

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO
HON. JEANINE NADEL, JUDGE

. . .

MENDOCINO RAILWAY)
)
)
PETITIONER,)
)
)
VS.)
)
)
CALIFORNIA PUBLIC)
UTILITIES, ET AL.)
)
RESPONDENT.)
)

CASE NO. SCUJ-CVED-20-74939

TRANSCRIPT OF PROCEEDINGS
OF
TRIAL

. . .

MONDAY, AUGUST 29, 2022

FORT BRAGG, CALIFORNIA
MENDOCINO COUNTY COURTHOUSE

. . .

A P P E A R A N C E S

For Petitioner:	For the Respondent:
Mr. Paul J. Beard	Mr. Stephen Johnson
FisherBroyles LLP	Mannon, King, Johnson & Wipf,
4470 West Sunset Boulevard	LLP
Suite 93165	PO Box 419
Los Angeles, CA 90027	Ukiah, CA 95482



1 Mr. Glen L. Block
2 California Eminent Domain Law
3 Group
4 3429 Ocean View Boulevard
5 Suite L
6 Glendale, CA 91208

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



I N D E X

	<u>PAGE</u>
1	
2	
3	TABLE OF EXHIBITS 4
4	PETITIONER'S WITNESS ROBERT PINOLI
5	Cross-Examination By Mr. Johnson 6
6	Recross-Examination By Mr. Block 38
7	Redirect By Mr. Johnson 50
8	Further Recross By Mr. Block 53
9	Further Redirect By Mr. Johnson 54
10	CERTIFICATION 61
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	



	<u>TABLE OF EXHIBITS</u>	
	<u>Offered for</u>	<u>Admitted</u>
	<u>Identification</u>	<u>Into Evidence</u>
1		
2		
3		
4	RESPONDENT'S EXHIBIT E	37
5	RESPONDENT'S EXHIBIT G	37
6	RESPONDENT'S EXHIBIT I	36
7	RESPONDENT'S EXHIBIT R	12
8	RESPONDENT'S EXHIBIT S	12
9	RESPONDENT'S EXHIBIT T	12
10	RESPONDENT'S EXHIBIT U	12
11	RESPONDENT'S EXHIBIT V	12
12	RESPONDENT'S EXHIBIT W	12
13	RESPONDENT'S EXHIBIT X	12
14	RESPONDENT'S EXHIBIT Y	12
15	PETITIONER'S EXHIBIT 36	38
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



1 (Monday, August 29, 2022 at 9:02 a.m.)

2 THE BAILIFF: Raise your right hand and face the
3 stand.

4 ROBERT PINOLI, PETITIONER'S WITNESS, SWORN

5 THE CLERK: Thank you. Take a seat.

6 MR. BEARD: Excuse me.

7 THE COURT: Yes. Good morning, this is Judge Nadel.

8 MR. BEARD: Good morning, Judge. I just -- I
9 couldn't hear anything that was going on in the courtroom, and
10 I wanted to make sure I was able to do that. This is Paul
11 Beard, on behalf of the Plaintiff.

12 THE COURT: Oh, okay; can you hear now?

13 MR. BEARD: I can certainly hear you now, yes.

14 THE COURT: Why don't --

15 MR. BEARD: The Court was on mute. Yeah, thanks.

16 THE COURT: Okay. We just swore in the witness,
17 so --

18 MR. BEARD: Very good, thank you.

19 THE COURT: Okay.

20 MR. JOHNSON: Your Honor, I have a copy of exhibits
21 I can provide to you.

22 THE COURT: Okay.

23 MR. JOHNSON: This is Exhibit Z. These are
24 documents that were marked the other day. If you notice,
25 there -- in the bottom here, there's -- I wrote in exhibit
26 numbers.

27 THE COURT: Okay. All right. Thank you.

28 MR. JOHNSON: Thank you.



1 Do we have -- are those photographs up there, Mr.
2 Pinoli?

3 THE WITNESS: Yes, they are.

4 MR. JOHNSON: Your Honor, last week, we also
5 discussed the fact that I was to provide the request for
6 admissions and the request for special interrogatory
7 questions, to go along with my request for judicial notice.
8 And so I've made copies of those, and I'd like to include
9 those with my request for judicial notice.

10 THE COURT: Okay, perfect.

11 MR. JOHNSON: And I can provide a copy of those to
12 you.

13 THE COURT: Thank you.

14 MR. BLOCK: No objection, Your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 Q BY MR. JOHNSON: Okay. Mr. Pinoli, I just have a
18 few more questions. I believe that you testified earlier in
19 this trial that each rail car could potentially hold four
20 times as much weight as a tractor-trailer type truck; is that
21 correct?

22 A On average, yes, that is correct.

23 Q Okay. So with -- I mean, my understanding of a
24 tractor-trailer truck would haul, generally, around 25 tons;
25 is that correct?

26 A Yes, it's just so that the gross weight, including
27 the truck and the trailer and the commodity, don't exceed
28 80,000 pounds.



1 Q Okay. So how much, generally -- based on your
2 knowledge, how much do these cars, freight cars, hold that are
3 used for the railroad?

4 A I think I had testified last week to the side dump
5 car being 100 ton capacity. So it will hold 100 tons of
6 aggregate or whatever.

7 Q Okay. And what are the weight capacity requirements
8 for the bridges on the line that you operate?

9 A It -- one of the things that I testified to last
10 week was that bridge capacities, in our case, meet the 286
11 standards, so that we could, if you wanted, carry 286,000
12 pounds across those structures.

13 Q Okay. So I've provided you some documents that are
14 photographs. They've been marked as exhibits, okay? And I'd
15 like -- just like to go through them with you, if I could.
16 The first exhibit is Exhibit R; see that one?

17 A Yes.

18 Q And this is an exhibit that reflects the railroad
19 line. This is just west of KOA -- it was taken just west of
20 KOA, and it shows some rock and -- looks like rock fill
21 material; do you see that?

22 A I do.

23 Q Now, with that type of maintenance with rock
24 and -- be done by your maintenance crew on the line? Is that
25 something that they would have done with that rock there; do
26 you know?

27 A Yes.

28 Q And they use -- the railroad uses its maintenance



1 cars to do this type of repair work to the line; is that
2 correct?

3 A It uses some of its maintenance way vehicles for
4 this type of work.

5 Q Okay. All right. And then, there's Exhibit S. And
6 this, again, was taken west of the KOA. It appears that
7 there's some ties that are deteriorated in the foreground; do
8 you see that?

9 A I do.

10 Q And is that common to have ties that deteriorate to
11 that extent on your line?

12 A As I testified last week, in order to meet Class I
13 standards, one in every eight tie must be (indiscernible).
14 And given that that tie is not underneath the joint, it's
15 certainly a tie that is -- would be slated for replacement.
16 But because it's not underneath the joint, it would -- it
17 would meet the Class I threshold.

18 Q Okay. So what about the ties that are not under a
19 joint; do they ever have to be replaced?

20 A Absolutely.

21 Q Okay. But according to your analysis, this tie in
22 the foreground would meet that type of requirement, type I
23 requirement, at this point?

24 A That's right.

25 Q If you go to the next photograph.

26 A Yes.

27 Q This is Exhibit T. It looks like it is a rail that
28 has been -- is broken. This was taken next to the KOA



1 campground. Would that be something that would need to be
2 replaced?

3 A Yes, and this is something that's on the field side,
4 so it's not on the inside. So technically, the wheel and the
5 flange -- more importantly, the flange of the wheel would
6 never touch it. The fracture runs parallel with the head of
7 the rail, and not perpendicular. Perpendicular would be a
8 problem. Parallel and on the field side, not on the inside,
9 doesn't present as big of a problem. It is something that was
10 noticed and inspected by our track inspectors over the weekend
11 and is slated for replacement.

12 Q Is that common to have problems like this?

13 A You know, this is 75 pound rail. And 75 pound rail
14 is older rail. It's not uncommon for railroads -- short line
15 railroads to have some of the original rail that was installed
16 back when a railroad was built. And so 75 pound refers to the
17 weight of the rail. The lighter the pounds, the lighter
18 weight the rail is, and becomes more temperamental. So this
19 is -- this is the section of track that is slated for upgrade,
20 and certainly the conversion from 75 pound to a heavier weight
21 rail.

22 Q Okay. This is the next photograph, is Exhibit U.
23 This is represents a bridge that is on the rail line that
24 borders the Meyer property. If you look down at the support
25 system, appears that the support -- the closest support to
26 this photographer is quite deteriorated, and it looks like
27 it's rotten a little; is it your belief that this type of
28 bridge can support 286,000 pounds?



1 A Yep, absolutely. In fact, our bridges, every year,
2 are inspected by an outside inspector. I testified to that
3 last week. One of the standards that never existed previously
4 to railroads was a bridge inspect standard, and it wasn't
5 implemented by the FRA until about 2015, if I recall
6 correctly, when the 286 standard came into play.

7 And so the last inspection -- the inspections are
8 done annually. They're done by an outside contractor, and
9 this bridge has passed its inspection.

10 Q And if you look at Exhibit V, it's the next exhibit,
11 it's also a picture from the same bridge. Looks like some rot
12 and some cracked ties -- the end of the cracked ties. Those
13 also -- this bridge and those type of problems are okay?

14 A Yeah, the -- the ties -- it's not uncommon for wood
15 to have natural cracks in it. In fact, most of the ties that
16 are being placed on bridges now are something that I had spoke
17 to last week about. Railroad ties, specifically, are end
18 plated. And that means that there is a metal grid that is
19 placed at the --

20 MR. BLOCK: Sorry.

21 A There is a metal grid that is placed on either end
22 of the tie that, you know, keeps splits from -- or big splits
23 from happening. There are -- in this photo here, there's
24 certainly something of concern to me, but it isn't related to
25 the tie condition at all.

26 Q BY MR. JOHNSON: What's of concern to you?

27 A Well, there's -- there appears to be a human
28 standing on main line track without proper protection of a



1 railroad escort, and that's something that Operation Lifesaver
2 takes very seriously. This is main line track. There's
3 somebody standing without a railroad escort, and that presents
4 a huge safety issue.

5 Q Okay. If you look at Exhibit W, that's in the same
6 group, is it common, on the rail line, to have these older
7 wooden structure bridges?

8 A Yes, and it's actually not something that is
9 isolated to the California Western Railroad. Wooden structure
10 bridges are common across railroads, including the Class I
11 railroads, across the entire Country.

12 Q Okay. And so it's your understanding that this type
13 of structure here would be -- in the condition that's it in
14 meets -- would sufficiently support a 286,000 pound vehicle,
15 or car?

16 A Yes, so keep in mind that as the train is moving
17 across a structure like this, that the weight is distributed
18 over the entire rail car, over each of the axels and the truck
19 assemblies, and isn't isolated to one spot on the bridge.

20 And so again, we have an outside bridge inspection
21 company, Coppers Osmoss (phonetic), that does our annual
22 inspection. It was completed each year. It was completed
23 last year, and they'll be out this fall for their regular
24 inspection.

25 Q And they inspect every bridge on the line?

26 A They do.

27 Q Okay. Then, there's two more photographs, Exhibit
28 X, which appears to be the same bridge. And Exhibit Y, which



1 appears to be the same bridge, as well.

2 MR. JOHNSON: Your Honor, I move these photographs
3 into evidence.

4 THE COURT: Any objection?

5 MR. BLOCK: No objection, Your Honor.

6 THE COURT: Okay. Exhibits R through Y will be
7 received.

8 (Respondent's Exhibits R through Y admitted into
9 evidence)

10 Q BY MR. JOHNSON: I believe you testified that the
11 present train station in Willits is approximately 1 acre; is
12 that correct, in size?

13 A Approximately.

14 Q And then, I believe you also testified that the
15 other portion of the yard where you have a maintenance area,
16 that's approximately four-plus acres; is that correct?

17 A Approximately, yes, that's correct.

18 Q So collectively, the area that you're using to
19 operate out of Willits, at this point, is about five-plus
20 acres?

21 A That's correct.

22 Q The site -- just to clarify, also -- and if this is
23 incorrect, please let me know. But the sites -- I'd like to
24 go over the acreage of the sites that you evaluated. You
25 evaluated the REMCO site, which was approximately 10 acres in
26 size?

27 A That's correct.

28 Q You evaluated the Coke (phonetic) site, which was



1 approximately two-and-a-half acres in size; is that right?

2 A That's correct.

3 Q You evaluated the Shell Lane property, which was
4 approximately four-and-a-half acres in size?

5 A That's correct.

6 Q You evaluated the Dudley (phonetic) property, which
7 was approximately twelve acres in size; is that right?

8 A That's correct.

9 Q And you also evaluated the Cutter Lumber property,
10 which was approximately ten acres in size?

11 A That's correct.

12 Q Based upon the acreages of the sites, isn't it
13 correct to state that you can complete your project on the
14 Willits side of the line with a site that's 12 acres or less?

15 A That's not correct.

16 Q Why is that not correct?

17 A As I testified a couple of times last week, the
18 current facilities that we have are extremely disjointed. And
19 in order to accommodate transloading, as we discussed in one
20 of the exhibits in the large binder, we do need that extra
21 space for additional rail and the ingress and egress of
22 trucks. Also, to provide adequate parking for trucks staging,
23 inbound and outbound and such.

24 Q So if you need that additional acreage, I mean, why
25 did you evaluate all these sites so significantly that are 12
26 acres or less?

27 A Well, as I testified last week, we looked at each of
28 the sites. Some of the sites are not necessarily sites that



1 were scouted out by myself, but my colleague and the -- and
2 for a variety of reasons, the sites just simply do not work.
3 Whether they either have natural land barriers that present an
4 issue, or the great separation from the existing railroad
5 grade to those pieces of property present a barrier.

6 Q No, I understand they all have limitations or
7 problems. But my question is, specifically, if you
8 need -- you're effectively stating that you need twenty acres
9 to do what you need to do; why did you evaluate sites that
10 were ten acres, twelve acres, four and a half acres, and two
11 and a half acres?

12 A As I stated last week in my testimony, one of the
13 sites that we considered was REMCO, and that was a ten-acre
14 site. And we even, in our illustrations, depicted pictures
15 of -- or images of track that would allow for minimal
16 transloading. But what it did not contemplate was expansion.
17 It was extremely limited to the footprint that it's bound by,
18 with very tight corners.

19 So at the time, in 2015, a site like REMCO may have
20 worked. But there were significant limitations, and the issue
21 of expansion would have meant that we would have needed to
22 acquire a potential future piece of property, again, bringing
23 up the disjointed effort that we currently are faced with.

24 Q So that being the case, why would you evaluate a
25 two-and-a-half-acre parcel, or a four-and-a-half-acre parcel,
26 or even a twelve-acre parcel, when you made these analyses?

27 A To see if there was some aspect of that property
28 that could work, or if there was a piece of property adjacent



1 to that that might not -- that might be able to work, as well.

2 Q You testified, I believe, earlier, when you -- when
3 the railroad decided to assist with this Trout's Unlimited
4 Project, at that time, you were shipping gravel and rock. You
5 transloaded that material at your existing four-plus-acre site
6 in Willits; is that correct?

7 A That was transloaded at the -- in the Y, on Exhibit
8 3, I believe, which is on the wall behind me. That was
9 transloaded in the Y area.

10 Q And that's on that four-plus-acre parcel; is that
11 right?

12 A I believe -- yes, I believe that was part of the
13 calculation.

14 Q So you were able to transload on a four-plus-acre
15 parcel, correct?

16 A And as I testified last week, it wasn't without
17 issue. The ingress and egress into that, just for rock
18 trucks, became an issue. That was one single commodity. Any
19 other transloading and any other traffic would have totally
20 balled up the entire process.

21 Q The term "transloading", effectively, refers to the
22 removal of some material or freight off of a truck. And then,
23 subsequently, the transfer of that material or freight to the
24 railroad; is that correct?

25 A That is correct.

26 Q So with the operation of -- or the plan at the Meyer
27 property, what you're doing is you're menacing a railway
28 would, effectively, be looking to quadruple the size of its



1 facility that it operates at in Willits presently; is that
2 correct?

3 A That's correct.

4 Q What is the acreage of Mendocino Railway's holdings
5 in Fort Bragg, California?

6 A Approximately 300 acres.

7 Q And on that -- on the Fort Bragg site, you have a
8 maintenance yard, a Y, and other maintenance facilities; is
9 that correct?

10 A We do.

11 Q And it's your understanding or expectation that
12 Mendocino Railway is going to fix the Fort Bragg tunnel 1 in
13 the near future; is that right?

14 A That is correct.

15 Q If the tunnel is going to be fixed, can you please
16 explain why you cannot just operate your maintenance facility
17 on Fort Bragg, as it's only 40 miles away from the Town of
18 Willits?

19 A As I testified last week, we are -- we have plans to
20 build facilities in Fort Bragg, very similar to what we plan
21 to do in Willits. And as such, the -- while it may be 40
22 miles geographically, there is a need on both ends of the
23 line. Again, something I testified to earlier, that is
24 railroad -- short line railroads complete the first mile and
25 last mile of logistics, often times in the chain of
26 transportation.

27 And so having everything be located in one spot, not
28 the other, simply doesn't work for the business model, not



1 specific to Mendocino Railway, but specific to logistics and
2 transportation for transloading across the Country.

3 Q As far as transloading is concerned, though, a
4 distinction between what -- the way you operate at Mendocino
5 Railway and other short line railroads, is that fact that your
6 short line railroad is not, effectively, part of the
7 transcontinental railroad system; is that correct?

8 A That is not correct.

9 Q Okay. It hasn't operated as part of the
10 transcontinental railroad since the system -- since at least
11 1998; isn't that correct?

12 A That is not correct.

13 Q Why is that not correct?

14 A Well, just because there may not be a current
15 connection, meaning, that a rail car isn't able to travel
16 north of, let's say, Cloverdale, California, to interchange
17 with us in Willits, does not mean that the railroads are not a
18 part of the national network, or not a part of the national
19 system.

20 Q Okay. Well, functionally, they haven't been part of
21 the system and functioned since 1998; is that correct?

22 A That is not correct. That -- again, that is
23 something that service transportation work would have to
24 render, and they have not done that yet.

25 Q Okay. The train has not passed through Ukiah and
26 gone to Willits since 1998; is that correct?

27 A There may have been a train, work related, that
28 passed after 1998, so I wouldn't be able to say with absolute



1 certainty. The last time that California Western Railroad
2 interchanged a freight train with the Northwestern Pacific
3 Railroad, as I testified to last week, was Thanksgiving eve of
4 1998.

5 Q Okay. Thank you. I would expect that most
6 railroads have maintenance facilities that are hundreds of
7 miles apart; is that correct?

8 A In some instances, that may be correct. But in most
9 cases, rail maintenance facilities, even if it's a substation,
10 would be placed much closer. I think it would depend on the
11 lay of the land, if you will. For instance, if you were
12 crossing over the Sierras, you would find that there would be
13 maintenance substations far closer because of the terrain that
14 the trains are covering.

15 Q I believe you testified that Mendocino Railway is
16 operating the train system today in the same fashion that it's
17 been operated in the last 125 years; is that correct?

18 A There's -- there is nothing different about what
19 Mendocino Railway is doing today than what it was doing 125
20 years ago.

21 Q And based on your knowledge, the train system is --
22 effectively had the same type of yards in Willits for the last
23 125 years; is that correct?

24 A The system of rail in Fort Bragg has changed
25 drastically. There have been tracks that have been removed
26 over the years. And in Willits, while the yard remains mostly
27 unchanged, it is yard that is not controlled by California
28 Western Railroad or Mendocino Railway.



1 Q Bu the yard has basically remained the same last 125
2 years in Willits; is that correct?

3 A I believe it to be.

4 Q If you look at the Exhibit Z, as in Zorro, it's a
5 train -- or appears to be a portion of a train schedule; are
6 you familiar with this document?

7 A I am. I printed it out at your request.

8 Q Okay. Can you explain or clarify exactly what this
9 document is?

10 A So this is an excerpt from the Railroad's
11 reservation system. It mirrored the exhibits that you had
12 produced. Exhibit L, I believe, is one of the exhibits. And
13 it's a behind-the-scenes look. There were holes in the
14 calendar on your Exhibit L. And when I say it "mirrors", it
15 mirrors in date range.

16 There were holes in the exhibit that you produced,
17 and that's because you were looking at one trip, specifically,
18 on the railroad's website. And so you printed that calendar
19 based on the title of the trip. Whereas, the exhibit that I
20 produced, Z, that gives you a full lineup of what may be
21 happening on any specific day.

22 Q Okay. Thank you.

23 A You're welcome.

24 Q So I'm looking at this -- specifically, I'll take a
25 look at Exhibit Z, the first page, which is -- looks like the
26 end of July 31st, through August 6th -- or no. I guess it's
27 for the whole month, exactly, July 31st through August 27th;
28 is that correct?



1 A Yes, the previous weeks at the top are collapsed,
2 because those dates have since happened. And again, I was
3 trying to match the calendar you printed out from the website.

4 Q All right. Thank you.

5 A You're welcome.

6 Q So it appears that it's -- a lot of the trips on
7 here relate to railbikes; is that correct?

8 A There's a -- there are a number of trips that relate
9 to railbikes.

10 Q And when did Mendocino Railways being operating
11 railbikes?

12 A Well, railbikes is what we may call them today;
13 they're nothing more than a velocipede. And the railroad has
14 a history of running those over its 100 year history. In
15 fact, next door to the depot in Fort Bragg, there's one that's
16 suspended from the ceiling in the cafe. The railbikes were
17 reintroduced, if you will, to the line in 2018.

18 Q And so in -- would it be correct to say that in
19 2018, that is when Mendocino Railways began offering the
20 excursion service of railbikes on its line?

21 A Yes.

22 Q And I believe you testified that what would occur is
23 that the railbikes would be put on the line. And then there
24 would be someone from your organization that would lead the
25 railbikes down the lane and someone in the back that would
26 follow. And then you would go a few miles; is that correct?

27 A There is a lead and a tail bike, those are railroad
28 employees. And there are multiple trips, some in which you



1 can travel seven miles round trip, some which you can travel
2 twenty-five miles round trip.

3 Q And then, these railbikes, they're powered like a
4 bicycle? Like, just people's legs; is that right?

5 A They are -- they're two-person bicycles. They're in
6 the recumbent position. They are peddle powered. Every bike
7 is -- or has an electric assist.

8 Q Okay. And Mendocino Railway has been heavily
9 marketing railbikes through its advertisements the last couple
10 of years, correct?

11 A It has.

12 Q And is it your plan to use the Meyer property as
13 your base for these railbike operation in the Willits area?

14 A At present, there are no railbike operations out of
15 Willits. Our railbike operations are limited to Fort Bragg.

16 Q Because if you were to acquire Mr. Meyer's property,
17 is it your plan to operate railbikes at his -- at that
18 property, off of that property?

19 A It may be one of the services that we offer, but the
20 railbikes on the Willits side need to be of a completely
21 different design in order to negotiate the mountainous curves
22 versus the railbikes that are used on the Fort Bragg side.

23 Q Did Mendocino Railway comply with the requirements
24 of the California Environmental Quality Act that's planning
25 for this project?

26 A It's my understanding the Mendocino Railway is
27 exempt from that process.

28 Q Okay. So the answer is no; is that correct?



1 A That's correct.

2 Q Did Mendocino Railway comply with the requirements
3 of the National Environmental Policy Act in planning for this
4 project?

5 A It's my understanding Mendocino Railway would be
6 exempt from that process as well.

7 Q Okay. So the answer to that question is no?

8 A That's correct.

9 Q You claim that Mendocino Railway did not complete a
10 site plan until June of 2022; is that correct?

11 A The official site plan that was prepared and
12 presented was done in June of 2022.

13 Q Do you believe that Mendocino Railway had any legal
14 responsibility to prepare a plan for the project before
15 beginning the eminent domain process on the Meyer property?

16 A No.

17 THE COURT: I'm sorry. Repeat that question.

18 MR. JOHNSON: Do you believe that Mendocino Railway
19 had any legal responsibility to prepare a plan for the project
20 before beginning the eminent domain process on the Meyer
21 property?

22 Q BY MR. JOHNSON: I'd like to refer you to Exhibit I.
23 This is a letter from the State of California Public Utilities
24 Commission. Appears to be written by Jonathan C. Koltz,
25 assistant general counsel, legal division, Public Utilities
26 Commission. And it's addressed to Michael Hart, CEO, Sierra
27 Railroad Company. And it's dated August 12, 2022. Are you
28 familiar with this letter, Mr. Pinoli?



1 MR. BLOCK: Your Honor, we object to the
2 introduction of this document. It's hearsay and irrelevant.

3 THE COURT: Well, I received the other letter;
4 right? So why wouldn't this be -- I mean, he objected to the
5 other letter and I received it so --

6 MR. BLOCK: Okay.

7 THE COURT: -- I'm going to receive this.
8 Are you moving this into evidence?

9 MR. JOHNSON: Well, I will move it into evidence,
10 yes, Your Honor.

11 THE COURT: Okay.

12 MR. JOHNSON: I'd just like to go over it first with
13 Mr. Pinoli and then I'll move it into evidence.

14 THE COURT: Okay. Go ahead.

15 MR. BLOCK: Your Honor, I'm not sure which letter
16 you're referring to.

17 THE COURT: I thought there was another letter.

18 MR. JOHNSON: Exhibit 12, Your Honor.

19 THE COURT: Right. It said the exact opposite at
20 one time.

21 MR. BLOCK: Oh. That's right.

22 THE COURT: Right. Okay. Go ahead.

23 Q BY MR. JOHNSON: Are you familiar with this letter,
24 Mr. Pinoli?

25 A Yes, I am.

26 Q In the first paragraph, it says:

27 "This letter is in response to your July 26, 2022,
28 email to the California Public Utilities Commission



1 General Counsel, Christine Hammond."

2 Do you understand that?

3 A I do.

4 Q Did Mr. Hart send an email to Ms. Hammond?

5 A It's my understanding that he did.

6 Q And then if you look at that next paragraph, it
7 says:

8 "In your July 26, 2022 email, you request a letter
9 from the Commission stating that Mendocino Railway
10 is a regulated public utility railroad. Your
11 request is similar to one received from Robert Jason
12 Pinoli, general manager of the Mendocino Railway, on
13 October 31, 2018."

14 Do you see that?

15 A I do.

16 Q Did you send an email or a letter to the California
17 Public Utilities Commission, requesting that they state that
18 Mendocino Railway is a regulated public utility railroad?

19 A Yes.

20 Q And that was done on or around October 31, 2018?

21 A About then, yes.

22 Q Okay. And then if you look at Exhibit 12 in the big
23 binder there --

24 A Yes.

25 Q -- is that the response that you received in
26 response to your letter on October 31, 2018?

27 A Yes, it is.

28 Q And in this Exhibit 12, did the California Public



1 Utility Commission state that Mendocino Railway is a regulated
2 public utility railroad?

3 A The letter states that Mendocino Railway is a Class
4 III railroad as considered by the Public Utilities Commission.

5 Q Okay. So you had requested that -- at that time on
6 your letter of October 31, you had requested that the
7 California Public Utility Commission provide you with a letter
8 that states that Mendocino Railway is a regulated public
9 utility railroad; is that correct?

10 A That's correct.

11 Q And they did not provide you with that letter that
12 stated you were a regulated public utility railroad, did they?

13 A They provided us with a letter that says we are a
14 Class III common carrier. And this was in an effort to give
15 Fort Bragg -- the city of Fort Bragg's attorney the ability to
16 issue their opinion letter to another state agency which said
17 the same.

18 Q Okay. But they -- just to clarify, they did not
19 state that you were a regulated public utility railroad;
20 correct?

21 A I don't have the code sections that they reference
22 in front of me in their letter. So those code sections may
23 very well refer to it, but in the letter -- so I can't answer
24 that question in the affirmative or not given that I don't
25 know what the public utility code sections are that are listed
26 in the letter.

27 Q Okay. And this letter, Exhibit 12, it doesn't refer
28 to Mendocino Railway as a common carrier, a Class III common



1 carrier. It refers to Mendocino Railway is regarded as a
2 Class III railroad by the California Public Utilities
3 Commission. Isn't that correct?

4 A That's what the letter says. And they're -- they're
5 one and the same.

6 Q And then if you look at Exhibit I, in the third
7 paragraph it states:

8 "On December 7th, 2018, the Commission responded in
9 writing to Mr. Pinoli stating that Mendocino Railway
10 is as Class III railroad. Based on Mendocino
11 Railway's representations to the Commission, the
12 Commission considers Mendocino Railway's rail
13 operations largely unchanged since that time."

14 Do you agree that your Mendocino rail operations
15 are, one, largely unchanged since October or December of 2018?

16 A And as I testified last week, the rail operations
17 remain largely unchanged since the 1980s, the '70s, the '60s,
18 the '50s, and so on.

19 Q Okay. All right. Thank you.

20 So when you received this letter in December of 2018 and
21 it did not specifically state that Mendocino Railway is a
22 regulated public utility railroad as you requested, did that
23 cause you or Mendocino Railway to question whether or not you
24 were a public utility railroad?

25 A No.

26 Q Why not?

27 A Well, as I testified last week, for a railroad that,
28 two weeks ago, had nine inspectors come out to do regular



1 inspection, it would strike me as that Mendocino Railway and
2 its railroad are fully regulated by the California Public
3 Utilities Commission.

4 Q But my question is: did this letter on December 8,
5 2018, cause Mendocino Railway to question whether or not it
6 was a public utility?

7 A No, not at all.

8 Q If you look at Exhibit I, the fourth paragraph, it's
9 in bold, it says:

10 "This letter confirms that Mendocino Railway is a
11 Commission-regulated railroad. The Commission
12 website lists Mendocino Railway's status as a Class
13 III Commission-regulated railroad."

14 And then there's a footnote where it references the
15 website. And then it goes on to say:

16 "While Mendocino Railway is a Commission-regulated
17 railroad, it is not a public utility within the
18 meaning of the California Constitution, the
19 California Public Utilities Code, and the
20 Commission's orders."

21 Do you see that?

22 A I do.

23 Q So based on this letter, it appears that the
24 California Public Utility Commission does not believe that
25 Mendocino Railway is a public utility within the meaning of
26 the Constitution, the California Public Utilities Code, and
27 the Commission's orders; is that correct?

28 A I disagree with that.



1 Q Okay. But that's -- it's your understanding that
2 that's the California Public Utility's code position?

3 A No. That is incorrect, Mr. Johnson. This is the
4 opinion of a staff attorney within the Public Utilities
5 Commission. It is not the opinion of the Commission, which
6 rendered in 1998, in their opinion, that the railroad would be
7 deregulated with respect to its excursion affairs and
8 excursion schedule only, and that the Commission, in 1998,
9 maintained control over all other aspects of the railroad.

10 Q Okay. So when this letter was written, do you
11 believe that this letter was written on behalf of the entity
12 that Mr. Koltz represents?

13 MR. BLOCK: Objection. Calls for speculation.

14 Q Do you know?

15 THE COURT: If you know.

16 THE WITNESS: No. Well, I don't know Mr. Koltz.
17 And I can't imagine that Mr. Koltz would issue a letter on
18 stationery that wasn't his. So it may be Mr. Koltz's opinion,
19 but it is not the opinion of the Commission.

20 Q BY MR. JOHNSON: Okay. Has anyone from the
21 Commission specifically told you that, that this letter
22 doesn't represent their opinion?

23 A Nobody from the Commission or the Commission in its
24 entirety which makes a decision, not a commissioner by
25 themselves, has expressed otherwise.

26 Q Does this letter cause you to question whether or
27 not Mendocino Railway is, in fact, a public utility?

28 A It does not.



1 Q So in reading -- after reading this letter, this
2 letter did not cause you to question whether or not Mendocino
3 Railway is a public utility?

4 A No. Because I've read the 1998 decision which
5 clearly states that but for the fares and schedule of the
6 excursion services operated by the California Western
7 Railroad, that the Commission maintains its authority over all
8 other aspects of the railroad.

9 Q Didn't that decision basically state that the
10 California Public Utilities Commission would maintain and
11 regulate Mendocino Railway as it relates specifically to
12 safety issues? Isn't that correct?

13 A It's one of the things that they covered.

14 Q And it specifically stated that it wasn't going to
15 regulate fares but it was going to specifically relate to
16 regulating them -- regulating Mendocino Railway or the
17 California Western Railroad based on safety issues. Isn't
18 that right?

19 A That is --

20 MR. BLOCK: Objection. Misstates the opinion. The
21 opinion speaks for itself. Calls for a legal interpretation.

22 MR. JOHNSON: Your Honor, I'm simply asking Mr.
23 Pinoli about the decision and I'm questioning whether he
24 believes or Mendocino Railway believes they're a public
25 utility. And he quoted the decision so I'm responding to his
26 answer.

27 THE COURT: Well, yeah. As long as he's not
28 rendering a legal opinion, he can (indiscernible). But do I



1 have a copy of that?

2 MR. JOHNSON: Yes, Your Honor.

3 THE COURT: I do? Okay.

4 MR. JOHNSON: It's in the request for judicial
5 notice.

6 THE COURT: Right. Okay.

7 MR. BLOCK: In both parties -- well, the Defendants'
8 request for judicial notice only has one of the three 1998 PUC
9 decisions. The Plaintiff's request for judicial notice has
10 all three decisions.

11 THE COURT: Okay. Great.

12 MR. BLOCK: It's a more complete record. Or a
13 complete record.

14 Q BY MR. JOHNSON: Do you understand my question? Do
15 you recall the question?

16 A I recall the question. And I believe, Mr. Johnson,
17 it's the same question that we covered a couple of times last
18 week when we were speaking about the actual decision and we
19 had that exhibit opened in front of us. And so I will restate
20 what I've said earlier. Your question to me just a moment ago
21 touched on schedules and fares, but what you left out of your
22 question was the word excursion. That is the only thing that
23 the California Public Utilities Commission, in their 1998
24 decision, said that they were willing to relinquish power on,
25 was excursion fares and excursion schedule.

26 Q If you go to the first paragraph on page 2 of this
27 Exhibit I, you can read that first paragraph to yourself.

28 Have you read that?



1 A I have. Yes.

2 Q Okay. In the second sentence it says, "In the
3 course" -- and it's referring to the decision, the 1997
4 California Western Railroad decision by the Commission, and it
5 states -- in response it states:

6 "In the course of this proceeding, the Commission
7 determined that CWRR did not constitute a public
8 utility to the extent it provides excursion rail
9 services which constituted 90 percent of its overall
10 business."

11 MR. BLOCK: Objection. Vague. Counsel misstated
12 the decision that it refers to. It refers to the January 21,
13 1998, decision.

14 MR. JOHNSON: That's fine. But it states in the
15 letter that it calls it 1997, but that's fine. The decisions
16 referenced here, the decision's 1998 Cal. PUC LEXIS 189.

17 Q BY MR. JOHNSON: So do you agree with that statement
18 that is in this letter?

19 A Mr. Johnson, as I said earlier, I don't agree with
20 this letter because it is the opinion of a staff attorney and
21 not the opinion of the Commission. A staff member is not
22 permitted to speak on behalf of the Commission in such a
23 matter.

24 Q Okay. But that's not my question. My question is
25 specifically this. There's a sentence here. It says:

26 "In the course of this proceeding, the Commission
27 determined that CWRR did not constitute a public
28 utility to the extent it provides excursion rail



1 service which constituted 90 percent of its overall
2 business."

3 And my question to you specifically is: do you
4 agree that that is -- or is that a true statement, in your
5 opinion?

6 A Well, since the Commission deregulated the railroad
7 with respect to its excursion fares and excursion schedule
8 only, then that would appear to be a correct statement whereas
9 it's a -- it's specifically targeting excursion fares and
10 excursion schedule, nothing else.

11 Q Okay. So you agree that that's a true statement?

12 A Yes, sir.

13 Q Okay. And then the next sentence, it says in
14 quotes:

15 "In providing the excursion passenger service, CWRR
16 does not function as a public utility."

17 Do you believe that that was also determined to be
18 the case in this referenced PUC decision, 1998 PUC decision?

19 A Again, with respect to the railroad's excursion
20 fares and excursion schedule, which is what the railroad
21 petitioned the CPUC for, the CPUC's, in this letter before me,
22 where it says that the CPUC determined that CWRR did not
23 constitute a public utility with respect to its excursion rail
24 service, I would agree with that.

25 Q Okay. And if you look at the next paragraph, it
26 states:

27 "The Commission found that while CWRR was not a
28 public utility, it was still subject to Commission



1 regulation regarding safety of CWRR's rail
2 operations."

3 Do you agree with that statement?

4 A I do not.

5 Q Why do you not agree to it?

6 A Because the railroad is a public utility.

7 Q So you do not believe that this 1998 decision stated
8 that the railroad is not a public utility; is that correct?

9 A That is correct.

10 Q And then it states down in the next sentence, it
11 states:

12 "CWRR agreed with these findings. It did not
13 challenge the Commission's determination that it was
14 not a public utility."

15 Do you know if that's a true statement?

16 A I do not know.

17 Q If you go to page 3 -- top of page 3 of Exhibit I,
18 the first sentence of page 3 states:

19 "The Commission's jurisdiction is limited to safety
20 oversight of Mendocino Railway's rail operations to
21 ensure that Mendocino Railway is operating its rail
22 vehicles safely in compliance with the law."

23 Do you believe that the Commission's jurisdiction is
24 limited simply to safety oversight?

25 A I believe the Commission has far broader.

26 Q Okay. So you don't agree with that statement?

27 A I do not.

28 Q And then the next sentence says:



1 "The Commission does not regulate other aspects of
2 Mendocino Railway's operations such as fare prices
3 or schedules and the Commission's authority would
4 not preempt, for example, generally applicable land
5 use or environmental rules or regulations as such
6 rules or regulations relate to non-railroad
7 operation."

8 Do you believe that's a true statement?

9 A I am not able to opine on that.

10 Q In the next paragraph it states:

11 "In addition, your July 26, 2022, email recounts
12 your difficulty with having Commission staff state
13 that Mendocino Railway's a public utility, and also
14 states at a recent conference that included other
15 California shortline railroads, in quotations, one
16 of the government officials present simply suggested
17 we throw the next CPUC inspector off the property
18 saying, We are not regulated and not subject to his
19 authority"

20 Do you have any understanding of what was stated in
21 the July 26, 2000 (sic) email that recounts the difficulty
22 with having Commission staffs state that Mendocino Railway is
23 a public utility?

24 A I do not.

25 Q Did you review that email at some point?

26 A I don't recall having reviewed that email.

27 Q Are you aware of what occurred or what's being
28 referenced here when someone talks about throwing the next



1 CPUC inspector off the property?

2 A Again, that was an email exchange between Mr. Hart
3 and whomever he directed his email to. But as I testified
4 earlier, there have been -- there was a subsequent CPUC
5 investigation and they took part in their full regular
6 inspection without any incident.

7 Q Does Mendocino Railway now believe that it's not
8 subject to CPUC regulation?

9 A Mendocino Railway is subject to CPUC regulation.

10 Q If you look at the last paragraph of this page 3,
11 Exhibit 9, it states:

12 "Ensuring the safety integrity of Commission's
13 inspectors is of paramount importance. Any acts of
14 obstructing or attempting to remove Commission
15 inspectors from railroad property will be prosecuted
16 to the fullest extent of the law."

17 Would it be correct to say that the CPUC appears to
18 be threatened by Mendocino Railway's behavior?

19 A I -- I would not say that whatsoever. I have spent
20 three decades in this profession and have never once said
21 something so ludicrous as to have an inspector be removed from
22 the property.

23 Q Okay. If you look at page 4, it states:

24 "We hope this letter answers your inquiry as the
25 Commission continues to exercise its regulatory
26 mission to ensure safe operations of Sierra Railroad
27 and its related entities."

28 Do you see that?



1 A I do.

2 Q Do you know if this letter answered Mendocino
3 Railway's inquiry?

4 A I'm not certain that it did.

5 MR. JOHNSON: Your Honor, I move Exhibit I into
6 evidence.

7 MR. BLOCK: Same objections, Your Honor.

8 THE COURT: Exhibit I will be received over
9 objection.

10 (Respondent's Exhibit I admitted into evidence)

11 MR. JOHNSON: Your Honor, at this point I believe
12 I'm done but I just want to double-check the exhibit list and
13 make sure that I have the exhibits or that it reflects the
14 exhibits proper.

15 THE COURT: Sam, (indiscernible)?

16 THE CLERK: Yes, Your Honor. Give me a quick
17 minute.

18 (Pause)

19 THE COURT: You want to take a moment to look at
20 the --

21 MR. JOHNSON: Yes, Your Honor. I'm doing that right
22 now.

23 THE COURT: Thank you.

24 MR. JOHNSON: Okay. Your Honor, at this point I
25 would like to move Exhibit E into evidence. That's a letter
26 from Orlevey (phonetic) Appraisal Group to Mr. Meyer.

27 THE COURT: Any objection?

28 MR. BLOCK: No objection.



1 THE COURT: Exhibit E will be received.

2 (Respondent's Exhibit E admitted into evidence)

3 MR. JOHNSON: And then I know that this is already
4 in evidence but just to make it clear -- clean, I'd also move
5 Exhibit G, which is the site -- preliminary site map.

6 THE COURT: Any objection? It's already in.

7 MR. BLOCK: Yeah. No objection.

8 THE COURT: Exhibit G will be received.

9 (Respondent's Exhibit G admitted into evidence)

10 THE COURT: That's the 2022?

11 MR. JOHNSON: Yes, Your Honor. And I just have one
12 or two more questions.

13 Q BY MR. JOHNSON: Mr. Pinoli, does any entity
14 regulate your railbike operation?

15 A Yes. Our railbike operations are under the same
16 jurisdiction as any of our rail operations. So CPUC, TSA, and
17 FRA.

18 Q Can railbikes travel through the Willits area from
19 the existing station safely?

20 A Railbikes could travel from Willits, but as I
21 mentioned earlier, the bike style is something that would have
22 to be changed to accommodate the curvature on the Willits side
23 of the line.

24 Q Okay. All right.

25 MR. JOHNSON: I have no further questions, Your
26 Honor.

27 THE COURT: Mr. Block, would you have some redirect?

28 MR. BLOCK: Yes. Thank you.



1 THE COURT: Just one moment before you start.

2 So Sam, can you figure out where those attorneys are
3 on the Sellet (phonetic) conference?

4 THE CLERK: Correct, Your Honor. I believe
5 that's -- one of them may be calling soon, and we do have one
6 half of the party for the Martinez outside still on conference
7 as well.

8 THE COURT: Okay. Yeah, I don't think Martinez is
9 going because they -- we didn't have service (indiscernible).

10 THE CLERK: Yeah. There's no proper service.

11 THE COURT: So why don't we let that person go.

12 Can I just break and deal with the family law
13 matters --

14 MR. BLOCK: Yes.

15 THE COURT: -- for --

16 (Recess at 10:02 a.m., recommencing at 10:09 a.m.)

17 THE COURT: Thank you, folks. Sorry.

18 MR. BLOCK: All right. Thank you, Your Honor.

19 RECROSS-EXAMINATION

20 Q BY MR. BLOCK: Mr. Pinoli, Mr. Johnson was asking
21 you some questions regarding Exhibit I, a letter from a staff
22 attorney at the PUC to Mr. Hart. Do you recall those
23 questions?

24 A Yes, sir.

25 Q Did Mendocino Railway respond to Mr. Koltz's letter?

26 A We did.

27 MR. BLOCK: And I'd like to mark Exhibit 36. I
28 believe that's next, Your Honor.



1 THE CLERK: Yes. Next in order, Exhibit 36.

2 MR. BLOCK: I've already given that to Mr. Johnson.
3 Here, Your Honor. I didn't mark that as 36.

4 Q BY MR. BLOCK: What is Exhibit 36, Mr. Pinoli?

5 A Exhibit 36 is a letter dated 15 August 2022 from
6 Counsel for Mendocino Railway, Paul Beard, to Mr. Koltz at the
7 California Public Utilities Commission.

8 Q And can you read the second paragraph there?

9 You can read it out loud.

10 A The second paragraph: In the interest of fairness
11 and accuracy, we ask that the conclusion be reconsidered in
12 light of the following key points that the letter does not
13 address.

14 Q And then, this letter was prepared by Mendocino
15 railways counsel, Mr. Paul Beard?

16 A That is correct.

17 Q Okay.

18 The first section here, starting on page 1 and
19 continuing onto page 2, addresses two reasons why Mr. Koltz's
20 letter is inaccurate, correct?

21 A That is correct.

22 Q And why his --

23 MR. JOHNSON: Your Honor? Your Honor, can I object
24 to this as hearsay? This is a letter from Mr. Beard, who's
25 the attorney in this action. And I'm sure it's a legal
26 argument. I mean, this is a legal argument that can be raised
27 in their closing papers, but I don't think it's appropriate
28 for Mr. Pinoli to testify about what Mr. Beard is saying in



1 this letter.

2 THE COURT: Well, this is the very issue that I was
3 struggling with all weekend. I wish I had had these letters
4 before the weekend -- this one. But here's my issue. And can
5 I just go into it before you -- or do you want --

6 MR. BLOCK: Sure.

7 THE COURT: -- to finish questioning?

8 MR. BLOCK: No, no, no.

9 THE COURT: Okay. So maybe this will help focus
10 things. If the PUC said ninety percent of the railways
11 business is excursion services, and Mr. Pinoli agrees with
12 that, and he agrees that the excursion services are not
13 subject to -- don't create a public entity status, then is ten
14 percent enough to grant status as a public entity or a public
15 utility?

16 That's the issue here as I see it, and this letter's
17 really important, because you're asking the PUC to give that
18 very ruling, and I'm curious as to whether or not we should
19 wait until we hear from the PUC on that issue before I'd make
20 a decision, because the PUC is the governing body here.

21 So that's my struggle, because in this case, to me,
22 the court issue is whether or not they are a public utility,
23 public entity, and --

24 MR. BLOCK: Not a public entity, a public utility.

25 THE COURT: -- public utility.

26 MR. BLOCK: Yeah.

27 THE COURT: And if they have that status, then they
28 have the ability to take property, but if they don't have that



1 status, then they don't, and what we're looking at is ninety
2 percent of the business is excursion services, and everybody
3 agrees with that, at least that's what I heard this morning,
4 so we're looking at ten percent, and whether that ten percent
5 gives them status or not, I --

6 MR. BLOCK: And actually, the PUC answered that
7 question in the affirmative, that Mendocino, or the
8 predecessor -- not the predecessor, the prior owner of the
9 California Western Railroad, CWRR, was a public utility
10 contemporaneous with the 1998 decision.

11 The August decision says exactly that, and that was
12 the next series of questions that I was going --

13 THE COURT: Okay.

14 MR. BLOCK: -- to ask Mr. Pinoli. And we can
15 certainly just jump right to that.

16 MR. JOHNSON: Can I say something on that particular
17 issue?

18 THE COURT: Sure.

19 MR. JOHNSON: I mean, you raised it. I'd like to at
20 least --

21 THE COURT: Okay.

22 MR. JOHNSON: -- press it.

23 The California Public Utility Commission's opinion
24 is of great importance to this case, I would guess, and the
25 letters that they have written seem to be -- contrary to what
26 Mr. Pinoli says, seem to be a position that's taken by the
27 California Public Utilities Commission.

28 However, if you look at the St. Helena case, the St.



1 Helena case is the Court's analysis of this California Public
2 Utilities Commission's analysis in the Wine Train, and the
3 California courts system has also -- through this Wine Train
4 decision has also made its opinion appropriately known, and
5 also as it applies to the Wine Train, as it applies to the
6 analysis, and as it applies to the Skunk Train.

7 And I think that, while the California Public
8 Utilities Commission opinion is of importance, we're still --
9 that precedent from the Wine Train is imperative to the
10 analysis that needs to go on by this Court, and I don't -- I
11 think it's improper, or would be improper for the Court to
12 completely defer to the California Public Utilities
13 Commission.

14 THE COURT: Well, the Wine Train case -- there's a
15 little bit of a distinction between the Wine Train case and
16 this one, and specifically, the St. Helena v. PUC case held
17 that future plans to conduct transportation passenger services
18 was not sufficient to establish a public utility.

19 Here, in this case, Mr. Pinoli has testified that
20 they have conducted freight services, and they have conducted
21 passenger transportation services, albeit ten percent of their
22 business, but they have done it. And so that to me -- there's
23 a distinction between what we've got going on here versus the
24 Wine Train case, and so I -- the Wine Train case dealt with
25 the excursion services, and Mr. Pinoli has admitted that the
26 excursion services doesn't allow consideration for Mendocino
27 Railway to be a public utilities. He's already admitted that.
28 So we're dealing with ten percent of their business, and



1 whether that's sufficient --

2 MR. JOHNSON: Well --

3 THE COURT: -- to constitute --

4 MR. JOHNSON: -- that's fine, Your Honor.

5 THE COURT: -- a public utility.

6 MR. JOHNSON: I would say this, though, on that
7 particular issue, okay? Two things: one, there's been no
8 proof that it's ten percent of their business, okay? We have
9 not seen anything that reflects that it's ten percent of their
10 business. There has been testimony that there was very
11 limited freight service, and then there was some very limited
12 passenger service with respect to some people that may live --
13 or that live next to the tracks that was available.

14 However, as far as what's been proven to what
15 they've done, that is nonexistent, and no documentation has
16 been presented to show that they've even taken freight.
17 There's testimony from Mr. Pinoli that they'd taken freight,
18 and there may be an agreement with the PUC's decision in 1998
19 that it was ten percent. However, there's been no proof of
20 any type of freight that's been taken other than Mr. Pinoli's
21 comments regarding that, and then he also has commented it's
22 very limited, so --

23 THE COURT: Well, and I think you're right, Mr.
24 Johnson. That's going to be the argument.

25 MR. JOHNSON: Right.

26 THE COURT: And I think you need to address the
27 facts.

28 The other issue I have is that Mr. Pinoli is the



1 sole witness in this case, and I'll just say right now, I find
2 him to be very credible, articulate, and very knowledgeable,
3 and so I have to weigh his evidence -- weigh his testimony
4 with that in mind.

5 MR. JOHNSON: Right.

6 THE COURT: And he has testified that on a couple of
7 occasions, they've transported rock, aggregate, and they have
8 had passenger transportation, historically, and -- so anyway,
9 those are the issues that I'm grappling with. And where I got
10 the ten percent is based on the PUC ninety percent analysis --

11 MR. JOHNSON: I understand.

12 THE COURT: -- just so you know.

13 MR. JOHNSON: Right.

14 THE COURT: So in any event, you go ahead and
15 continue the questioning.

16 MR. BLOCK: Sure.

17 Q BY MR. BLOCK: So Mr. Pinoli, I'll just ask this
18 general question. Does Mr. Beard's August 15th, 2022 letter,
19 Exhibit 36, provide information and arguments that contradict
20 Mr. Koltz's conclusion in Exhibit I?

21 A They do.

22 Q Okay. And among the information that Mr. Beard
23 pointed out were the rulings of the PUC in the August 1998
24 CPUC ruling, which is attached as an exhibit to Mr. Beard's
25 letter, Exhibit 36?

26 A That's correct.

27 Q Okay. I'd like to turn you to page 6 of 9 of the
28 August 1998 CPUC ruling.



1 MR. BLOCK: And Your Honor, I'm just going to skip
2 to the most pertinent thing. We'll reserve argument with
3 respect to all other things, but we'll address, really, the
4 bottom line here.

5 MR. JOHNSON: Which -- excuse me what --

6 THE WITNESS: Is that titled page --

7 MR. JOHNSON: -- what are you referring to?

8 THE WITNESS: -- 205 at the top?

9 MR. BLOCK: It says it's 6 of 9 --

10 MR. JOHNSON: Well, there's two (indiscernible).

11 MR. BLOCK: -- of attachment 3.

12 MR. JOHNSON: Okay, so the second one?

13 THE COURT: Attachment 3.

14 Q BY MR. BLOCK: So you see in the -- right there, Mr.
15 Pinoli?

16 A I'm getting there.

17 Okay. 6 of 9, yes.

18 Q Okay. And at the top of the page, it says,
19 conclusion?

20 A Yes.

21 Q And the conclusion, the first two sentences say, we
22 will approve the application, citing public utility code
23 section 832(a) prohibits a public utility without the consent
24 of the commission, to apply any part of the stock issue or any
25 proceeds thereof to any purpose not specified in the
26 commission's order, et cetera, et cetera, correct?

27 A Yes.

28 Q And so there in the conclusion, the PUC is



1 acknowledging CWRR's status as a public utility?

2 MR. JOHNSON: Your Honor, I object as leading.

3 THE COURT: Well, it calls for --

4 MR. BLOCK: I'm just asking --

5 THE COURT: -- he can ask his -- you can ask him his
6 understanding of what this means.

7 Q BY MR. BLOCK: Is that your understanding --

8 A Yes.

9 Q -- of the conclusion?

10 And then findings of fact, number 1. Can you read
11 findings of fact number 1?

12 A Applicant is a common carrier railroad engaged in
13 interstate commerce. Applicant operates railroad passenger
14 and freight service between Fort Bragg and Willets,
15 California.

16 Q And is it your understanding that this is a finding
17 of fact by the California Public Utilities Commission in
18 August of 1998, finding that CWRR, the operator of the
19 California Western Railroad at that time, was a common carrier
20 railroad?

21 A Yes.

22 Q Engaged in interstate commerce?

23 A That is correct.

24 Q Operating in railroad, passenger, and freight
25 services between Fort Bragg and Willits?

26 A That is correct.

27 Q Similar services to the services that Mendocino
28 Railway offers now, correct?



1 A That is correct.

2 Q And similar to services that Mendocino Railway has
3 operated along the California Western Railroad since it
4 purchased the CWR in 2004?

5 A That is correct.

6 Q I'd like to turn you to the next page, 7 of 9, under
7 conclusions of law, number 1. Can you read what that states?

8 A Number 1 under conclusions of law?

9 Q Yes.

10 A Applicant is a public utility within the meaning of
11 section 216(a) of the PU, Public Utilities, Code.

12 Q And is it your understanding, Mr. Pinoli, that this
13 conclusion of law by the California Public Utilities
14 Commission is -- in this August 1998 decision is a finding or
15 a conclusion of law that the California Western Railroad,
16 Inc., the operator of the California Western Railroad in 1998,
17 is a public utility within the meaning of Public Utilities
18 Code 216(a)?

19 A Yes.

20 Q And is it your understanding that California Western
21 Railroad Inc. operated the CWRR at that time in August of 1998
22 similar to the way that Mendocino Railway has operated the
23 CWR, the California Western Railroad, since it acquired the
24 California Western Railroad in 2004?

25 A Yes, That is correct.

26 MR. BLOCK: I have no further questions, Your Honor.

27 MR. JOHNSON: Your Honor, I have a few questions.

28 MR. BLOCK: Oh. I'd like to offer Exhibit 36 into



1 evidence.

2 MR. JOHNSON: I object, Your Honor. It's hearsay.

3 THE COURT: Well, do I have all of these PUC
4 decisions already? All three of them?

5 MR. JOHNSON: Yes, you do.

6 THE COURT: Okay.

7 MR. JOHNSON: This is Mr. Beard, who is the attorney
8 in this case, attorney of record, and it's his letter, and
9 it's hearsay.

10 THE COURT: I'm not going to receive this exhibit,
11 because I agree with Mr. Johnson that this is argument by
12 counsel. This certainly is argument you can put in your
13 closing brief, but I want to make sure that I have all three
14 of these decisions, and they've already been attached to the
15 request for judicial notice.

16 MR. JOHNSON: I believe that Mr. Block attached them
17 to request for judicial notice.

18 THE COURT: Did you attach all three?

19 MR. BLOCK: I absolutely did.

20 The only thing I would offer with respect to the
21 objection is that Mr. Colts' letter is argument, the CPUC
22 letter which the Court admitted into evidence, so I think it's
23 only appropriate for the Court to admit this August 15th, 2022
24 letter, Exhibit 36, on the same basis.

25 MR. JOHNSON: Your Honor, there's a difference
26 between a letter from Mr. Beard, who represents the Plaintiff,
27 and a letter from the California Public Utilities Commission
28 from their lead counsel on the issue, specifically when Mr.



1 Pinoli and Mr. Hart and their organization requested the
2 specific response from the California Public Utilities
3 Commission probably for this specific case or the case
4 involving California -- or their case against the county -- I
5 mean city of Fort Bragg. And this was the response that they
6 received.

7 And I think it also goes to the fact of whether or
8 not they effectively believe that they are in fact a
9 California Public Utility or not, because since 2018, they've
10 been requesting the California Public Utilities Commission
11 provide them with a letter to be used just in a trial like
12 this stating, yes, you're a public utility, and they
13 effectively received the response that, no, we're not going to
14 state that you're a public utility.

15 THE COURT: I'm not going to receive the letter, but
16 this is what I want you to focus on in your closing briefs --

17 MR. JOHNSON: All right.

18 THE COURT: -- because the letter that -- and I just
19 briefly skimmed it here, but the August 12th letter really
20 addresses the excursion services issue, not the remaining
21 things that the Mendocino Railway does, such as freight and
22 transportation, so.

23 MR. JOHNSON: Right. Well, Your --

24 THE COURT: But in any event --

25 MR. JOHNSON: That's fine.

26 THE COURT: -- that could be -- you can address
27 it --

28 MR. JOHNSON: I appreciate you being very specific



1 about what you want us to focus on, because that definitely
2 helps.

3 THE COURT: Yes.

4 MR. JOHNSON: I have a couple more questions on this
5 specific issue.

6 THE COURT: Okay. Go ahead.

7 FURTHER REDIRECT EXAMINATION

8 Q BY MR. JOHNSON: Mr. Pinoli, we were reviewing this
9 1998 decision, okay? In 1998, a freight train could run from
10 the city of Fort Bragg to the city of Willits, correct?

11 A That is correct.

12 Q It wasn't inhibited by a tunnel that had collapsed.
13 Is that right?

14 A That is correct.

15 Q And in 1998, at least through the majority of 1998,
16 that California Western Railroad was attached to the
17 interstate system that went through Ukiah out in the Bay Area
18 and to the rest of the country. Is that correct?

19 A And it still is attached.

20 Q Okay. And it was a functioning railroad in 1998.
21 Is that correct? All the way through from -- you could go
22 from Fort Bragg to New York City if you wanted to.

23 A And by definition, in the STB eyes, it's still a
24 functioning railroad until it's not.

25 Q Okay. But as far as whether or not it's functional,
26 it has not been functional since 1998 or late 1998,
27 Thanksgiving of 1998. Is that correct?

28 As far as functionally moving something from Fort



1 Bragg to the City of New York on the railroad, that could not
2 be done since Thanksgiving of 1998. Is that right?

3 A With an appropriate trans load facility, it could be
4 done.

5 Q It could be -- wouldn't it be correct to say from
6 after Thanksgiving or December of 1998, from that time frame
7 on, it was impossible to take a train from Willits -- or
8 excuse me -- from Fort Bragg to New York City?

9 A Contiguously, yes.

10 Q Okay. So at the time this decision was made, it was
11 a lot easier to move freight along your line than it is today
12 because right now, today, and for the last seven years, you
13 cannot effectively run a train from Fort Bragg to Willits,
14 correct?

15 A Correct.

16 Q And this decision in 1998 that was referred to,
17 where they found these findings of fact regarding public
18 utility status, that was a finding of fact that was made prior
19 to the St. Helena decision in 2004. Is that correct?

20 A I don't have the St. Helena decision in front of me,
21 but if it was 2004, then yes. The '98 decision was certainly
22 before that.

23 Q And the St. Helena decision, do you recall that
24 decision?

25 A I know aspects of it. As I testified last week,
26 it's something that I'm not intimately familiar with.

27 Q Okay. In that 2004 St. Helena decision, originally
28 the California Public Utilities Commission had established



1 that the wine train was a public utility, isn't that correct?
2 And a common carrier?

3 A I'm sorry. I don't know that to be correct.

4 Q And in the St. Helena decision, didn't the court
5 rule that the Public Utility Commission had made a mistake and
6 that, in the court's opinion, the Wine Train was not a public
7 carrier and was not a public utility. Isn't that right?

8 A I believe what the Wine Train has done and has been
9 doing is completely different than what that of the California
10 Western Railroad has done and continues to do.

11 Q Okay. But in that decision, isn't it true, though,
12 or do you know, in that 2004 decision, that the court
13 determined that the Wine Train was not a public utility and
14 was not a common carrier. Is that correct?

15 A Again, I don't have the decision in front of me to
16 know it, but I do believe that to be correct.

17 Q Okay. Thank you.

18 Is it possible that the California Public Utilities
19 Commission has changed their opinion on whether or not the
20 California Western Railroad is a common carrier and public
21 utility?

22 MR. BLOCK: Objection. Calls for speculation and
23 vague.

24 MR. JOHNSON: (Indiscernible).

25 MR. BLOCK: Irrelevant.

26 THE COURT: If you know. I don't want you to guess.

27 A I'm -- I'm -- I'm not going to guess on that.

28 Q BY MR. JOHNSON: Okay. So you don't believe that



1 that August 12th, 2022 letter from the California Public
2 Utilities Commission lawyer means anything? Is that your
3 opinion?

4 A Yes. And I've stated that previously.

5 MR. JOHNSON: All right. No further questions, Your
6 Honor.

7 MR. BLOCK: Just one --

8 THE COURT: Go ahead.

9 MR. BLOCK: -- quick question, Your Honor.

10 FURTHER RECROSS EXAMINATION

11 Q BY MR. BLOCK: Mr. Pinoli, I don't think Mr. Johnson
12 allowed you to fully elaborate and answer your question about
13 the connection, so could you explain what you wanted to
14 explain with respect to the California Western Railroads
15 connection to the National Rail System currently and since
16 1998?

17 A Yes. So the -- you know, the railroad has -- for
18 instance, it has had a longstanding relationship, as an
19 example, with Amtrak. Amtrak is the national -- is the United
20 States' national passenger rail system, or carrier. The -- if
21 you pull up Willits on the Amtrak timetable, they use our
22 depot and our property as their Willits-based terminus.

23 There has never been an Amtrak train that has
24 intersected with our train, but there's an Amtrak bus, and so
25 you could conceivably go from Fort Bragg to Willits after
26 1998, and it was done by many people. You could get off at
27 the Willits Depot, get the Amtrak bus, and then travel to an
28 Amtrak train in Emeryville or Martinez and travel to the rest



1 of the country.

2 Similarly, that is the same style of business that
3 would be conducted on the freight side, meaning transloading.

4 Q Okay. Do you want to just briefly explain how the
5 transloading part of it would work?

6 A The transloading part, as I testified earlier, or
7 last week, was -- or is that goods or services could leave --
8 would leave Fort Bragg and/or Willits and would arrive to Fort
9 Bragg -- the station at Fort Bragg -- either be loaded -- load
10 rail cars right there and transport out to Willits where they
11 would be transloaded onto a truck and then taken to a place
12 like the port of Oakland.

13 Additionally, inbound items would be transloaded off
14 of a train or a container brought from a ship, brought up to
15 Willits and loaded onto rail as well.

16 Q Thank you, Mr. Pinoli.

17 MR. BLOCK: I have no further questions.

18 MR. JOHNSON: One question, Your Honor.

19 FURTHER REDIRECT EXAMINATION

20 Q BY MR. JOHNSON: So Mr. Pinoli, in 1998 when the
21 train was operating, and there was no problem with the tunnel,
22 wouldn't it be correct to say that there were passengers that
23 were going from -- or would it -- is it correct to say that
24 there were passengers going from Willits to Fort Bragg?

25 A And vice versa.

26 Q Correct. And that hasn't occurred since at least
27 2015. Is that correct?

28 A Starting in Willits and travelling to Fort Bragg?



1 Q Right.

2 A That is correct.

3 Q And since 2015, there's been no trains that have
4 gone carrying freight from Fort Bragg to Willits, right?

5 A That is correct.

6 Q So in fact, at the time, in 1998, wouldn't it be
7 correct to say that there were more passengers and more
8 freight being transported at that particular time than there
9 is today on the California Western Railroad. Is that right?

10 A I wouldn't necessarily say that. As I testified to
11 last week, in 2020/'21, we carried a hundred car -- hundred --
12 about -- over a hundred car loads of aggregate for a project
13 that the railroad had a contract to meet for Travel Limited.

14 I also testified to the fact that the freight train
15 was made a priority, and the railroad's excursion schedule was
16 halted to yield to the freight operations of the railroad.

17 Q So we're in August of 2022. Do you have any idea
18 what your revenue is from the carrying of freight this year?

19 A I do not.

20 Q Do you have any idea what your revenue is for the
21 carrying of passengers?

22 A I do not.

23 Q Do you have any idea what your revenue is for the
24 carrying of excursion passengers?

25 A I do not.

26 Q What about for 2020? Do you have any idea what your
27 revenue was in 2020 for the carrying of excursion passengers?

28 A I do not.



1 Q Is there a reason why you don't know your revenue?

2 A I don't have the numbers in front of me, and I'm not
3 going to speculate on the numbers.

4 Q Is there a reason why you didn't bring your numbers
5 today to discuss the percentage interest you may have as far
6 as freight and passengers are concerned relative to your
7 excursion service?

8 A I think, Mr. Johnson, you've known me well enough to
9 know that if you've asked for something we've produced it, and
10 I've done so accordingly. If I would have been prepared or
11 asked to bring revenue numbers, I would have done so
12 accordingly.

13 Q Okay, so you're not prepared to discuss your revenue
14 as it relates to your freight, you passenger, or your
15 excursion service at this point in time? Is that correct?

16 A That's correct.

17 Q All right. And you're not in a position to provide
18 any type of bill lading related to your freight for this time
19 frame of 2022, are you?

20 A Today? No.

21 Q And you're not in a position to provide any type of
22 evidence relating to how many passengers you took up and down
23 the line on one round trip to their property, are you?

24 A That's correct.

25 Q Okay. And you're not in a position to discuss what
26 your passenger levels were in 1998, are you? As far as
27 carrying passengers --

28 MR. BLOCK: Your Honor, this is not what redirect



1 was, this whole line of questioning. It was not asked on
2 cross-examination, so I move to strike all these questions and
3 answers --

4 MR. JOHNSON: Your Honor --

5 MR. BLOCK: -- as not appropriate in response to the
6 redirect questions.

7 MR. JOHNSON: Your Honor, can I answer that --

8 THE COURT: Sure.

9 MR. JOHNSON: -- respond?

10 The 1998 discussion here was a discussion of the
11 findings of fact made by the CPUC in 1998 and a declaratory
12 statement that these were findings of fact, and that was
13 supposed to be applied to today.

14 And inherent in doing that is the question of
15 whether or not these finding of fact are the same as in 1998,
16 and so that's why this question is in line, because we're
17 trying to compare the two different issues as to what was
18 operating in 1998 and what was operating today, and they --
19 it's an issue, and it's also an issue that you just raised as
20 well.

21 And so the question of whether or not they're in a
22 position to discuss these imperative issues are worth raising,
23 especially given the fact that they're basically stating that
24 a decision made twenty four years ago should be applied
25 exactly to today's decision, functionally.

26 MR. BLOCK: Your Honor, the redirect questions were
27 specifically related to the connection between the California
28 Western Railroad and the National Rail Network, which was the



1 subject of Mr. Johnson's recross questions. Period.

2 THE COURT: Right. I think your questioning, Mr.
3 Johnson, has gone far beyond what the redirect was, so do you
4 have any other questions?

5 MR. JOHNSON: No, Your Honor.

6 MR. BLOCK: I have no further questions, Your Honor.

7 THE COURT: All right. So then let's talk about --

8 MR. BLOCK: Briefing.

9 THE COURT: -- closing briefs.

10 What are you thinking in terms of time frame and --

11 MR. JOHNSON: When are you going to be gone?

12 THE COURT: I'm leaving this Friday, and I won't be
13 back until -- I'll be back in the courthouse on the 19th.

14 MR. BLOCK: What if we submit our respective closing
15 briefs on September 9th and then our respective reply or
16 oppositions on the 16th?

17 THE COURT: That's fine.

18 MR. JOHNSON: I would --

19 THE COURT: If that will --

20 MR. JOHNSON: -- I don't think that's very good for
21 me, Your Honor.

22 THE COURT: Okay.

23 MR. JOHNSON: I've got a lot of problems I've got to
24 deal with for other clients, and I'd rather -- I mean, we need
25 to focus on this -- give a little time to focus on this.

26 I would request that we have the opening briefs done
27 on the 19th and work off that date.

28 THE COURT: Okay.



1 MR. BLOCK: That's acceptable to me, so --

2 THE COURT: All right. So why don't we have closing
3 briefs filed -- Friday's a holiday -- by the 22nd, and then
4 any reply briefs filed by October 7th? And then the case will
5 be under submission as of the 7th?

6 MR. JOHNSON: All right. Thank you.

7 MR. BLOCK: Are you --

8 THE COURT: Again -- go ahead.

9 MR. BLOCK: I'm sorry. Are you anticipating oral
10 argument, or we just submit briefs and that's it?

11 THE COURT: Submit briefs, and we'll have the
12 transcripts by then, and then I can go back and look at the
13 transcripts, but again, I really want you to focus on this
14 issue of the excursion versus transportation and freight and
15 is ten percent enough.

16 And also, since you brought it up, I mean, the fact
17 that the tunnel collapsed, I don't know if that's an issue or
18 not, and I want you to address that issue.

19 MR. BLOCK: Thank you, Your Honor.

20 THE COURT: Because it collapsed just through no
21 fault of their own, and does that really change the status, if
22 they are truly a public utility, and they can't access their
23 rail service for a period of time until it's fixed, does that
24 really affect the status is what I'm looking at.

25 Now let's see, anything else here. Oh, and then,
26 again, I want you to focus on -- address the St. Helena case,
27 and basically, the court there said that future plans to
28 provide transportation services was not sufficient to



1 establish a public utility. Is the transloading plan
2 something different than what they've done before, and is that
3 a future plan that really shouldn't be considered in terms of
4 determining -- or should it be considered in terms of
5 determining whether or not it's a public utility.

6 MR. JOHNSON: Thank you.

7 THE COURT: The Court laid out a pretty good
8 analysis of that issue, and I want you to address that.

9 MR. BLOCK: Thank you, Your Honor.

10 THE COURT: Okay. Thank you very much --

11 MR. JOHNSON: Thank you.

12 THE COURT: -- for your interest in the case, and
13 I'll look forward to the closing briefs.

14 (Proceedings concluded at 10:43 a.m.)

15 * * * * *

16

17

18

19

20

21

22

23

24

25

26

27

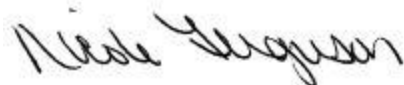
28



C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WE, NICOLE FERGUSON, LISA HULM AND JODIE DAY,
Transcriptionists, do hereby certify that the foregoing pages,
1 - 60, constitute a full, true, and accurate transcript, from
electronic recording, transcribed by me, of the proceedings
had in the foregoing matter, MENDOCINO RAILWAY V. CALIFORNIA
PUBLIC UTILITIES, ET AL., Case No. SCUJ-CVED-20-74939, on the
docket of the Superior Court of the State of California, for
the County of Mendocino, a court of record, and all prepared
to the best of my skill and ability.



NICOLE FERGUSON, CDLT-149
Digital Court Transcriber



LISA HULM, CET**D-783
Digital Court Transcriber



JODIE DAY, CDLT-246
Digital Court Transcriber

DATED and SIGNED this 9th day of September, 2022.

