

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-144 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-144. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-144 and should be submitted on or before November 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-27022 Filed 11-8-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36077; Docket No. NOR 42148]

**North Coast Railroad Authority and Northwestern Pacific Railroad Company—Petition for Declaratory Order; North Coast Railroad Authority and Northwestern Pacific Railroad Company v. Sonoma-Marin Area Rail Transit District**

On October 4, 2016,<sup>1</sup> North Coast Railroad Authority (NCRA) and Northwestern Pacific Railroad Company (NWPCo) (together Petitioners)<sup>2</sup> filed a petition requesting an emergency declaratory order and preliminary injunctive relief to prevent Sonoma-Marin Area Rail Transit District (SMART) from interfering with freight rail operations over portions of the Northwestern Pacific Railroad Line.<sup>3</sup> (Pet. 2, 4-5, 10-11.) Board staff held two conference calls with representatives of both parties on October 6 and October 11, 2016, to clarify the facts of the dispute over Petitioners' request for preliminary injunctive relief. On October 21, 2016, the Board issued an order denying the preliminary injunction. See *N. Coast R.R. Auth. v. Sonoma-Marin Area Rail Transit Dist.* (October 21 Decision), NOR 42148 (STB served Oct. 21, 2016) (with Commissioner Begeman partially concurring).

**Background**

The Line consists of three segments: The Willits Segment, the Healdsburg Segment, and the Lombard Segment. (Pet. 2-3.) NCRA, the public agency created to preserve freight operations on the Line, holds the exclusive right to conduct freight operations over the Line. (Pet. 3.)<sup>4</sup> NWPCo is the freight

<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative purposes.

<sup>2</sup> The initial pleading in this proceeding was styled as "Finance Docket No. NOR 42148" but appears to request a declaratory order. (Pet. 2; Addendum to Pet. 2.) Therefore, the Board is changing the docket number from NOR 42148 to FD 36077, without prejudice to Petitioners' requesting to restate their petition to seek another remedy, if any, that may be appropriate. All filings and decisions in Docket No. NOR 42148 will be considered part of the record in Docket No. FD 36077.

<sup>3</sup> The parties also refer to the Northwestern Pacific Railroad Line as the Northwestern Pacific Line. For purposes of this decision, we will refer to it as the Line.

<sup>4</sup> In 1996, NCRA acquired Board authority to lease and operate the Line. *N. Coast R.R. Auth.—Lease & Operation Exemption—Cal. N. R.R.*, FD 33115 (STB served Sept. 27, 1996). See also *Sonoma-Marin Area Rail Transit Dist.—Acquis. Exemption—N.W. Pac. R.R. Auth.*, FD 34400, slip op. at 1 (STB served March 10, 2004) (indicating that SMART

operator. (Pet. 2.)<sup>5</sup> SMART, the public agency created in 2003 and authorized to provide commuter passenger service over portions of the Line, holds the exclusive right to operate passenger service, including the right to dispatch over portions of the Line. (Pet. 2-3.) In 2004, SMART obtained Board authority to acquire the real estate and rail facilities and trackage to the Healdsburg and Lombard segments of the Line. *Sonoma-Marin Area Rail Transit Dist.*, FD 34400, slip op. at 1-2.<sup>6</sup> NCRA owns the Willits Segment. (Pet. 2-3.) NWPCo operates on the Healdsburg and Lombard segments; SMART currently has plans to operate on the Healdsburg Segment. (Pet. 3.)

In 2011, NCRA and SMART entered into an Operating and Coordination Agreement (Agreement) for the Line. (Pet., Williams Decl. para. 1.) The Agreement gives SMART dispatching authority over the Lombard and Healdsburg segments and a portion of the Willits Segment. (Pet., Williams Decl., Ex. A at 4.) It defines dispatching as having the same meaning as in 49 CFR 241.5(1)(i). (Pet., Williams Decl., Ex. A at Ex. 1 at i.) The Agreement also contains a provision addressing hazardous materials, which states in part:

Neither Party shall use, generate, transport, handle or store Hardous Materials on the Subject Segments other than as may be used by the Party in its operations in the normal course of business or, in the case of NCRA, as may be transported by NCRA in its capacity as a common carrier by rail and in all events in accordance with Applicable Laws.

(Pet., Williams Decl., Ex. A at 11.) The Agreement defines "Industrial Track" as "all existing or later built track on the Healdsburg and Lombard Segments used solely for NCRA Freight Service" and provides that "NCRA, at its own expense, shall have the exclusive right to manage" such track. (*Id.* at 3.) Finally, the Agreement contains a provision subjecting disputes to arbitration. (*Id.* at 19.)

On July 28, 2016, NWPCo began transporting loaded liquid petroleum gas (LPG) tank cars to, and storing them at, the Schellville rail yard on the

subsequently acquired portions of the Line subject to NCRA's freight easement).

<sup>5</sup> See *N.W. Pac. R.R.—Change in Operators Exemption—N. Coast R.R. Auth.*, FD 35073 (STB served Aug. 24, 2007).

<sup>6</sup> SMART retains the residual common carrier obligation over portions of the Line, including the Lombard Segment, which is at issue here. See *Sonoma-Marin Area Rail Transit Dist.*, FD 34400, slip op. at 2; see also *Sonoma-Marin Area Rail Transit Dist.—Acquis. Exemption—in Marin Cty., Cal.*, FD 35732, slip op. at 2 n.2, 3 (STB served July 15, 2013).

Lombard Segment. (Pet. 2, 5.) For about two months, SMART dispatchers issued track warrants<sup>7</sup> for these movements. By late September, 80 loaded LPG tank cars were stored at the Schellville yard. However, according to Petitioners, SMART recently began using its dispatching function as preclearance authority to prohibit the movement of certain freight on the Line. (Pet. 4, 6, 8.) On October 2, 2016, SMART denied a track warrant for 12 LPG tank cars destined for Schellville and six grain cars destined for Petaluma, thus prohibiting those cars from proceeding. (*Id.* at 6.) As clarified on the two conference calls, the six grain cars were allowed to proceed, but the 12 loaded LPG cars remained sitting on the track at an interchange with the California Northern Railroad. NWPCo also has a voluntary hold on an additional 30 loaded LPG tank cars bound for the Schellville yard. On October 21, 2016, the Board rejected Petitioners' request for preliminary injunctive relief. *See October 21 Decision*, slip op. at 5.

In addition to a preliminary injunction, Petitioners request an order that SMART has no regulatory authority to precondition freight shipments. (Pet. at 7.) They state that due to SMART's actions, they are uncertain when, and if, they will be able to discharge their common carrier obligations. (*Id.* at 9.) Petitioners also assert that the preclearance authority asserted and exercised by SMART through its dispatching function is preempted by federal law. (*Id.* at 8–9.)

SMART contends<sup>8</sup> that there is no reason for the Board to issue a declaratory order because it is not impermissibly interfering with Petitioners' movements. SMART acknowledges that it has refused to allow onto the Lombard Segment tank cars loaded with LPG that are not being moved directly to a customer or shipper destination but are instead intended for temporary storage, on the ground that NCRA does not have a contractual right to store such cars at the Schellville yard. (Reply 2.) SMART asserts that the provision of the Agreement dealing with hazardous materials prohibits Petitioners from storing the LPG tank

cars on SMART's property, including the Schellville yard. (*Id.* at 3.) SMART also contends that Petitioners' storage activities at its yard violate federal safety regulations. (*Id.* at 5–6.)

SMART claims that this is a contractual dispute, that the Board typically does not get involved in contractual disputes, and there is no reason for it to do so in this instance. (Reply 2.) Specifically, the issue of whether the Petitioners "can store the LPG-loaded tank cars on SMART's property is a question of contractual interpretation," (*id.* at 4), and SMART "does not purport to require preclearance of the movement of grain cars over the SMART property," (*id.* at 3). Relying on *Town of Woodbridge v. Consolidated Rail Corp.*, FD 42053 (STB served Dec. 1, 2000), SMART argues that the Petitioners "agreed to the contractual restriction in [the hazardous materials section] of the Agreement and cannot invoke ICCTA preemption to avoid its voluntary contractual agreements." (Reply 4.) SMART also asserts that Petitioners failed to show that enforcement of the contractual agreement not to store hazardous materials at Schellville<sup>9</sup> would unreasonably interfere with their common carrier obligations. (Reply 4–5.) On October 31, 2016, the City of American Canyon and American Canyon Fire Protection District filed a notice of intent to participate.

#### Discussion and Conclusions

As the Board has stated, this case appears to raise a number of novel issues that require further briefing by the parties. *N. Coast R.R. Auth. v. Sonoma-Marin Area Rail Transit Dist.*, NOR 42148, slip op. at 2 (STB served Oct. 7, 2016); *October 21 Decision*, slip op. at 2, 5. In this case, there are controversies regarding the railroads' common carrier obligation and whether SMART's actions are preempted by federal law. *See* 49 U.S.C. 10501(b). Petitioners are directed to brief the following issues and provide the following information, and SMART is directed to reply, as part of their further submissions to the Board in this proceeding:

##### 1. General requests:

a. A detailed map of the entire Northwestern Pacific Railroad Line and operations including, but not limited to, information about interchange locations and responsibilities, which carrier has what rights and where, and alternative locations for storage. Also include a

description of the volume and type of traffic that moves over the Line.

b. As necessary, include comments on or corrections to the Board's written summaries of the October 6 and October 11 conference calls. The summaries are available on the Board's Web site as miscellaneous filings in the docket.

c. As necessary, the parties should include any factual updates that have occurred since the date of their last filings.

2. Regarding the common carrier obligation:

a. Assuming for the sake of argument that the contract reflects that NCRA agreed not to store hazardous materials at the Schellville yard, would such an agreement be consistent with NCRA's common carrier obligation under 49 U.S.C. 11101? Why or why not?

b. Does the storage of loaded LPG cars at the Schellville yard for an indeterminate period of time constitute "transportation by rail carrier" within the meaning of 49 U.S.C. 10501? In answering this question, parties should discuss:

i. Whether the storage at Schellville is a service that NWPCo provides at the request of and/or for another railroad or a shipper, and how that service is marketed.

ii. The typical route, from origin to ultimate destination, for loaded LPG tank cars stored at the Schellville yard. Include a description of NWPCo's role in that movement.

iii. How long loaded LPG cars are typically scheduled to be stored at the Schellville yard. If there is no typical time period, provide a range of time the cars will be stored and a final date by which they would depart the yard for final destination.

iv. Evidence, such as bills of lading, demonstrating that NWPCo uses the Schellville yard to transport goods in interstate commerce as part of a rail movement.

c. What are the implications of SMART's residual common carrier obligation over portions of the Line, including the Lombard Segment?

##### 3. Regarding federal preemption:

a. Does SMART's denial of track warrants for loaded LPG cars destined for the Schellville yard constitute "regulation" of rail transportation within the meaning of 49 U.S.C. 10501(b)?

b. Assuming for the sake of argument that the contract reflects that NCRA agreed not to store loaded LPG cars at the Schellville yard, would such an agreement "unreasonably interfere" with interstate commerce? In answering this question, parties should:

<sup>7</sup> A track warrant control system is a verbal authorization system using radio, phone, or other electronic transmission from a dispatcher. *See CSX Transp., Inc.—Joint Use—Louisville & Ind. R.R.*, FD 35523, slip op. at 3 n.8 (STB served Apr. 10, 2015).

<sup>8</sup> On October 5, 2016, the Board issued an order requiring replies to the petition on an expedited schedule and scheduling a conference call with parties, counsel, and Board staff. On October 6, 2016, SMART filed a reply to the petition noting that it was not "waiving its right to file a more detailed response to the [October 4] Petition." (Reply 2 n.1.)

<sup>9</sup> The parties apparently disagree whether the Schellville yard tracks are "Industrial Tracks" as defined by the Agreement. (Reply 4, n.5.)

i. Address *Town of Woodbridge v. Consolidated Rail Corp.*, NOR 42053 (STB served Dec. 1, 2000), and *PCS Phosphate Co. v. Norfolk Southern Railway*, 559 F.3d 212 (4th Cir. 2009); and

ii. Discuss the feasibility of NCRA/NWPCo storing loaded LPG tank cars elsewhere, either on tracks they currently own or lease or on tracks they could lease from other parties, or moving loaded LPG tank cars directly from their origin to their ultimate destination, thus avoiding entirely temporary storage at Schellville or elsewhere.

c. What effect, if any, does SMART's status as a governmental agency have on the preemption analysis?

As discussed above, the Petitioners and SMART have filed their initial pleadings.<sup>10</sup> However, the Board is establishing a procedural schedule for receiving additional evidence. In addition, either party may move for an appropriate protective order to protect against the public disclosure of any commercially sensitive, confidential information.

*It is ordered:*

1. The procedural schedule is as follows:

November 23, 2016 NCRA's and NWPCo's opening is due.

December 5, 2016 SMART's and any other party's replies are due.

2. All filings and decisions in Docket No. NOR 42148 will be considered part of the record in Docket No. FD 36077.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: November 3, 2016.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**  
*Clearance Clerk.*

[FR Doc. 2016-27062 Filed 11-8-16; 8:45 am]

**BILLING CODE 4915-01-P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Commission Meeting

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Susquehanna River Basin Commission will hold its regular

<sup>10</sup> As noted above, SMART stated that it filed its October 6 reply in accordance with the Board's order and was not "waiving its right to file a more detailed response to the [October 4] Petition." (Reply 2 n.1.)

business meeting on December 8, 2016, in Annapolis, Maryland. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

**DATES:** The meeting will be held on Thursday, December 8, 2016, at 9 a.m.

**ADDRESSES:** The meeting will be held at Loews Annapolis Hotel, Powerhouse—Point Lookout Room (Third Floor), 126 West Street, Annapolis, MD 21401.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436.

**SUPPLEMENTARY INFORMATION:** The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the Lower Susquehanna Subbasin area; (2) resolution concerning FY2018 federal funding of the Groundwater and Streamflow Information Program; (3) ratification/approval of contracts/grants; (4) notice for Montage Mountain Resorts, LP project sponsor to appear and show cause before the Commission; (5) regulatory compliance matters for Panda Hummel Station LLC, Panda Liberty LLC, and Panda Patriot LLC; and (6) Regulatory Program projects.

Projects listed for Commission action are those that were the subject of a public hearing conducted by the Commission on November 3, 2016, and identified in the notice for such hearing, which was published in 81 FR 69182, October 5, 2016.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects were subject to a deadline of November 14, 2016. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110-1788, or submitted electronically through <http://www.srb.com/publicparticipation.htm>. Such comments are due to the Commission on or before December 2, 2016. Comments will not be accepted at the business meeting noticed herein.

**Authority:** Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: November 3, 2016.

**Stephanie L. Richardson,**  
*Secretary to the Commission.*

[FR Doc. 2016-27006 Filed 11-8-16; 8:45 am]

**BILLING CODE 7040-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Opportunity for Public Comment on Surplus Property Release at Madras Municipal Airport, Madras, Oregon

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for public comments.

**SUMMARY:** Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from Madras Municipal Airport, in Madras, OR to waive the surplus property requirements for approximately 5.22 acres of airport property located at Madras Municipal Airport, in Madras, OR.

The subject property is currently under lease with Wilbur-Ellis Company. This property serves Wilbur Ellis Company and their Agribusiness Division well because of its close proximity to both the rail system (City rail spur and Burlington Northern Santa Fe main track) and Highway 97/26. From this location, they import, export and distribute various agricultural commodities throughout Central Oregon. This release will enable the City of Madras to complete a promise made in 1995 whereby the City agreed to diligently and aggressively pursue the approval of the United States of America to sell the 5.22 acres to Wilbur Ellis Company, if Wilbur Ellis were willing to relocate their company to the Madras community thereby providing much needed jobs. The estimated net proceeds from the subject property will be applied toward the City's current five-year airport capital improvement plan or to relocating a hangar at the airport that is called out to be moved in the airport master plan. It has been determined through study and master planning that the subject parcels will not be needed for aeronautical purposes.

**DATES:** *Effective Date:* Comments must be received on or before December 9, 2016.

**ADDRESSES:** Send comments on this document to Ms. Cayla Morgan, at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057, Telephone 425-227-2653.

**FOR FURTHER INFORMATION CONTACT:** Documents are available for review by appointment by contacting Ms. Cayla Morgan, Telephone 425-227-2653 or by contacting Mr. Jason Ritchie, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 425-227-2658.