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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

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August 4, 2004

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### BY FACSIMILE

The Honorable Emil H. Frankel  
Assistant Secretary for Transportation  
Policy and Intermodalism  
Department of Transportation  
400-7<sup>th</sup> Street, S.W.  
Washington, DC 20590

Dear Mr. Frankel:

This letter follows up on your August 3, 2004 answers to my July 9th second set of post-hearing questions for your personal reply after the May 18th hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "How Can We Maximize Private Sector Participation in Transportation?"

Question 1, DOT's Enforcement of Private Sector Participation Requirements, asked for "published notices in the **specific** publications of general circulation, as stipulated in the SOP" (emphasis added). The Standard Operating Procedure (SOP) for Sacramento Regional Transit (SACRT) stated that publication would be in The Daily Recorder. Your attachment is proof positive that SACRT routinely publishes notices in The Daily Recorder, as it did for Fiscal Years (FYs) 1998-99, 2000-01, 2001-02, and 2002-3 but not for the key year (FY 1999-2000) in which the notices in other publications included "CNG Bus Fleet Replacement and Expansion \$2,490,000." Such a notice in The Daily Recorder would surely have triggered a response by private sector transportation operators. An obvious question now is what did you find about SACRT's decision for this one year only not to include notice in The Daily Recorder?

Also, the notices in your reply solely relate to SACRT's proposed operating and capital budgets, i.e., none are provided for SACRT's proposed Program of Projects (POP). As SACRT's FY 02-03 notices state, "Title 49, U.S.C. Section 5307 requires RT, as a grantee, to develop a Program of Projects in consultation with interested parties, including private transportation providers ... After the draft Program of Projects is prepared, RT must summarize federal funding amounts and projects to be undertaken, make it available for public review and comment, consider comments received from the public, and make the final Program of Projects available." Therefore, please provide a

copy of each of SACRT's POP published notices relating to the proposed "CNG Bus Fleet Replacement and Expansion \$2,490,000" in the **specific** publications of general circulation, as stipulated in the SOP.

Lastly, your answer to Question 1 inaccurately asserts, "attached are the FTA decisions with respect to the charter complaint filed against SACRT." As I previously indicated to the Department of Transportation (DOT), the emergency protest filed by the California Bus Association (CBA) principally related to SACRT's noncompliance with the private sector participation requirements and, thus, was not a charter complaint per se.

Question 2, DOT Enforcement of Restrictions on Use of Equipment, asked, "What has the current Administration done to enforce this restriction [codified by DOT in 1988 at 49 CFR §18.32 (c)(3)]?" Your answer inaccurately stated, "this regulation was promulgated by the Office of Management and Budget (OMB)." Since OMB did not issue a codified regulation but, instead, coordinated a government-wide common rule in which DOT participated and then codified its own implementation, it is DOT, not OMB that would be enforcing its own rule. As a consequence, your reply stating, "DOT has referred this Question to OMB ... for a response" is inappropriate and nonresponsive. Please provide an answer about DOT's enforcement during the current Administration of its codified regulatory provision.

Question 4, Amador Case, asked, "Does DOT have evidence of compliance that was not included in the documents provided by SACRT? If so, please provide it to the Subcommittee. If not, what do you recommend that Amador now pursue to remedy the harm it suffered?" Your partial answer stated, "DOT is unable to ascertain whether it has evidence of compliance that was not included in the documents provided to CBA by SACRT as DOT is not in receipt of these documents." How could DOT opine that SACRT was in "minimum" compliance without evidence of any published notices in The Daily Recorder? Also, what do you recommend that Amador now pursue?

Please hand-deliver your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later August 19, 2004. If you have any questions about this request, please call Subcommittee Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,



Doug Ose  
Chairman

Subcommittee on Energy Policy, Natural  
Resources and Regulatory Affairs

cc: The Honorable Tom Davis  
The Honorable John Tierney