



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

*Office of Environmental Analysis*

May 4, 2011

Michelle Walker, Chief, Regulatory Branch  
U.S. Army Corps of Engineers, Seattle District  
P.O. Box 3755  
Seattle, WA 98124-3755

**Re: Gateway Pacific Terminal and Custer Spur Expansion Projects**

Dear Ms. Walker:

Thank you for your April 13, 2012 letter inviting the Surface Transportation Board to participate in the preparation of an Environmental Impact Statement (EIS) for the proposed Gateway Pacific Terminal and Custer Spur Expansion projects in Washington State. As you know, the Board has significant responsibility to oversee rail restructuring matters. This responsibility includes mergers and acquisitions, line sales, line constructions, and line abandonments. The Board's Office of Environmental Analysis (OEA) is responsible for conducting the environmental review process to ensure compliance with the National Environmental Policy Act (NEPA) and related environmental laws as part of the Board's licensing process.

Based on available information, it does not appear that the Board would have a licensing role in the proposed Gateway Pacific Terminal or Custer Spur Expansion projects. Typically, a license from the Board is required to construct a new rail line or an extension to an existing rail line.<sup>1</sup> However, there is no statutory requirement for a carrier to obtain Board approval to build or expand facilities that would improve the railroad's existing operations but would not extend the railroad's ability to serve new markets.<sup>2</sup>

Because the Custer Spur Line already serves existing industries and connects to producers across the U.S. Northern Tier and Midwest, constructing a second track along the length of the line and making improvements to the existing line would not extend the territory or markets that are served. In addition, it appears that the proposed East Loop and West Loop would qualify as industrial or private industry track. While the Board has exclusive jurisdiction

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<sup>1</sup> See 49 U.S.C. § 10901.

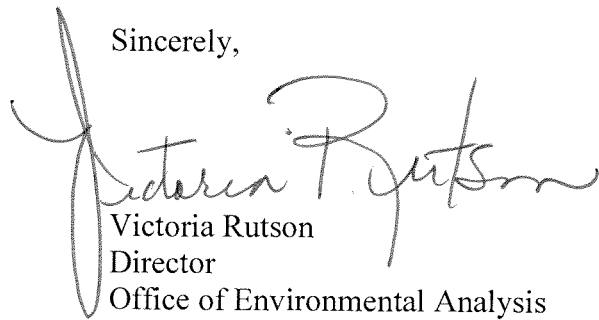
<sup>2</sup> See Port Authority of New York and New Jersey—Petition for Declaratory Order, FD 34428 (STB served Jan. 21, 2004).

over the construction and operation of spur, industrial, team, switching and side tracks, there is no statutory requirement for a carrier to obtain Board approval to construct such track.<sup>3</sup>

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We recognize that, pursuant to 40 C.F.R. § 1501.6, a Federal agency may participate in the preparation of an EIS when it has special expertise with respect to any environmental issue that should be addressed. However, due to current commitments and limited resources, we are unable to participate at this time in the environmental review.<sup>4</sup> We do appreciate the invitation and would be happy to answer any questions that you may have as the EIS moves forward. If information regarding these projects should change or if you have additional information indicating that Board licensing may be required, please to not hesitate the contact me at (202) 245-0295 or Christa Stoebner at (202) 245-0299.

Sincerely,



Victoria Rutson  
Director  
Office of Environmental Analysis

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<sup>3</sup> See 49 U.S.C. §§ 10501(b)(2) and 10906.

<sup>4</sup> See 40 C.F.R. § 1501.6(c).