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SURFACE TRANSPORTATION  
BOARD

DOCKET NO. FD 36077

NORTH COAST RAILROAD AUTHORITY  
AND NORTHWESTERN PACIFIC RAILROAD  
COMPANY

PETITION FOR DECLARATORY ORDER

SURFACE TRANSPORTATION BOARD  
395 E. STREET, S.W., ROOM 1027  
WASHINGTON, DC 20423

DECEMBER 8, 2016

3:00 P.M.

1 SPEAKER LIST

2

3

4 SCOTT ZIMMERMAN - CHAIR

5 EVELYN KITAY

6 ERIK LIGHT

7 NATHANIEL BAWCOMBE

8 MITCH STOGNER, BY PHONE

9 CHRISTOPHER NEARY, BY PHONE

10 WILLIAM ROSS, BY PHONE

11 TOM LYONS, BY PHONE

12 DOUG BOSCO, BY PHONE

13 JEFF RICHARD, BY PHONE

14 ED FISHMAN, BY PHONE

15 JUSTIN MARKS, BY PHONE

16 KEVIN SHEYS, BY PHONE

17

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19

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1 P R O C E E D I N G S

2 MR. ZIMMERMAN: Good afternoon everyone my  
3 name is Scott Zimmerman. I'm Deputy Director for  
4 Policy at the Office of Proceedings here at the STB.  
5 We are here today to discuss issues in the case of  
6 North Coast Railroad Authority and Northwestern  
7 Pacific Railroad Petition for Declaratory Order  
8 Docket No. FD 36077.

9 On November 3, 2016 the Board issued a  
10 decision in this case directing the Petitioners who I  
11 will refer to as North Coast to brief various issues  
12 and provide certain information and Sonoma-Marín Area  
13 Rail Transit District which we will refer to as  
14 SMART was directed to reply and any other parties  
15 were permitted to reply.

16 Following North Coast's submission, on  
17 December 2nd the Board issued a further order as you  
18 know scheduling this conference call today because,  
19 the Board said, "There is outstanding factual  
20 information necessary to complete the record and  
21 decide the issues raised in this proceeding."

22 The Board said the discussion "will be

1 limited to the areas where the Board seeks factual  
2 information related to the common carrier obligation  
3 and federal pre-emption." So some of you have been  
4 on a couple of conference calls that we have had in  
5 this case previously. Like those previous calls I  
6 just want to make sure that everyone understands that  
7 this is not an off the record mediation session but  
8 rather we are in an on the record session with Board  
9 staff who are here working on the case and will  
10 continue to work on the case. So this is again not a  
11 situation where there will be any recusals.

12 The Board staff you are talking to today  
13 will continue to be actively involved in the formal  
14 case. However, unlike the two previous calls we have  
15 had, this time we have a court reporter here with us  
16 in Washington transcribing the conversation verbatim  
17 for the record. So this will be an on the record  
18 discussion and the transcript of the discussion will  
19 be made part of the public record in the case.

20 Because we have a court reporter here I  
21 just wanted to point out that it is important  
22 especially for the folks that are on the phone to

1 speak clearly and loudly for the court reporter and  
2 if, you would, every time you speak it would be  
3 helpful if you could remember to re-identify yourself  
4 and who you represent so that the court reporter can  
5 accurately identify you in the transcript.

6 So before we get started let's go around  
7 and just re-introduce everybody who is on the call.  
8 In addition to myself here in Washington at the Board  
9 we have Evelyn Kitay, Deputy General Counsel,  
10 Nathaniel Bawcombe, Branch Chief in the Office of  
11 Proceedings and Erik Light an attorney in the Office  
12 of the General Counsel.

13 So on the phone if we could first just  
14 start with the North Coast representatives if you  
15 could identify yourselves one at a time for the court  
16 reporter and indicate -- spell your name and  
17 indicate what entity you represent.

18 Christopher Neary, N-e-a-r-y, Counsel for  
19 North Coast Railroad Authority.

20 Douglas Bosco, B-o-s-c-o, Counsel for the  
21 Northwestern Pacific Railroad Company.

22 Mitch Stogner, S-t-o-g-n-e-r, North Coast

1 Railroad Authority.

2 MR. ZIMMERMAN: And representatives from  
3 SMART if you could do the same?

4 MR. FISHMAN: Sure this is Ed Fishman,  
5 F-i-s-h-m-a-n with the Nossaman Law Firm, outside  
6 Counsel for SMART and I have two other colleagues  
7 here with me that will introduce themselves now.

8 MR. MARKS: Justin Marks, M-a-r-k-s.

9 MR. SHEYS: Kevin Sheys, excuse me, S (as  
10 in Sam) h-e-y-s again.

11 MR. LYONS: Tom Lyons, General Counsel for  
12 SMART.

13 MR. ZIMMERMAN: Very good. American  
14 Canyon?

15 MR. KITAY: Wait a minute, how do you  
16 spell Lyons?

17 MR. LYONS: L-y-o-n-s.

18 MR. ZIMMERMAN: Thank you.

19 MR. ROSS: For American Canyon William D.  
20 Ross, R-o-s-s, that's both the City of American  
21 Canyon and the American Canyon Fire Protection  
22 District.

1 MR. ZIMMERMAN: And Mr. Ross do you have a  
2 title?

3 MR. ROSS: I am District Counsel for the  
4 Fire District and the City attorney for the city of  
5 American Canyon.

6 MR. ZIMMERMAN: Okay great thank you. And  
7 for Napa County?

8 MR. RICHARD: Yes my name is Jeffrey  
9 Richard, R-i-c-h-a-r-d. I'm Chief Deputy Counsel  
10 with the Napa County Counsel's Office for Napa  
11 County.

12 MR. ZIMMERMAN: Very good, thank you  
13 everybody. Did I miss anyone? Okay -- as you all  
14 know in response to Motions for Protective Order  
15 filed by North Coast and SMART the Board yesterday  
16 issued a Protective Order in order to protect against  
17 the public disclosure of any information that would  
18 qualify as confidential or highly confidential under  
19 the terms of that order.

20 In today's call it is our intention not to  
21 ask questions that would require anybody to respond  
22 with highly confidential information under the

1 Protective Order. However, if during the call you  
2 feel that the questions or the discussions that we  
3 are having are getting into areas that would require  
4 you to disclose highly confidential information that  
5 would need to be protected, please let us know before  
6 that happens and we can call a time out and decide  
7 how best to proceed because we do have some in-house  
8 people on the call.

9 Anybody have any questions so far? Okay I  
10 guess we will just kick off the questions. Evelyn?

11 MS. KITAY: This is Evelyn Kitay and my  
12 question is that I don't fully understand the  
13 information that North Coast provided in response to  
14 our November decision and maybe you could clarify  
15 some of that. And as we said in our December 2nd  
16 Decision I still don't quite understand your response  
17 to our information requests 1A and 2B.

18 And I'd like to -- we asked for the  
19 specific information. I don't know how you are  
20 marketing your transportation, I don't know what the  
21 role is between UP and California Northern and North  
22 Coast and I don't really understand where these

1 shipments come from and how they move or what you  
2 mean when you talk about integrated activity.

3 I think that's a lot of questions and we  
4 can go down these one by one. Is there a better way  
5 that you could describe what it is that is really  
6 going on here that has created issues regarding  
7 common carrier obligation and pre-emption?

8 MR. NEARY: Well I will start and I will  
9 let Doug Bosco finish off. This is Christopher Neary  
10 for NCRA. The railroad markets the transportation  
11 activity and its storage capacity to the general  
12 public. It has a website which offers transportation  
13 and advertises the availability of the tracks for  
14 storage.

15 It also had two outside consultants  
16 performing its marketing function and they brought in  
17 two separate contracts -- one with Tesoro and one  
18 with Valero that called for the system that we  
19 described in the Brief where the cars are delivered  
20 by the Union Pacific at the interchange of Union  
21 Pacific and California Northern and then transferred  
22 by California Northern to the railroad at we'll say

1 Lombard.

2 And when the railroad picks up the cars it  
3 transports them to its facility at Schellville which  
4 is approximately 12 miles from interchange. There  
5 are two tracks there approximately a mile in length  
6 in addition to the main line. And the loaded cars  
7 are stored and staged for delivery to market.

8 Generally they are stored for  
9 approximately 60 to 75 days depending upon the  
10 switchover from summer blend to the winter blend.

11 And then as the cars leave the empty cars are  
12 returned for storage for the next cycle -- for the  
13 next blend so it is basically four movements for each  
14 blend per year.

15 Two for the summer blend of LPG and two  
16 for the winter blend. And those activities were  
17 marketed or that business was marketed through  
18 outside consultants who contacted refineries and --  
19 two refineries went into contact with NWPCo starting  
20 in about July in one case and August in another of  
21 this year.

22 MS. KITAY: And where is the ultimate

1 destination? Is it on this line or is it somewhere  
2 else?

3 MR. NEARY: No, it's -- for one of their  
4 refineries -- Valero, they have a refinery very close  
5 by in Benicia, California which is on San Francisco  
6 Bay. And Tesoro generally dispatches the cars to a  
7 variety of locations, to various refineries in  
8 California and elsewhere and Texas and some of the  
9 cars are even sent from Schellville as far as Mexico.

10

11 MR. ZIMMERMAN: But for all of these cars  
12 that we are talking about -- I'm sorry this is Scott  
13 Zimmerman. For all of the cars that we are talking  
14 about is North Coast's participation in the movement  
15 limited to simply the 12 miles between Lombard and  
16 Schellville and back?

17 MR. NEARY: At present correct.

18 MR. ZIMMERMAN: Okay.

19 MR. NEARY: And then we interchange with  
20 California Northern which in turn interchanges with  
21 Union Pacific. So the routing on the waybills coming  
22 in are UP-California Northern-NWPCo going out there

1 into the NWPCo-California Northern-Union Pacific.

2 MR. ZIMMERMAN: Okay and how is the charge  
3 or the fee that North Coast receives for this service  
4 determined? Is it in -- and I'm not asking what it  
5 is, I'm just asking how it is determined -- is it in  
6 the contract that you have with Valero and Tesoro or  
7 --

8 MR. NEARY: Correct.

9 MR. ZIMMERMAN: Okay.

10 MR. NEARY: There's a transportation fee  
11 and there's a per day storage fee, both for loaded  
12 cars and empty cars.

13 MS. KITAY: So when you talk about  
14 integrated -- this is Evelyn Kitay, when you talk  
15 about integrated activity or integration of  
16 transportation and storage could you just clarify  
17 exactly what you mean by that?

18 MR. NEARY: Well these cars are sent to us  
19 by each of these two shippers. We take possession of  
20 them at interchange, transport them to our facility  
21 and then hold them until the shipper determines  
22 exactly where they want to go and then we transport

1 it back and deliver it to California Northern.

2 In some cases the cars stay on an average  
3 of 60 to 75 days so the other activity is holding and  
4 storing the cars during the time that the shippers  
5 determine where they want the cars to go.

6 MS. KITAY: So you might not know at the  
7 beginning of when you move the car from Lombard to  
8 Schellville where the ultimate destination is going  
9 to be or would you?

10 MR. NEARY: As to Tesoro we don't know  
11 mostly it is to Tesoro refineries in California. For  
12 Valero it's almost entirely Benicia so we do know the  
13 location for Benicia. And as I understand it,  
14 there's no storage capacity at Benicia and so they  
15 have to have the cars staged over a period of time  
16 into that facility, especially at the critical point  
17 where they change the blends.

18 MR. BAWCOMBE: This is Nathaniel Bawcombe,  
19 is there a separate contract that the shipper has  
20 with UP to get the traffic to Lombard or is that  
21 something that you guys work out with UP on their  
22 behalf?

1 MR. NEARY: No, no we don't have any --  
2 but we just receive bills of lading in some cases  
3 from UP and in other cases we receive waybills  
4 directly from the shipper.

5 MR. ZIMMERMAN: Are the bills of lading or  
6 waybills for the inbound movement to Schellville are  
7 they always separate from those for the outbound  
8 movement? In other words there's a --

9 MR. NEARY: Correct.

10 MR. ZIMMERMAN: There's a waybill that  
11 goes from origin to Schellville and then a separate  
12 one later on that goes from Schellville to whatever  
13 the destination is?

14 MR. NEARY: Correct.

15 MR. LIGHT: This is Erik Light. Can you  
16 explain -- I think you have already touched on it but  
17 maybe you can explain why the shippers don't -- why  
18 are they storing LPG here instead of shipping just  
19 directly to the ultimate destination? Is it lack of  
20 storage at the originating point?

21 MR. NEARY: Well it's more than that. I  
22 think that in the case of Valero they lack storage

1 capacity at their refinery which is very close by.  
2 They need to store the cars at the ready so that when  
3 they shift from one blend to another they can start  
4 delivery immediately and having them staged to the  
5 facility.

6 So they can't -- they don't have the  
7 facilities to receive 150 cars a day or something  
8 like that. They bring them in 15-20 cars at a time.  
9 And sometimes they don't know when they are going to  
10 need them. I mean it might be as early as October  
11 1st for say the winter blend or it might be as late  
12 as December 1st for the winter blend. It just  
13 depends on when the temperature changes and the air  
14 quality rules require the use of a different blend.

15 So they need to have the cars close to  
16 their refinery or at a place close to their refinery  
17 to stage them in and so when the time comes for the  
18 blend there will be a movement every day for a week  
19 or so.

20 MS. KITAY: And so what about the  
21 interchange locations? Is it just Lombard?

22 MR. NEARY: Well the California Northern

1 and NWPCo interchange at you know, generally is at  
2 Lombard, which is just outside of Napa. I'm not sure  
3 where California Northern interchanges with Union  
4 Pacific, I think it's near Roseville but that's just  
5 a guess.

6 MR. LIGHT: This is Erik Light again. You  
7 talked about the destinations for Tesoro's products  
8 -- can you talk about the origins?

9 MR. NEARY: Say that again.

10 MR. LIGHT: Where does Tesoro's LPG  
11 originate if you can state it?

12 MR. NEARY: I don't know the answer to  
13 that. I believe that they have refineries in Texas.  
14 And by the way I would point out that we have and you  
15 know we get all of this information from the waybill.  
16 We just get word that there's going to be an inbound  
17 shipment from -- we get the word from Union Pacific  
18 through a bill of lading, generally that's how we  
19 find out that the shipment is coming and then we  
20 receive sometimes a backup waybill. We will always  
21 receive a waybill out and it has the destination and  
22 the routing and it is generally NWPCo, California

1 Northern then Union Pacific.

2 MR. LIGHT: This is Erik Light again. You  
3 referred to your relationship with Tesoro and Valero  
4 as you having contracts. You don't have a tariff  
5 established, is that right?

6 MR. NEARY: I'm not certain about that.  
7 We have a -- I don't believe so. A tariff would mean  
8 the same rate for both shippers and I don't believe  
9 it is the same rate.

10 MR. ZIMMERMAN: Maybe Ed and Mr. Stogner  
11 do you know whether do the railroad publish tariffs?

12 MR. STOGNER: No. The North Coast  
13 Railroad Authority oversees the rail service and  
14 contracts with NWPCo as its freight operator. I  
15 would defer to Mr. Bosco possibly on that question.

16 MR. BOSCO: Yes this is Doug Bosco. We do  
17 not establish tariffs for this movement. It's the --  
18 what we charge is contractually agreed to and it is  
19 different between the two shippers.

20 MS. KITAY: I have one more question which  
21 is -- is this a typical way LPG gets to the shipper  
22 throughout the country or is this just something that

1 was you know, made as a good business opportunity?

2 MR. NEARY: I believe it's a very common  
3 practice, especially in the west. In the east I  
4 understand that a lot of LPG is delivered by  
5 pipelines. In the west there is a scarcity of  
6 pipelines delivering LPG and they are typically  
7 delivered throughout the west coast by LPG cars and  
8 certainly throughout California which is a very large  
9 state, the air quality rules apply you know  
10 universally.

11 So this need exists for every refinery in  
12 California.

13 MS. KITAY: But I mean are there these  
14 storage facilities, and tracks like these that have  
15 been built on other rail lines throughout California  
16 that do the same thing?

17 MR. NEARY: It's a very common practice.

18 MS. KITAY: And who was talking? Who  
19 answered that question?

20 MR. NEARY: Christopher Neary.

21 MS. KITAY: Christopher Neary okay.

22 MR. FISHMAN: Evelyn this is Ed Fishman on

1     behalf of SMART.

2                   MS. KITAY:   Yeah.

3                   MR. FISHMAN:   I'm not sure we have any  
4     evidence on that.   I'm not sure if Mr. Neary is an  
5     authority on how LPG is delivered, you know, in  
6     California and the west coast so I just say we  
7     haven't had an opportunity to brief that issue but I  
8     am not aware of any other short line railroad that  
9     has opened up tank storage facilities like this.   To  
10    basically take a load of LPG from a refinery and hold  
11    it because the refinery doesn't have track space to  
12    its own facility so I don't know.

13                   Obviously I would say we would want an  
14    opportunity to provide evidence on that issue if it  
15    is important to consider that relevant.   I would also  
16    like to point out there is a very important  
17    clarification I think that needs to be made for the  
18    record.   I'm very glad we are having this conference  
19    call.   I'm glad that you are able to clarify that the  
20    only reason the loaded LPG comes on to the line that  
21    the railroad operates is for the purposes of the  
22    storage that is taking place at Schellville.

1           And we have also clarified that at none of  
2     the destination locations, there is no receiver for  
3     this traffic that is located on the NWP line so it  
4     really just comes on the line for storage and then it  
5     moves off the line once either Tesoro or Valero  
6     identifies where they want to send it.

7           There is a very important issue though  
8     that I think needs to be clarified. In the Board's  
9     most recent Decision I believe it was based on prior  
10    statements Valero has made in the conference call and  
11    some statements it made in its brief, there is a  
12    statement that all the loaded LPG that was moved to  
13    Schellville and stored at Schellville has been moved  
14    off and moved to alternate destination.

15           That is not my understanding of the  
16    current situation. SMART learned last week that  
17    there are still approximately 16 loaded LPG cars that  
18    are stored at Schellville and they will remain in  
19    storage at Schellville until the summer of 2017. Now  
20    that those cars are going to be there for  
21    approximately 9 months and again this is part of the  
22    reason we filed a Request for Discovery and a Motion

1 to Compel is that I'm very, very concerned about the  
2 factual record that is being developed here. We've  
3 had two conference calls, this is the third. We have  
4 had a round of briefings and we are still trying to  
5 figure out exactly how this operation works.

6 But perhaps you can ask for some  
7 clarification from the railroad on the cars that  
8 remain -- loaded cars that remain at Schellville and  
9 they are not scheduled to be moved from there until  
10 such time as either Tesoro or Valero asks for them  
11 next year.

12 MR. NEARY: Well first of all -- this is  
13 Chris Neary. This information came from us but we do  
14 have for Valero no cars presently on our tracks. For  
15 Tesoro we have 16 loaded cars waiting for  
16 instructions for delivery. I speculated that they  
17 might be summer blend but I don't know.

18 We don't have any information from Tesoro  
19 on when they will call for those. They have called  
20 for cars within the last month so we don't know the  
21 duration but there are 16 cars and generally they  
22 have been brought in since September and we don't

1 know when they are going to leave. We have 89 empty  
2 cars for Tesoro which we expect to be storing for --  
3 until the summer you know, until they call for them  
4 to load them for the summer blend.

5 MS. KITAY: And those are at Schellville  
6 too, the 89 empty cars?

7 MR. NEARY: Correct.

8 MS. KITAY: And what happened to the 12  
9 cars that were sitting at Lombard, where did they go?

10 MR. NEARY: Well shortly after that  
11 situation arose where they were stranded there  
12 sometime in October, Tesoro called for more than 12  
13 cars and the railroad asked for permission to  
14 substitute the 12 cars that were stranded for the  
15 cars that Tesoro was calling for and received  
16 permission and so they were shipped out along with  
17 other Tesoro loaded cars and presumably containing  
18 winter blend because there was a big movement of all  
19 the Tesoro loads out in late October, early November.

20 MR. LIGHT: This is Erik Light. What  
21 happened to the 30 cars that you had been intending  
22 to move to Schellville but you cancelled I guess,

1 what happened to those?

2 MR. NEARY: Well I'll let Mr. Bosco answer  
3 that question. I mean there is a contractual issue  
4 that has arisen about that and I think that there  
5 were 30 cars -- we were told that there were 30 cars  
6 headed our way in early October and when SMART  
7 stopped issuing track warrants to avoid those cars  
8 being stranded at California Northern tracks we told  
9 them that we could not accept them.

10 And maybe Mr. Bosco can answer you know,  
11 he might have more details about the number of cars  
12 and the impact of the 30 cars.

13 MR. BOSCO: This is Doug Bosco, no that's  
14 essentially correct. When Farhad Mansourian the  
15 general manager of SMART notified me on October 2nd  
16 by telephone call that SMART would not allow any  
17 further movement of loaded LPG cars or actually at  
18 the time he said any cars loaded with any  
19 commodities. But when it was clear that SMART would  
20 not allow any traffic to come on to our line I said,  
21 "Well what about the 12 cars that are here already  
22 outside waiting for us?"

1           He said, "Well they are not going to be  
2    allowed on either." So I knew they would be stranded  
3    and our engineer Jake Parks told me that there is  
4    another 30 that were ready to bring in and I said  
5    don't bring them in, hold them back you know we are  
6    not going to have 42 cars stranded out there, so  
7    that's basically what happened.

8           MR. LIGHT: But where did they end up  
9    staying physically?

10          MR. BOSCO: I don't know the answer to  
11   that. I do know that Valero which owned those cars  
12   recently has asked us to indemnify them and to  
13   actually pay them for their cost of storing cars  
14   elsewhere. But I don't know -- and transporting them  
15   elsewhere as well, I don't know if those are the same  
16   30 cars.

17          MR. ROSS: Perhaps it is appropriate for  
18   me to say something. This is William Ross, the  
19   Counsel for the Fire District and the City of  
20   American Canyon. We are familiar with the area  
21   within our jurisdiction that's basically the Lombard  
22   portion of the track in what's known as Napa

1 Junction. We have had proceedings before the state  
2 PUC. We are aware that the Union Pacific owns those  
3 tracks we all know that there is a lease operating  
4 agreement with California Northern Railroad and some  
5 type of operating relationship with Genesee and  
6 Wyoming, Incorporated.

7 We became aware of this issue because of  
8 the concurring Commissioner's opinion in the October  
9 20 decision on or about October 31st. And November  
10 1st we started observing and this would be officials  
11 of the Fire Agency what we understand to be  
12 classified as LPG-capable cars being stored in  
13 varying quantities and being transported through Napa  
14 Junction which is both in the city and the Fire  
15 District.

16 The numbers varied and we started to  
17 quantify them officially after November 1st as  
18 between 6 and 41. The ones that we could observe did  
19 not have DOT placards as to their content.  
20 Conversations with both CAL Northern and Genesee  
21 directors, meaning managers, indicated that they  
22 could carry LPG and that there could be residual

1 amounts in the cars that they were handling. We  
2 don't know anything more than that. We have had an  
3 increased amount of communication with CAL Northern  
4 and Genesee Wyoming about this issue. We are  
5 familiar with the suppression and evacuation  
6 standards. We have -- we are the water purveyor in  
7 that area, we know what the water capabilities are at  
8 Napa Junction.

9           They can't meet the FRA standards with  
10 respect to that so our concern is one of public  
11 safety and identification of what are these cars that  
12 are appearing both on the tracks and on a siting  
13 which is located at 100 yards west of State Route 29  
14 which is the major means of accessing the Napa  
15 Valley, the second highest tourist destination in the  
16 state.

17           I don't know the precise terms but I do  
18 know that the refinery that has been referenced by  
19 counsel is generally to the southeast and south of  
20 the location of the Lombard track and I guess I would  
21 just observe very practically and pragmatically why  
22 are these -- what's this great frequency of cars?

1           Our concern is one of public safety and  
2     for what I understand to be the interchange function  
3     between CAL Northern and Northwest Pacific for the  
4     content of the cars over this time period. So that's  
5     the basis for our request for further discovery. I  
6     think we could say right now just for purposes of  
7     this discussion that the number of these cars in  
8     American Canyon, in the Napa Junction Lombard portion  
9     of what I think is always referred to as the rail  
10    line in the opinions and orders it varies  
11    significantly.

12           And the movement which we can't describe  
13    in any kind of technical terminology also is  
14    significant each day. So hopefully you know our  
15    concern emanates from public safety and applicability  
16    of FRA standards. We are familiar with those because  
17    of recent legislation in the state of California that  
18    addresses regional rail lines on this very issue  
19    which emanated from an incident in the legislative  
20    attempt that occurred in Benecia. So it is not like  
21    we are uninformed but we certainly don't have  
22    knowledge about the specific movement and if the

1 movement is you know, taking place at American  
2 Canyon, we want to make sure there is integration  
3 with hazard and management plans.

4 We have dealt with PG&E on several issues.  
5 We are sophisticated in that area but we have had  
6 nothing from either the lessee railroad in California  
7 Northern or Union Pacific concerning these movements.  
8 The most recent representation has been from  
9 somebody -- from the regional manager at Genesee and  
10 Wyoming and we are getting a declaration or  
11 confirming communication to the effect that they have  
12 been instructed not to deliver any loaded cars of  
13 LPG or crude oil for refinery use.

14 We just don't want to be unprepared,  
15 caught in the middle, uninformed, but that's our  
16 knowledge as I just described it.

17 MS. KITAY: So this is Evelyn. North  
18 Coast when it handles other commodities do those  
19 trains also do exactly the same thing as these trains  
20 -- just sit in Schellville for months on end?

21 MR. BOSCO: This is Doug Bosco. They  
22 don't sit usually for months on end but they

1 sometimes sit for a week or two until we move them  
2 through our line.

3 MS. KITAY: And those would go to a  
4 shipper on the line or those would also go back to  
5 Lombard and go wherever on UP or California Northern?

6 MR. BOSCO: They go -- we pick them up  
7 from CAL Northern and then we take them to a shipper  
8 on the line. But sometimes we store them in  
9 Schellville or in other locations.

10 MR. LIGHT: This is Erik Light. So just  
11 to confirm the only two LPG shippers are Valero and  
12 Tesoro is that right?

13 MR. BOSCO: That's correct.

14 MR. LIGHT: And is there any reason that  
15 the railroad could not establish a tariff if it  
16 wanted to for these LPG movements?

17 MR. BOSCO: I don't think there's a reason  
18 that we couldn't, we haven't but presumably we could.

19 MR. ZIMMERMAN: I think that concludes the  
20 questions that we have here. Is there anything else  
21 that anyone on the phone wants to say before we  
22 conclude the call?

1                   MR. BOSCO: This is Doug Bosco. May I ask  
2     the -- Mr. Ross I don't quite understand all of what  
3     he said and I would like to. But apparently these  
4     are not -- I'm sure they are not LPG cars that are  
5     left on the track but NWPCo. They appear to be cars  
6     that are moving through American Canyon in route, is  
7     that true?

8                   I mean are you talking about cars that are  
9     just sitting there on the main track?

10                  MR. ROSS: I think what I said was  
11     accurate Mr. Bosco from our understanding. And again  
12     it is limited because of what we know or what we can  
13     gain by communications with both CAL Northern and the  
14     entity, the Genesee corporate entity that I referred  
15     to. We understand that there is an exchange of both  
16     loaded and unloaded cars at the Lombard section.

17                  How they move and you know what those  
18     numbers are we do not know. I think that my  
19     description that I gave about on and after is  
20     absolutely accurate. You know are they stored there  
21     for more than 20 minutes? We don't know we are  
22     observing limits -- specific times of the day and

1 they are moved.

2 We are not sophisticated in the  
3 nomenclature that you have but we are trained in  
4 various suppression and evacuation functions so our  
5 concern is as stated but as to those cars there's no  
6 way we could specifically quantify what they are but  
7 it is as a matter of safety right-of-way. It's been  
8 represented that there is residual amounts of oil or  
9 LPG in those cars, so why aren't they marked, I mean  
10 these are just kind of basic things from fire  
11 suppression and safety capabilities but as to their  
12 movement you know, storage to me connotes you know  
13 there for a day or extensive periods.

14 What I would hope to describe if we find  
15 out more information is these are moving. Do they go  
16 on these sidings? Yes but when you go back six hours  
17 later they are not there. Again this is the very  
18 common sense ordinary observation about what is  
19 there and based on the conversations with CAL  
20 Northern as I described earlier.

21 MR. BOSCO: Alright well this is Doug  
22 Bosco again and thank you for your comments. The

1 movement of LPG is heavily regulated under other  
2 federal statutes and state law but it would not be  
3 any of our cars that are parked in American Canyon.

4 When our tanker cars leave NWPCo on a  
5 waybill they just stay in transit.

6 MR. ZIMMERMAN: Okay with that North Coast  
7 folks is there anything else you would like to say  
8 before we wrap up?

9 MR. NEARY: Yes this is Chris Neary. We  
10 understood that the Board's Order requesting  
11 information about waybills did not request us to  
12 provide all of the waybills so what we did in our  
13 brief was provided a representative movement for both  
14 Valero and for Tesoro but we do have all of the  
15 waybills available and we could -- and in a format we  
16 could make those available on fairly short notice.

17 Those would describe you know every car,  
18 every movement, every routing, which are empty, which  
19 are loaded, their origin and their ultimate  
20 destination.

21 MR. ZIMMERMAN: Could we go off the record  
22 for just a minute.

1 (Off the record 3:45 p.m.)

2 (On the record 3:47 p.m.)

3 MR. ZIMMERMAN: Sorry for that short  
4 break. We are back, let's go back on the record.  
5 Well as far as the other waybills you know the four  
6 of us sitting here as Board staff are not in a  
7 position to ask you or direct you to do that. But if  
8 it is something that you are voluntarily willing to  
9 do and if SMART believes it would be helpful for them  
10 -- if you want to produce those that's up to you all.

11 If you want to agree with SMART that you  
12 will produce those that would be fine with us but we  
13 are not sitting here right now today directing you to  
14 do that.

15 MR. NEARY: Okay.

16 MR. ZIMMERMAN: So from SMART, anything  
17 further that you would like to put before the group  
18 before we wrap up?

19 MR. FISHMAN: Yes this is Ed Fishman on  
20 behalf of SMART. Thank you for having the call. We  
21 appreciate the effort to clarify the record. I will  
22 just note we do have our Motion to Compel pending and

1 we continue to believe that all of the issues we  
2 talked about today including you know the storage  
3 business, how it is marketed, what do these contracts  
4 say, are there separate track leases -- those are all  
5 the topics of our discovery requests and we continue  
6 to believe all of that information is very relevant  
7 to this proceeding.

8 And so we continue to ask for that  
9 information and it sounds like we will wait to see  
10 what the Board does next on those issues.

11 MR. ZIMMERMAN: Okay thank you.

12 MR. LYONS: And this is Tom Lyons. I just  
13 want to clarify one point which is we are the  
14 underlying owners of the facility that NCRA and NWPCo  
15 is claiming to be theirs and from a contractual  
16 standpoint we disagree with their evaluation that  
17 this is their facility.

18 MR. ZIMMERMAN: All right thank you.

19 MR. NEARY: This is Chris Neary, just a  
20 point of clarification. SMART did file a Motion for  
21 Protective Order. In response the Board convened  
22 this call so we have not responded to that Motion for

1 Protective Order and I assume that if there is some  
2 correction that comes out of this call that it would  
3 be determined whether or not we need to respond to  
4 that Motion.

5 This call was a substitute of that.

6 MR. ZIMMERMAN: Well the Board issued a  
7 Protective Order yesterday.

8 MR. LIGHT: Do you mean the Motion to  
9 Compel?

10 MR. FISHMAN: Hi it's Ed Fishman, I  
11 believe Chris was referring to the Motion to Compel,  
12 the document that we filed.

13 MR. ZIMMERMAN: Yes we understand that  
14 that is still on the table.

15 MS. KITAY: The hope was having this call  
16 would expedite the ability to get the record that we  
17 need to decide this proceeding and I think it has you  
18 know, clarified some of the issues, maybe not  
19 everything.

20 MR. ZIMMERMAN: With that --

21 MS. KITAY: Does Napa have anything that  
22 they want to say?

1 MR. ZIMMERMAN: I was going to ask Mr.  
2 Richard is there anything that you would like to say  
3 before we wrap up?

4 MR. RICHARD: This is Jeff Richard. I  
5 think Bill Ross aptly described our concerns. We  
6 need to know more and we need probably some answers  
7 to the discovery questions as to you know, to  
8 confirm that there are no cars in Napa County being  
9 stored or moved that are under the control of these  
10 parties. So that's my main concern.

11 But as to the procedural issues I have  
12 nothing to add.

13 MS. KITAY: And American Canyon, have they  
14 -- yeah.

15 MR. ROSS: Yeah I think what I said --  
16 this is Bill Ross for the American Canyon entities.  
17 The one other thing is I think in one of the filings  
18 and that is going to be general, there was a  
19 representation that the entire rail line had been  
20 certified for all FRA safety procedures or something  
21 to that effect.

22 And that's not our experience with respect

1 to that rail line that you know is Napa Junction  
2 Lombard, at least you know as to some respects, but  
3 we just need to know more. I think I would concur  
4 with Mr. Richards also and thank you for your time  
5 and these proceedings.

6 MR. ZIMMERMAN: All right well if there is  
7 nothing further we appreciate everyone taking the  
8 time to make themselves available for the call today  
9 and with that we will wrap it up, thank you all.

10 (Whereupon at 3:51 p.m., the meeting was  
11 adjourned.)  
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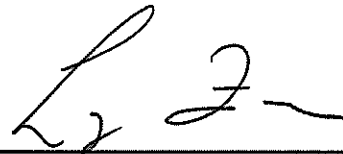
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## CERTIFICATE OF COURT REPORTER

I, LARRY FLOWERS, Court Reporter, do hereby certify that the testimony contained herein is a true record of the testimony given by said witness, and I further certify that I am neither attorney nor counsel for, related to, or employed by any of the parties to the action in which this statement is taken; and, further, that I am not a relative or an employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

A handwritten signature in cursive script, appearing to read 'L. Flowers', is written above a horizontal line.

LARRY FLOWERS