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**SURFACE TRANSPORTATION BOARD**  
**Washington, DC 20423**

Office of Economics, Environmental Analysis, and Administration

September 18, 2009

Salvador Deocampo  
District Engineer, Texas Division  
Federal Highway Administration  
U.S. Department of Transportation  
300 E. 8<sup>th</sup> Street, Room 826  
Austin, TX 78701-3255

RE: Environmental Analysis of the Tower 55 Rail Line Redesign Project in  
Tarrant County, Texas; Acceptance of Invitation to be a Cooperating  
Agency

Dear Mr. Deocampo:

Thank you very much for your letter of September 8, 2009 inviting the Surface Transportation Board (Board) to act as a cooperating agency with the U.S. Department of Transportation Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) to complete the environmental analysis under the National Environmental Policy Act for the above referenced rail line project. Below, I have summarized the Board's jurisdiction over rail line constructions and what portions of the Tower 55 project the Board would have a potential licensing role.

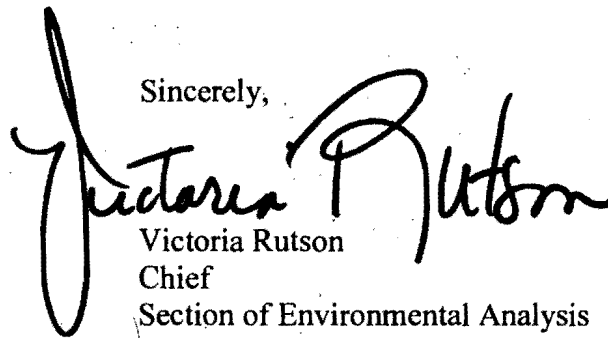
In general, the Board's jurisdiction over rail carriers is set forth in Chapter 105 of Title 49. The Board has jurisdiction over "transportation by [a] rail carrier" (section 10501(a)(1)) that is providing common carrier railroad transportation (section 10102(5)) over "any part of the interstate network" (section 10501(a)(2)). The term "common carrier" is not defined by statute, but is defined by common law and agency precedent. Railroads that are common carriers, such as Union Pacific Railroad and BNSF Railway, have a common carrier obligation "to provide service to any and all shippers along the line that request service in the future (49 U.S.C. 11101(a)). Persons who are, or intend to become, common carriers – and thus subject to the Board's jurisdiction – are subject to the regulatory provisions of the Interstate Commerce Act, as amended by the ICC Termination Act, including the general requirements of 49 U.S.C. 10901 that they obtain advance authorization from the Board before constructing or operating a new or extended line of railroad. This licensing requirement extends to all of such carriers' lines, including both "main" and "branch" lines.

As relevant here, two of the four proposed rail alternatives could be subject to the Board's licensing authority. The first concept – At-Grade Capacity and Operational

Improvements – would, among other things, add track to maximize concurrent use; and the fourth concept – Fort Worth & Western Railroad Bypass – would provide a number of upgrades to the current track, structures, and capacity in order to use the current track as a bypass for mainline operations. The fourth alternative would require additional right-of-way and require reinstatement of the Biddison connection between the Fort Worth & Western Railroad and BNSF Railway lines.

Based on this information provided, and pursuant to 40 CFR 1501.6, the Board's Section of Environmental Analysis is very pleased to accept the invitation. We look forward to working with you and the project team to complete this analysis. At your earliest convenience, please provide us with a schedule for briefing the cooperating agencies. If you have any questions or would like to discuss this matter further, please contact Diana Wood of my staff at (202) 245-0302 or email at [woodd@stb.dot.gov](mailto:woodd@stb.dot.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and a long, sweeping tail that extends to the right.

Victoria Rutson

Chief

Section of Environmental Analysis