S.C. § 10502(d); 49 C.F.R. § 1121.4(f)." (Reply at 5.)

TRAC disagrees that "The 2019 SMART Board presentation relied upon by TRAC was published almost two years ago and has no bearing on the current SMART operating budget or SMART's longer term financial plan." (Reply at 6.) Despite SMART's various attachments offering a plethora of current details, the 2019 presentation accurately indicated the financial fragility of the agency, which has been exacerbated by an 85% drop in ridership due to COVID-19. The Verified Statement of Michael Arnold, PhD, offers a more in-depth view of SMART's financial strength. (Exhibit A.)

SMART attempts to minimize the significance of TRAC's evidence of Mr. Thronson's email. (Exhibit 5b to TRAC submission.) Although SMART argues that this evidence "says nothing about SMART's present intention to provide freight rail service on the Subject Line" (Reply at 7), the present intention is irrelevant. With his involvement back when the scheme was first being planned, Mr. Thronson establishes that there was no intention to operate freight at that time.

TRAC responds to the Verified Statement of SMART General Manager Farhad Mansourian (cited at Reply pages 8-9) with the Verified Statement of Former NWPCo General Manager Jacob Park, (Exhibit B) a history of SMART's obstruction of freight.

This conclusion is further supported by the complete absence of any business financials in the Board Packet (Exhibit 4 to TRAC submission) for the SMART meeting when the Board approved the acquisition of NWPCo. That absence creates the presumption of a non-business intent in acquiring NWPCo, which SMART failed to rebut in its Reply. Together, these points contradict SMART's assertion that "TRAC has not provided any credible evidence that SMART is not seeking freight operating rights in good faith." (Reply at 11.)

A freight operator eager for business would not have uttered SMART's excuse that "But there is not freight service or freight service obligation on the south of Ignacio." (Reply at 10.) TRAC believes this statement to have been a giveaway as to SMART's real intent. SMART makes an irrelevant exhortation that "The STB should not question the business judgment of the SMART Board or substitute its judgment or TRAC's judgement for that of the SMART Board." (Reply at 10.) The SMART Board's judgment is not at issue here. When a public body buys a business as a going concern without any financial documentation, and justifies it with illogical statements, the issue is not judgment--it is bad faith.

TRAC predicts its bad faith allegations will be vindicated. We expect the freight consultant hired by SMART will return with a report concluding that the market will not support a viable freight operation. SMART would then file a service discontinuance petition afterwards. STB could deter such gamesmanship by deferring action on NWPCo's Petition until after SMART's marketing study is released in final form. At that point, the record will be complete.

Thank you for considering these comments.

Sincerely yours,



David Schonbrunn, President
415-370-7250

Exhibit A

Verified Statement of Michael Arnold, Ph.D.

My name is Michael Arnold. I am a Ph.D. economist that has worked over 30 years in the banking and finance sector in financial risk management. I was a lecturer in the Economics Dept. at UC Berkeley 2012-2018. I currently lecture on economics and finance at the Fromm Institute (USF), in the Osher Life Long Learning Institute at Dominican University (San Rafael) and Sonoma State University.

I have closely followed the financial condition of SMART starting in 2006, prior to the voters' approval of the Measure Q quarter cent sales tax in 2008. That ballot measure enabled SMART to construct its rail system.

I have been the Chair or Co-chair of the campaigns against the SMART ballot measures in 2006 and 2008 and technical advisor on the March 2020 "NotSoSMART" campaign formed to oppose the proposed tax extension (Measure I). We defeated SMART at the polls last year, limiting the vote in favor of the measure to less than 55%.

After reviewing the Verified Statement of Heather McKillop, my comments are as follows:

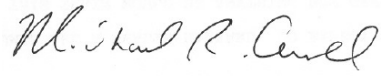
1. The long-term financial strength of the agency is dependent on its political favorability with the electorate. The current sales tax expires on March 31, 2029. For SMART to survive beyond this date, it must pass an extension of the tax. California's constitution requires that a special sales tax measure must receive a 2/3 vote to pass. That is a very difficult bar.
2. The STB should not assume that SMART will be able to pass a tax extension measure in the future. The proposed tax extension measure (Measure I) received less than 55% approval in March 2020.
 - After 12 years of marketing and promoting rail in Marin and Sonoma counties, there were 88,000 fewer "yes" votes and 20,000 more "no" votes in March 2020 than in November 2008. The STB should consider this record at the polls and the difficulty SMART is going to have winning back the approval of voters when they next place a tax extension measure on the ballot.
 - Almost two million dollars was spent locally to defeat Measure I (March 2020) and the campaign significantly influenced voter perception of this agency and the financial viability of a within-suburban passenger rail system. This conclusion is based on an internal poll conducted by the funder.
 - The CFO did not disclose how little SMART has done to control their overall expenses during the crisis, while their ridership has declined 85% due to COVID. The result: taxpayer subsidy per rider, based on their own published financial data, is now over \$300 per boarding.
 - And what was one of the major campaign arguments we used in March 2020 to sway voters that this rail system was cost-ineffective? "It's costing over \$100 per roundtrip in taxpayer subsidies." We used this argument because an internal campaign poll indicated voters were sensitive to this concern.
 - While I expect some of their ridership is going to return post-pandemic, a prudent analyst would expect that, due to the remote-work phenomena that appears to be rolling out throughout the country, ridership is unlikely to return to the levels preceding the

pandemic. Hence, the performance metrics in the next campaign will be even worse than they were in late 2019/early 2020.

3. Ms. McKillop's statement refers to four different dates for a tax extension measure (2022, 2024, 2026, and 2028). There are, in fact, eight different dates, because a measure can be placed on either a primary or general election ballot. However, only one of the eight dates has the potential to reverse the outcome from Measure I. And that is the Presidential election in 2024, where turnout would expect to be the highest. As evidenced by the November 2008 Presidential election, high turn-out favors tax measures in our area. Low turn-out makes passing such measures more difficult. Primary elections and general gubernatorial elections would have lower turnout.
4. There is the reality that should SMART lose the next tax extension measure, whenever that occurs, their remaining time to tax expiration is significantly shortened. This will limit their ability to obtain federal, state, and regional grants, for obvious reasons.
5. It is simply unrealistic to think November 2028 is a viable tax measure date. It would be difficult to obtain voter approval while simultaneously being forced to do contingency planning for shutting down operations. Dissolving a rail transit agency is not something that is simple, nor something that has occurred sufficiently frequently to fully understand the complexities and challenges.
6. Ms. McKillop's statement says nothing about the agency's ability to finance freight rail operations, other than that it has received small grants from the State. It says nothing about the agency's ability to finance capital projects that benefit freight service. SMART has acknowledged that it is unable to extend its rail line to Cloverdale without a grant from the State. SMART's Board Chair recently stated that such grants are hard to obtain, due to the low population density along that segment.
7. To date, neither the SMART Board nor the public have been provided any information on the financial viability of freight operations in this corridor. For instance, the revenues earned by the private freight operator have never been stated, nor were the costs of operating the freight trains and providing service to the few customers currently shipping by freight.
8. Neither the Board nor the public have been provided information on the revenues earned by the private operator from the parking of LPG tanker cars in Schellville (Sonoma Co.). This issue has already been before the Board (STB Docket No. NOR 42148). The Board has already seen evidence of the political risk that local voters may pressure the agency to cease providing this service. This could seriously impact the net revenues earned from operating freight trains.
9. Once SMART is operating the freight trains, the net revenues will be public information. If they are not positive, there could be local political pressure for SMART to attempt to abandon freight rail service. The reason: SMART's primary revenue source is sales tax revenues. These are unaffected by the freight service. As a consequence, if the provision of freight service does not generate positive net revenues, it will reduce the funding for passenger rail.

I, Michael Arnold, PhD, declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2021 in Novato, California.

A handwritten signature in cursive script that reads "Michael R. Arnold". The signature is written in dark ink on a light-colored background.

Michael Arnold, Ph.D.

Exhibit B

Verified Statement of Jacob Park

My name is Jacob Park. I was the former General Manager of the Northwestern Pacific Railroad Company between January 2011 & January 2017. Since then, I have been self-employed.

From day one of my joining NWP Co as the General Manager in 2011, SMART's employees and consultants continually railroaded us in order to prevent us from ever operating. This continued throughout my time with NWP and after.

There are many examples of SMART attempting to block us from initially operating, including removing turnouts to potential shippers and continually badgering our owner, John Williams, our employees and myself. Prior to day one of our first train operation into Petaluma to inspect bridges and deliver 5 loaded grain cars to Hunt & Behrens, Tom Matoff of LTK and Jon Kerruish of SMART tried to stop us from delivering the grain cars. They placed numerous calls to the FRA and to me to stop our train crew from this delivery. The delivery was successful but it did not stop them from making numerous attempts to make our lives a living hell until I finally resigned in 2017.

I offer the following comments in response to the parallel items in Farhad Mansourian's Verified Statement:

Item 1: "Many of the sidings were not in a condition for freight service." This statement is false and incorrect. A siding is generally a passing track that has a switch on both ends. A spur is a track that directly serves a customer or a stub ended track. Prior to NWP operating, Park siding was restored. This siding was needed because it connected to Hunt & Behrens. Burdell siding was also in operating condition prior to NWP start-up. Santa Rosa siding was used by NWP multiple times to deliver railroad ties to Stacy & Witbeck for construction of the SMART mainline. Many of the other spurs that were not used by shippers were used by NWP to deliver company material for SMART construction. With minimal repairs or removal of weeds all of the customer spurs could easily have been restored to Class 1 track between Ignacio and Windsor.

Item 2: This is a half-truth. There was an original agreement that existed prior to Farhad's and my arrival that stated the "incremental" costs would be born by both parties. This agreement was thrown out and replaced thanks to negotiations between Doug Bosco/NCRA and Farhad. This was another nail in the coffin for NWP/NCRA, in that it obligated NCRA/NWP and the shippers to pay for the entire cost of any freight turnout going forward. There was one bone that SMART threw our way for a turnout in Cotati to serve a plastic pellet company (however, it was never built). They offered to contribute the first \$150k. NWP & the shipper were required to pay the difference of \$400k. This was an active rail shipper that transloaded to truck in Stockton.

Item 3: Farhad clearly does not understand what it takes to operate a handling carrier railroad. NWP has no contracts with Dairyman's, Hunt & Behrens, Willowbrook Feeds (not sure of their name now) or Lagunitas. NWP is a common carrier and operates without shipper contracts.

NWP is a handling carrier for Union Pacific and has a contract with UP. There is no requirement to have a contract with a shipper unless they are a captive shipper (only ship within NWP) or storage or for other various reasons. Letters from shippers demanding service were given to both NWP and SMART. SMART ignored those letters and ripped out the turnouts. It is a lot harder to provide service to a shipper without a turnout.

Item 4: Letters from shippers from Petaluma to Windsor demanding service were provided to NWP and SMART and no switches were ever built for those shippers. The construction on the line between Petaluma and Airport Boulevard was commencing at the same time we were trying to get shippers to use the rail. The construction made it impossible to get shippers to commit since they did not know when the railroad would be back in service and if they would get their switch back.

Item 5: Dairyman's was not rebuilt by SMART. It was previously rebuilt many years prior to NWP start up. The Adobe spur we agreed to count as a turnout even though it was not a main line turnout. Adobe was connected to the mainline through Willowbrook Feeds. The Petaluma Transload track was cut short at D Street in Petaluma so the depot property could be redeveloped. Prior to this, lumber cars were transloaded for customers Redwood Empire and tenants of the former Standard Structures property in Windsor. They used this location while track construction continued north of Petaluma. We also delivered material for SMART construction to this location.

NOTE: The Standard Structures spur now known as Pruitt Industrial Park shipped a car to be transloaded for Friedman's as recently as 2019 I believe. We delivered cars to this location for many customers (Standard Structures, Redwood Empire, I&E Lath, Friedman's & Mead Clark) over the years. The spur is now ripped out and SMART wants them to pay for its replacement. This shows how accommodating SMART truly is. Since this location served multiple customers and was an active spur prior to removal it seems that SMART has some legal obligation to replace it under the confines of being either a common carrier or residual common carrier.

Item 6 & 7: The Adobe spur was supposed to be a temporary location for Lagunitas to transload. They had a spur that directly served their facility and the former wine warehouse that Lagunitas currently distributes from. Both the wine warehouse and Lagunitas wrote letters to save their spur. Had the spur been reconnected, outbound beer and inbound bottles would have been shipped by rail. Mr. Sharyon is correct in his statement that it is "silly" that shipments were not directly delivered to Lagunitas. This was in both our minds a temporary solution to get service to Lagunitas started sooner. A direct connection should have been rebuilt since Lagunitas was an active shipper prior to the termination of the 2014 agreement.

Item 8: California Shingle and Shake was a viable shipper and their track was not "dilapidated". The single tie on the rail was a bumper at the end of the spur. The track only need weed removal. It was in good enough condition for Class 1 track. I was personally working with Union Pacific and California Shingle and Shake to get rail service started at their facility. Rates were being put together at the time the switch was torn out. An

employee of SMART suggested we transload their product at the Adobe spur which would have made the rail option cost prohibitive.

Item 10: The spur for Glenn Kantock is much more involved than stated. We were attempting to set it up as a transload for multiple companies in the area. This was a long drawn out process that involved many players. No cars were ever delivered to this location but there was definitely interest.

Item 11: I do not see any issue with 115 pound rail. This rail is more than enough to accommodate 286k rail cars.

SMART has no business being in control of the freight operation. They will make the service ineffective and cost prohibitive. From day one that they have had no interest in seeing freight rail succeed. SMART is the fox guarding the hen house. There is a reason that publicly run passenger rail agencies rarely operate freight. The only one I can think of is the Alaska Railroad. As far as I know they do a pretty good job. The Long Island Railroad is a great example of when the freight is now operated by an outside party. The New York & Atlantic took over their freight operations and grew the traffic from 10,000 carloads to over 30,000 carloads.

I know there is tremendous opportunity on this line to grow the freight rail business if it has a willing partner. There is demand to move wine, aggregates, lumber and many other commodities on what is operating today and what can be operated to at least Willits.

I, Jacob Park, declare under penalty of perjury that the foregoing is true and correct.

April 22, 2021

A handwritten signature in black ink, appearing to be 'Jacob Park', written over a horizontal line.

Jacob Park

PROOF OF SERVICE

I certify that I have this day served copies of the TRAC Request for Leave to File Replies, Reply to NWPCo Letter of April 16, 2021, Reply to SMART Letter of April 20, 2021 and Proof of Service, upon all parties of record in this proceeding, by email.

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Signed on April 22, 2021



David Schonbrunn, President of TRAC