IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

A168497 & A168959

MENDOCINO RAILWAY
Plaintiff–Appellant,

v.

JOHN MEYER
Defendant-Respondent.

On Appeal from the Superior Court of California,
County of Mendocino
(Case No. SCUKCVED202074939, Hon. Jeanine Nadel)

APPELLANT'S ANSWER TO BRIEF OF AMICUS CURIAE CALIFORNIA COASTAL COMMISSION

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I. INTRODUCTION

Amicus curiae California Coastal Commission[1] wants desperately for the Court to refrain from deciding an issue that is squarely before it on a fully developed record—namely, whether Appellant Mendocino Railway is an STB-regulated common carrier. The Commission wants that issue decided in an unrelated and later-filed case pending in the Mendocino County Superior Court, because the Commission thinks it can argue the issue of Mendocino's federal common-carrier status better than Meyer did below.[2]

Most of the Commission's briefing is barred because it raises new points that the parties never argued, and that Respondent John Meyer—the party the Commission supports—even

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[1] The Commission's participation as amicus curiae is curious. The primary issue in this case is whether Mendocino is a California public utility with the authority to condemn, for railroad purposes, land located some 40 miles east of the Coastal Zone (the narrow strip of coastal area over which the Commission has jurisdiction). *See* https://www.coastal.ca.gov/maps/czb/ (official jurisdictional map for Mendocino County area, showing the Coastal Zone boundary (in blue) relative to Willits, some 40 miles east). The dispute It is not Mendocino's status as a public utility that federally preempts the Commission's land-use permitting authority over the railroad. Yet, the Commission has come to Meyer's defense.

[2] When the case at bar and the other case to which the Commission is a party (*City of Fort Bragg v. Mendocino Railway*) were both pending in different departments of the same superior court, Mendocino filed a notice of related cases. But the Commission successfully opposed relating the cases. CT 2267 ("Opposition of California Coastal Commission to Mendocino Railway's Notice of Related Cases").

disavowed an interest in. Further, the Commission's arguments reflect a deeply flawed understanding of the Interstate Commerce Commission Termination Act ("ICCTA") and how the Surface Transportation Board ("STB") operates. Ultimately, the Commission fares no better than Meyer in refuting the facts that (1) Mendocino has since its inception been an STB-regulated common carrier, and (2) its status as such is probative of its status as a California common-carrier railroad and public utility.

II. ARGUMENT

A. As Meyer Acknowledges, Mendocino Did Not Forfeit Its State-Constitutional Argument

According to the Commission—but not Meyer—Mendocino has forfeited its argument that it is a common carrier and public utility under section 3 of Article XII of the California Constitution because of its status as an STB-regulated common carrier. Commission Br. at 10. That constitutional provision defines "public utility" to include any "common carrier." Cal. Const. art. XII, § 3. The Commission contends that Mendocino never cited Article XII, section 3, in any of its trial-court pleadings. Commission Br. at 10-11. But the Commission's "forfeiture" argument fails for at least three reasons.

First, the Commission improperly argues an issue that the parties to the appeal did not raise. The rule is that "an appellate court will consider only those questions properly raised by the appealing parties." *Younger v. State of California* (1982) 137

Cal.App.3d 806, 813–814 (cleaned up). An "amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered." *Id.* (cleaned up); *see also Conservatorship of Whitley* (2007) 155 Cal.App.4th 1447, 1457 n. 5 (declining to consider standing argument raised by amicus curiae). Consequently, courts "decline to consider [an] amicus curiae's . . . argument" that "is not among the contentions raised by the parties." *California Manufacturers & Technology Assn. v. State Water Resources Control Bd.* (2021) 64 Cal.App.5th 266, 278 n.8. This rule "is particularly appropriate where the party who stands to benefit from the argument disavowed any interest in it." *Mercury Casualty Co. v. Hertz Corp.* (1997) 59 Cal.App.4th 414, 425.

Here, the Commission makes a "forfeiture" argument that Meyer did not make in his Respondent's Brief. In fact, far from arguing forfeiture, Meyer's brief acknowledges Mendocino's reliance on Article XII, section 3, without any mention of a purported waiver or forfeiture. Resp. Br. at 24-25. Thus, the party who stands to benefit from the Commission's "forfeiture" argument—Meyer—"disavowed any interest in" it, including by not briefing the point. Not only can the Commission not raise this new point, but the point has been waived. "When [a party] fails to raise a point" in its appellate briefing, the Court "treat[s] the point as waived." *Schmidt v. Bank of America, N.A.* (2014) 223

Cal.App.4th 1489, 1509) ("Appellate briefs must provide argument and legal authority for the positions taken."). The Court should disregard the Commission's "forfeiture" argument.[3]

Second, even if the Commission could step into the parties' shoes and raise a waived argument, the "forfeiture" argument lacks merit. That's because Mendocino *did* argue section 3 of Article XII in its briefing in the trial court. In its Closing Trial Brief, Mendocino relied on that constitutional provision to help establish its common-carrier, public-utility status:

> "The ordinary meaning of 'provide' [transportation] is supported by case law recognizing that the *dedication* of property for public use is what renders the provider a public utility (of which a common carrier is one kind). 'Although not expressly contained in article XII, section 3, the state Constitution also requires a *dedication* to public use to transform private businesses into a public utility.' *Independent Energy Procedures Assn. Inc. v. State Bd. of Equal.* (2004) 125 Cal.App.4th 425, 442 (emphasis added)."

CT 1966 (Mendocino's Closing Trial Brief).

There's no question, too, that Mendocino repeatedly argued that its status as an STB-regulated common carrier informs its status as a common-carrier public utility under California law, including for eminent-domain purposes. *See, e.g.*, CT 773, 781-82 (Mendocino's Trial Brief); CT 1969 (Mendocino's Closing Trial

[3] "The rule barring amici from raising new arguments is not absolute." *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 503. But courts "do not depart lightly from the general rule" and do so only when "the issue posed is purely a question of law based on undisputed facts, and involves important questions of public policy." *Id.* (cleaned up). Here, whether Mendocino forfeited the argument at issue is factually disputed (*see infra*) and doesn't come close to implicating any important public-policy question.

Brief at 11:20-27); CT 2027 (Mendocino's Reply to Meyer's Closing Trial Brief at 3 n.2) (citing both STB and CPUC recognition of Mendocino's public-utility status); CT 2045 (Mendocino's Request for Statement of Decision ("MR Request") at 1:18-25 (requesting specific finding on whether Mendocino "is a common carrier public utility railroad" under California law "consistent with the United States Surface Transportation Board's ('STB's') determination that Mendocino Railway is a common carrier railroad pursuant to its April 2, 2004 Notice of Exemption (STB Finance Docket No. 34465)); CT 2046 (MR's Request at 2:21-24 (requesting finding on "whether the STB has licensed Mendocino Railway to be a common carrier railroad subject to the exclusive jurisdiction of the STB under 49 U.S.C. § 10501, et seq. and whose common carrier obligation cannot be extinguished without STB authority.")). Repeatedly, Mendocino argued and presented evidence that it is a common carrier under both state and federal laws. *See, e.g.*, CT 1065 (Mendocino's response to Meyer's interrogatory: "Plaintiff is a railroad corporation and public utility under California law. . . . As such, Mendocino Railway's acquisition of the Property and development of its Project is subject to STB jurisdiction and exempt from CEQA. *See Or. Coast Scenic R.R., LLC v. Or. Dept. of State Lands* (9th Cir. 2016) 841 F.3d 1069, 1072; *see also* 49 U.S.C. § 10501(a)(1)-(2).")).

As the Commission admits, the trial court's ruling addresses Mendocino's status as an STB-regulated common carrier, stating:

"A class III carrier is one that is a small or midsized railroad company that operates over a relatively short distance. (See Surface Transportation Board Notice of Exemption. (EX21)). There was no designation of MR's status by the STB offered by MR." CT 2037. Of course, the trial court erred, as the STB does not issue such formal "designations." And, as explained in Mendocino's briefs, the evidence in the record decisively establishes that the STB nevertheless ***does*** recognize, and always has recognized, Mendocino as an STB-regulated common carrier. Op. Br. at 37-38; Reply Br. at 6-23. But to the Commission's point, the only reason the trial court had occasion to discuss the STB issue—including citing the STB's Notice of Exemption authorizing Mendocino's acquisition of the CWR—is because Mendocino did indeed raise that issue below.

Finally, even if Mendocino had raised its state-constitutional point for the first time on appeal, the point would not be subject to forfeiture. "Constitutional claims raised for the first time on appeal are not subject to forfeiture . . . when the new arguments do not invoke facts or legal standards different from those the trial court itself was asked to apply, but merely assert that the trial court's act or omission, insofar as wrong for the reasons actually presented to that court, had the additional legal consequence of violating the Constitution." *People v. Tully* (2012) 54 Cal.4th 952, 979-80.

That is precisely the case here. The Commission challenges, as forfeited, the argument that a railroad's status as an STB-regulated common carrier makes it a common carrier under Article XII, section 3. Yet that argument raises a pure question of law, and does not invoke facts or legal standards ***different from those the trial court was asked to apply***. The only factual predicate for the argument is that Mendocino is an STB-regulated common carrier—a factual question that the parties argued and the trial court decided. CT 769, 773 (Mendocino's Trial Brief, arguing its STB-regulated status); CT 41-42 (Mendocino's pre-trial Request for Judicial Notice of 49 U.S.C. section 10501 (granting STB exclusive jurisdiction over federal common carrier railroads)); CT 933, 935 (Meyer's Motion to Reopen Case to introduce purported evidence refuting Mendocino's status as an STB-regulated common carrier); CT 1954, 1963, 1969 (Mendocino's Closing Trial Brief arguing its status as STB-regulated common carrier); CT 1985, 1992, 1995 (denying Mendocino's common-carrier status based on lack of connection to "national rail system"); CT 2036-37 (trial court decision discussing issue of Mendocino's status as an STB-regulated common carrier).

In the parties' briefing on appeal, Mendocino's state-constitutional argument invoked the ***same*** set of facts. Op. Br. at 37-38; Reply Br. at 6-23; Resp. Br. at 29-32. As the Supreme Court has explained, "[n]o separate constitutional discussion is required, or provided, when rejection of a claim on the merits necessarily

leads to rejection of any constitutional theory or 'gloss' raised for the first time" on appeal. *People v. Clark* (2011) 52 Cal.4th 856, 889 n.7. Here, the trial court rejected the factual predicate of Mendocino's state-constitutional argument—that Mendocino is an STB-regulated common carrier—and therefore no separate discussion of the state-constitutional point was necessary.

For all these reasons, Mendocino has not forfeited its state-constitutional argument.

B. As Meyer Acknowledges, an Entity's Status As an STB-Regulated Common Carrier Is Relevant to Its Status As a Common Carrier Under State Law

In yet another attempt to make an argument that no party to this appeal raised, the Commission urges the Court to forgo resolving whether Mendocino is an STB-regulated common carrier under federal law. In the Commission's view, that question is irrelevant to whether Mendocino has the power of eminent domain. Commission Br. at 13. Further, the Commission argues, this Court should allow the "federal law issues" to be decided by another court in another later-filed case that has yet to be heard, where the issues will purportedly have "the benefit" of a "more developed and targeted record." *Id.* The Court should reject the Commission's argument for several reasons.

First, Meyer did not argue in the trial court or this Court that Mendocino's status as an STB-regulated common carrier is irrelevant or that an inadequate record on that issue was developed in the trial court. Quite the contrary. In both the trial

court and this Court, the parties briefed Mendocino's status as an STB-regulated common carrier. Op. Br. at 37-38; Reply Br. at 6-23; Resp. Br. at 29-32; CT 42, 773, 935, 1963, 1969, 1992, 1995, 2036-37 (parties' trial-court briefs addressing STB issue).

The issue is therefore squarely and properly before this Court on a developed record, and there is no legitimate basis—let alone at the urging of a nonparty—to refrain from resolving that issue. *California Manufacturers*, 64 Cal.App.5th at 278 n.8 (holding that courts generally "decline to consider [an] amicus curiae's . . . argument" that ""is not among the contentions raised by the parties"). That the Commission believes it can create a different record or better argue the issue in its unrelated action is not a basis for this Court to withhold a decision on that issue.

Second, even if allowed, the Commission's argument fails on the merits. As explained in Mendocino's Opening Brief, its status as an STB-regulated railroad is "further evidence of Mendocino's 'common carrier' status" under state law. Op. Br. at 37. That is because the definition of a "common carrier" railroad is substantially the same under the relevant provisions of state and federal law. The Public Utilities Code defines "common carrier" as "every person or corporation providing transportation for compensation to or for the public or any portion thereof," and expressly includes "[e]very railroad corporation." Pub. Util Code § 211. A common carrier is one who "holds himself out as such to the world" and "undertakes generally and for all persons indifferently

to carry goods and deliver them for hire." *Samueleson v. Pub. Util. Comm.* (1951) 36 Cal.2d 722, 729-30; *see also* Civ. Code § 2168 (similarly defining "common carrier," for tort-liability purposes, as, in relevant part, anyone "who offers to the public to carry persons" or "property").

The same is true under federal law. A common-carrier railroad—referred to as a "rail carrier" in the federal context—is defined in relevant part as "a person providing common carrier railroad transportation for compensation." 49 U.S.C. § 10102(5). If a railroad "proposes to hold itself out to the public to provide common carrier railroad service to passengers [or freight] for compensation," it satisfies the federal definition of a "rail carrier." *Mass. Bay Commuter R.R. Co., LLC—Pet. for Dec. Order*, STB Finance Docket No. 34332, 2003 STB Lexis 316, *4 (STB served June 4, 2003). And, in the federal context—just as in the state context— "common carrier" means a "carrier that is required by law to transport passengers or freight, without refusal, if the approved fare or charge is paid." *New York Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 250-51 (3d Cir. 2007) (quoting Black's Law Dictionary 205 (7th ed. 1999)). "The dominant and controlling factor in determining the status of one as a common carrier is his public profession as to the service offered or performed"—i.e., his acceptance of the "obligation to serve the public at large." *New York*, 500 F.3d at 250-51. As the STB has explained, "[t]here is no statutory definition of the term 'common

carrier," but it "is a well-understood concept arising out of common law," which "refers to a person or entity that holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation." *Am. Orient Express R.R. Co. LLC—Pet. for Dec. Order*, STB Finance Docket No. 34502, 2005 STB Lexis 630, *10 (STB served Dec. 27, 2005) (also noting, at *11, that "[a] common carrier need not hold itself out to serve all business at all times," but rather "may establish a business niche" that "targets a subset of the public"); *see also H&M Int'l Transp., Inc.—Pet. for Dec. Order*, STB Finance Docket No. 34277, 2003 STB Lexis 722, *6 (STB served Nov. 10, 2003) ("To be considered a rail carrier under the statute, there must be a holding out to the public to provide common carrier service.").

In sum, the defining characteristics of a "common carrier" in the railroad context are essentially the same under state and federal law. The fact that federal law treats Mendocino as a common-carrier railroad is therefore probative of Mendocino's common-carrier status under state law. *Cf. State of California v. Pacific Bell Telephone Co.* (2006) 142 Cal.App.4th 741, 746 n.3 ("Given the very close similarity of California's act to the federal act, it is appropriate to turn to federal cases for guidance in interpreting the act."). Indeed, it would be anomalous for Mendocino to be a common-carrier railroad under federal law, but not under state law. It would mean that a federally-regulated common carrier under the legal obligation to provide passenger

and freight transportation services to the public upon reasonable request would nevertheless be barred from acquiring property—through eminent domain—for the purpose of facilitating or expanding its rail operations, on the incongruous finding that it is not a "common carrier" (and therefore not a public utility) under California law.

The Commission also questions the relevance of Article XII, section 3. Commission Br. at 15. That provision is relevant insofar as it defines "public utility" to be any "common carrier"—without limitation. Since Mendocino is a common carrier, it is a public utility as a matter of constitutional law. Cal. Const. art. XII, § 3. Misciting two cases, the Commission turns a blind eye to the provision's clear inclusion of common carriers in the definition of "public utility," and instead suggests that the provision's sole "purpose" is to "confer broad authority on the Legislature to regulate public utilities." Commission Br. at 15 (quoting *Hartwell Corp. v. Super. Ct.* (2002) 27 Cal.4th 256, 264, and citing *BNSF Railway Co. v. Pub. Util. Comm.* (2013) 218 Cal.App.4th 778, 784). But that's not what those precedents say. Conferring authority on the Legislature is not the provision's ***sole*** purpose. Article XII, section 3's primary purpose is to define the term "public utility." Only after defining the term does the provision confer on the Legislature certain regulatory authority over public utilities—as defined.

Finally, the Commission urges this Court to "refrain from making any determination regarding the Railway's status under federal law," in part because "such federal law issues are much better addressed with the benefit of the more developed and targeted record in the pending Mendocino Action." Commission Br. at 13. As a non-party, the Commission apparently has little familiarity with the proceedings below and the extensive record that was created there with respect to Mendocino's status as an STB-regulated railroad. As the parties' briefing on appeal shows, the "federal law issues" were fully developed based on a comprehensive record. Op. Br. at 37-38; Reply Br. at 6-23; Resp. Br. at 29-32. There is no reason for the Court to "refrain" from deciding an issue that has been fully argued and briefed in both the trial court and this Court.

C. Mendocino Is Connected to the Interstate Rail Network and Is Therefore an STB-Regulated Common Carrier

In its final attempt to improperly step into Meyer's shoes, the Commission argues that the record does not support the conclusion that Mendocino is an STB-regulated common carrier. Commission Br. at 16. All of the Commission's arguments reflect a profound misunderstanding of the ICCTA and how the STB regulates federal railroads such as Mendocino.

First, the Commission highlights the fact that Mendocino's operations "function entirely within the State of California." Commission Br. at 16. But, as noted in Mendocino's Opening Brief

at 10, it is hornbook law even a wholly intrastate line like Mendocino, with connections to other interstate lines, is part of the "interstate rail network" and within the exclusive jurisdiction of the STB. 49 U.S.C. § 10501(a)(2)(A), 10501(b); *Friends of Eel River v. North Coast R.R. Auth.* (2017) 3 Cal.5th 677, 707 (same).

Second, the Commission argues that Mendocino's only connection to the interstate rail network is via the embargoed NWP, falsely implying that the NWP is not part of the interstate rail network. But, as explained in Mendocino's Opening Brief at 11, an embargoed line remains a part of the interstate rail network and within the STB's exclusive jurisdiction unless and until "abandonment authority has been sought [from the STB], granted [by the STB], and exercised" by the railroad. *Angeles A. Zori, et al.—Pet. for Dec. Order*, STB Docket No. FD 36016, 2017 STB Lexis 21, *7 (STB served Jan. 30, 2017); *see also* 49 U.S.C. § 10903(d); *Hayfield N.R. Co. v. Chi. & N.W. Transp. Co.* (1984) 467 U.S. 622, 628, 633 (holding that "authorization of an abandonment" is what "brings [the STB's] regulatory mission to an end" and "terminates [its] jurisdiction"); *Bar Ale, Inc. v California Northern R.R. Co. and Southern Pacific Transp. Co.*, STB Finance Docket No. 32821 (July 20, 2001) (holding that an embargo cannot be used by railroad to unilaterally abandon or discontinue service on line at its own election). The STB has not issued any such approval. Simply put, the NWP's status as an embargoed line does

not disconnect either the NWP or Mendocino's line from the Nation's interstate rail network.

Once one understands the difference between (1) an embargoed line—which remains a part of the interstate rail network and within the STB's jurisdiction—and (2) a line that has been abandoned following STB approval—which does not—one can see the errors in the Commission's other points about the NWP's status as an embargoed line. Commission Br. at 17-18. For example, the Commission cites a memorandum of the Bankruptcy Court that supervised the sale of the CWRR's railroad assets, which states that "there is no longer a direct connection to the rest of the country through the NWPY track." CT 1015. But that was an inartful way of saying that the NWP was embargoed, though still a part of the interstate rail network and still within the STB's jurisdiction. There is no evidence that the NWP's owner ever sought, received, and exercised abandonment authority from the STB—the ***only*** way to remove the line from the interstate rail network. *Angeles A. Zori, et al.—Pet. for Dec. Order*, STB Docket No. FD 36016, 2017 STB Lexis 21, *7 (STB served Jan. 30, 2017).

The Commission's reliance on the 2006 Railroad Retirement Board ("RRB") determination and Mendocino's 2022 letter to the RRB is similarly misplaced. Commission Br. at 18. In those documents, the NWP is uncontroversially described as lacking "service," "unusable," and "inactive," and Mendocino is described as not being able to "physically operate in interstate commerce" on

the NWP. CT 1917, 1920-21, 1923. But those descriptions merely reflect the reality that the NWP was embargoed. None of the documents even remotely suggest that the NWP and the CWR were removed from the interstate rail network, or that the STB's jurisdiction over them was ever terminated. Moreover, the Commission conveniently omits statements from those documents affirming that, despite the NWP's being embargoed, Mendocino "was . . . and remains[] a common carrier subject to the exclusive jurisdiction of the STB" (CT 1921) and that the NWP "remains subject to the STB's jurisdiction" (CT 1923).[4]

Relatedly, the Commission questions how the STB's continued jurisdiction over the NWP line "would automatically be conferred on the Railway itself." Commission Br. at 17. The Commission's question betrays its confusion as to federal railroad law. To recap:

- Both the NWP line and Amtrak connect to the Union Pacific Railroad Mainline, which in turn connects to the interstate

[4] The Commission quotes *RLTD Ry. Corp. v. Surface Trans. Bd.*, 166 F.3d 808, 814 (6th Cir. 1999) for the proposition that the STB "loses jurisdiction over a line once it becomes severed from the interstate rail system." Commission Br. at 19. But that decision is inapposite for a number of reasons, not least of which is the fact that Mendocino has ***not*** been severed from the interstate rail network. Again, an embargoed line is not an abandoned line; only abandoned lines are removed from the interstate rail network and are therefore "severed" from it. Because the NWP remains a part of the interstate rail network, and Mendocino is undisputedly connected to the NWP, Mendocino remains a part of the interstate rail network.

rail network. The NWP and Amtrak are a part of the interstate rail network. Neither Meyer nor the Commission has cited any evidence or legal authority to the contrary. CT 1014:25—1015:1, 1332-33, 1717; RT 41:16-19, 351:26-28, 702:24-27; *see also Meyer v. Capital Crossing Bank (In re Cal. W. R.R.)* (2003) 303 B.R. 201, 203. As to Amtrak, the unrebutted trial testimony of Mendocino's President, Robert Pinoli, was that "the railroad has . . . had a longstanding relationship . . . with Amtrak," which is "the United States' national passenger rail system or carrier." RT 702:24-27. Indeed, he testified that Amtrak "use[s] our depot and our property as their Willits based terminus."[5]

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[5] The Commission complains that Mendocino has produced no evidence that its relationship with Amtrak "is still in effect or that it has exchanged any passengers with Amtrak in the more than twenty years since it purchased CWR's assets." Commission Br. at 18 n. 17. But the only evidence required to establish the requisite connection to the interstate rail network is Mendocino's direct connection to Amtrak. *Texas Cen. R.R. & Infrastructure Inc., et al.—Pet. for Exemption—Passenger Rail Line Between Dallas & Houston, Tx.*, STB Docket No. FD 36025, 2016 STB Lexis 221, **13-14 (STB served July 18, 2016) (holding that a "shared station" between intrastate rail line and Amtrak would constitute the requisite "direct connection" necessary to make the line a part of the interstate rail network). Indeed, as the STB has explained, an entity that acquires an STB-regulated line becomes a federal common carrier, with the obligation to offer passenger and freight services to the public—and remains a common carrier even if " the line has been inactive for a time, or even if it remains inactive after it is acquired." *Middleton & N.J. R.R., LLC—Lease & Operation Exemption—Norfolk S. R.R. Co.*, STB Docket No. FD 35412, 2013 STB Lexis 95, **9-10 (STB served Mar. 26, 2013). Thus, the

- Mendocino's line (the CWR) connects to the NWP line and Amtrak. CT 1014:25—1015:1, 1332-33, 1717; RT 41:16-19, 351:26-28, 702:24-27; *see also Meyer*, 303 B.R. at 203. Again, neither Meyer nor the Commission has cited any evidence or legal authority to the contrary.
- The CWR's connection to the NWP and Amtrak renders the CWR itself a part of the interstate rail network. 49 U.S.C. § 10501(a)(2)(A), 10501(b); *see also Texas Cen. R.R. & Infrastructure Inc., et al.—Pet. for Exemption—Passenger Rail Line Between Dallas & Houston, Tx.*, STB Docket No. FD 36025, 2016 STB Lexis 221, **13-14 (STB served July 18, 2016) (holding that "shared station" between intrastate rail line and Amtrak would constitute the requisite "direct connection" necessary to make the line a part of the interstate rail network).
- The fact that the NWP has been embargoed does not mean it has been ***abandoned*** and therefore removed from the interstate rail network and from the STB's jurisdiction. *Hayfield*, 467 U.S. at 628, 633 (holding that only "authorization of an abandonment" is what "brings [the STB's] regulatory mission to an end" and "terminates [its] jurisdiction").

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amount of passenger "exchanges" that have taken place between Mendocino and Amtrak is legally irrelevant.

- Even a segment of rail line that has witnessed "long disuse" and even "physical severance" from an STB-regulated line—circumstances ***not*** applicable to Mendocino—remains a part of the interstate rail network and within the STB's jurisdiction until such time that STB-approved abandonment occurs. *See R.J. Corman R.R. Property, LLC—Abandonment Exemption—in Scott, Campbell & Anderson Counties, Tenn.*, STB Docket No. AB1296X (STB served Nov. 17, 2022), pp. 4-5 (reaffirming the long-standing principle that "a railroad cannot abandon a line of railroad without Board authority").

Third, the Commission faults Mendocino for not pointing to "any evidence that the STB has actually asserted its jurisdiction over the Railway's" operations. Commission Br. at 19. But, as the Commission should know, Mendocino did indeed submit such evidence at trial, pointing out that Mendocino became subject to the STB's jurisdiction when it acquired the CWR, and the STB published its 2004 notice of exemption approving Mendocino's acquisition. 49 C.F.R. § 1150.32(a)-(b); CT 1341 (STB's notice of exemption authorizing the acquisition). Once subject to the STB's jurisdiction, that jurisdiction does not end until the STB approves its abandonment. The STB has not terminated its jurisdiction over the CWR since Mendocino acquired it in 2004, and Meyer and the Commission have not cited—and cannot cite—any evidence or legal authority to the contrary.

There are, of course, other contexts in which the STB can formally "assert" its jurisdiction. In addition to approving acquisitions of rail lines within the interstate rail network, the STB also approves railroad activities such as consolidations and mergers, construction and operation of new rail lines, abandonment of rail lines, trackage rights and leases over rail lines, and certain rate changes. *See, e.g.*, 49 U.S.C. §§ 10901, 10903, 11323-11325. But Mendocino hasn't had to file applications to the STB for these kinds of activities. So apart from approving the 2004 acquisition of the CWR, the STB hasn't had occasion to formally "assert" its jurisdiction over Mendocino and its rail line.

Fourth, the Commission repeats Meyer's misleading claim that Mendocino did not "perform any common carrier services between 2004 and 2022." Commission Br. at 19. Mendocino has fully debunked that claim in its briefs. Op. Br. at 43-46; Reply Br. at 24-27. To summarize, Mendocino's affiliates performed passenger and freight transportation services on its behalf, from 2004 through the end of 2008, and from 2004 until the end of 2021, respectively. RT 160:5—161:1. But this arrangement in no way stripped Mendocino, as the line's owner, of its common-carrier status. That's because the line's owner is the one with the legal obligation to make common-carrier services available to the public upon reasonable request . *Groome & Assoc., Inc. v. Greenville Cty. Econ. Dev. Corp.*, STB Docket No. 42087, 2005 STB Lexis 676, **24-25 (STB served July 27, 2005) ("Even though [the rail line's

owner] did not intend to operate the line itself, it assumed responsibility for contracting with, and ensuring continued service by, a rail operator.").

Ultimately, the Commission cannot escape the legal reality that, once an entity acquires a rail line within the STB's exclusive jurisdiction—as Mendocino did in 2004—that entity assumes a common-carrier obligation that cannot be removed except by the STB's affirmative decision. *Id.* (non-carrier who acquired rail line in the interstate rail network "assumed a common carrier obligation"). As the STB has explained:

> "To avoid any further misunderstanding, we reiterate here that, after obtaining acquisition authority from the Board, an entity that goes forward and acquires an existing railroad line becomes a rail carrier authorized to use 49 U.S.C. § 10902 as of the date of the acquisition, even if it is not actually called upon to provide service until some later time."

Middleton & N.J. R.R., LLC—Lease & Operation Exemption—Norfolk S. R.R. Co., STB Docket No. FD 35412, 2013 STB Lexis 95, *8 (STB served Mar. 26, 2013).

In the same determination, the STB expounded on the nature of the common-carrier obligation:

> "Because the common carrier obligation cannot be terminated without abandonment authorization from the Board, the transfer of the railroad line and the common carrier obligation that goes with it immediately imposed upon the new owner the continuing obligation to provide common carrier rail transportation service over the line upon reasonable request. As was the case with the prior owner, it does not matter whether the line has been inactive for a time, or even if it remains inactive after it is acquired. Either way, because a rail line itself is part of 'transportation,' on the date that an acquiring entity .

> . . consummates a Board-authorized transaction by acquiring a common carrier railroad line, it becomes a 'rail carrier' as defined by § 10102(5) [of the United States Code]. . . and a 'rail carrier providing transportation subject to the jurisdiction of the Board' that is eligible to use 49 U.S.C. § 10902 (or the relevant exemption procedures)."

Id. **9-10.

Based on the record before this Court, there can be no serious dispute that Mendocino is an STB-regulated common carrier. And that fact is probative of its status as a common carrier, and ultimately a public utility, under California law. The trial court erred in holding otherwise—a mistake that this Court should correct.

III. CONCLUSION

The Commission's brief represents an improper attempt to rehabilitate Meyer's brief. It raises new arguments not made by the parties. And it repeats the same errors and mischaracterizations of federal railroad law that Meyer's brief commits. The Commission's arguments should be disregarded.

DATED: February 10, 2025 s/ PAUL BEARD II

Counsel for Appellant Mendocino Railway

Certificate of Compliance

I hereby certify that the foregoing APPELLANT'S ANSWER TO BRIEF OF AMICUS CURIAE CALIFORNIA COASTAL COMMISSION is proportionately spaced, has a typeface of 13 points or more, and contains 5,456 words.

DATED: February 10, 2025 /s/ PAUL J. BEARD II