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VIA PAPER FILING

December 5, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W., Room 1034
Washington, D.C. 20423-0001



**Re: Docket No. AB-1108 (Sub-No. 1X)
NETEX Opposition to Granting Exemption Petition**

Dear Ms. Brown:

The Northeast Texas Rural Rail Transportation District ("NETEX") submits this protest in opposition to the Petition for Discontinuance Exemption ("Petition") filed by The Blacklands Railroad ("BLR") on October 25, 2019 and noticed in the Federal Register on November 15, 2019 (84 Fed. Reg. 62561). BLR's request to abruptly discontinue its operations on the NETEX Line¹ would cause substantial harm to current shippers that have utilized this line on at least a twice-a-week basis and to NETEX's ongoing economic development efforts in the six Texas counties under its purview. As discussed more fully below, the Surface Transportation Board (the "Board" or "STB") should reject the Petition for, among other reasons, the following:

- NETEX strongly opposes the Petition because it would cause economic hardship to the six NETEX Member Counties. In addition, almost every NETEX shipper

¹ NETEX owns outright a segment of track stretching from Greenville, Texas (MP 555.0) to Winfield, Texas (MP 489.41). In addition, NETEX acquired trackage rights from Union Pacific ("UP") over the adjoining 10.41-mile rail segment running from Winfield (MP 489.41) to the UP Mt. Pleasant interchange (MP 479.0). See *Northeast Texas Rural Rail Transportation District—Purchase (Portion) Exemption—St. Louis Southwestern Railway Company*, STB Docket No. FD 32841 (Service Date Jan. 26, 1996) and *Northeast Texas Rural Rail Transportation District—Acquisition Exemption—Lines of the Union Pacific Railroad Company*, STB Docket No. FD 33892 (Service Date Jul. 26, 2000). This continuous 76-mile rail segment running from Greenville to Mt. Pleasant, over which NETEX has either complete ownership or trackage rights, is referred to herein as the "NETEX Line."

located along the NETEX Line would be harmed because it would leave them with no viable rail option (at least until a new operator is under agreement to provide common carrier service on the NETEX Line at some point in the future).

- In 2005, unbeknownst to NETEX, BLR acquired a lease directly from UP for a 7.9-mile portion of rail over which NETEX possess trackage rights (MP 489.40 to 481.5). BLR has served a very small number of customers on this 7.9-mile stretch with the same resources (equipment and personnel) utilized to provide freight rail services for NETEX under the NETEX-BLR operator agreement. The Petition states that BLR intends to continue serving its own customers on this 7.9-mile rail segment even after BLR discontinues its service as the NETEX operator on the NETEX Line.
 - BLR's 7.9-mile rail segment is located between NETEX's customers and the UP interchange in Mt. Pleasant. NETEX is concerned that BLR could potentially delay/interfere with NETEX customers' access to this crucial interstate rail gateway. This operating condition, if allowed, will almost certainly deter future potential operators from agreeing to provide service on the NETEX Line as the BLR Successor.
- BLR argues that the NETEX Line is hopelessly unprofitable and that shipping volumes remain stagnant or have decreased. However, NETEX and shippers have complained to BLR about its deficient operation of the NETEX Line. Shippers have been forced to utilize more expensive options such as trucking because BLR has not provided reliable or consistent service. In fact, at least one shipper has stated that it would like to increase its rail use for delivery of necessary materials/components, but has not done so because of BLR's track record of unpredictable schedules and delays.
- BLR has not maintained the NETEX Line track in Class 1 condition as required by the operating agreement between the parties. It will be difficult and costly (money and time) for NETEX to find a successor operator with the track in such poor condition.
- NETEX is not in a position to confirm the accuracy of BLR's statements and figures regarding its revenues and expenses contained in the Petition. However, BLR admits that its Petition does not include its revenues associated with its direct lease with UP of a 7.9-mile segment of the NETEX Line, on which BLR apparently operates in a capacity separate from its role as NETEX operator, though utilizing the same rolling stock and manpower resources afforded by the NETEX-BLR operator agreement. The Board cannot verify and examine these figures unless BLR's request is subject to the Board's full application procedures as opposed to the streamlined exemption process BLR seeks.

Therefore, the Board should reject the Petition and require compliance with the Board's normal procedural rules for a full application to ensure an appropriate, STB-supervised transition from BLR to a new common carrier operator on the NETEX Line.

I. Background

NETEX is an established governmental subdivision of the state of Texas representing six contiguous counties across northeast Texas: Titus, Franklin, Hopkins, Delta, Hunt, & Collin Counties. NETEX was formed in 1995 to save the former St. Louis Southwestern (Cotton Belt) Railway's Dallas Division from abandonment and preserve rail service for current and future customers along the corridor and to ensure the potential for long-range economic growth in the region. It owns, or jointly owns with the State of Texas, 65.6 miles of operational railroad plus 23.2 miles of right of way with rails removed for a total corridor length of 88.8 miles.² NETEX is dedicated to promoting the economic vitality of this region through preserving and expanding the availability of multimodal capable rail service.

Since as early as 1999, NETEX has contracted with BLR to serve as the common carrier operator for the entirety of the NETEX Line. Importantly, in 2005, BLR separately acquired a lease of a 7.9-mile segment of the NETEX Line directly from UP. Petition at 6. BLR acquired this lease without NETEX's knowledge. Regardless, once BLR is no longer the operator for the NETEX Line, BLR has stated that it intends to maintain its leasehold interest in this segment which is located between NETEX's customers and the UP regional interchange at Mt. Pleasant. In other words, NETEX will not be able to hand over complete control for the NETEX Line to a new operator; BLR will continue to maintain control over a small segment of the NETEX Line that stands between NETEX's customers and the UP regional interchange at Mt. Pleasant. BLR has made clear that it intends to exercise control over this stretch of rail in the future and that NETEX will need permission to cross this segment of the NETEX Line.

BLR's continued control over this 7.9-mile segment (even after discontinuing service as NETEX operator) poses potential problems for NETEX to secure common carrier service on the NETEX Line by a new operator. While NETEX is not opposed to the termination of BLR as its operator, allowing for discontinuance to proceed under an exemption would not allow NETEX and shippers to efficiently transition to a new operator. Granting an exemption could also leave existing shippers without a reliable freight rail option for the foreseeable future. Therefore, in order to ensure these issues are appropriately addressed, NETEX requests that the Board deny the Petition and subject BLR's request to the Board's full application process for approvals of discontinuance requests.

II. Legal Standard

Federal law prohibits discontinuance of a jurisdictional rail line without prior approval from the Board. 49 U.S.C. § 10903. The Board grants approval only if it "finds that the present or future public convenience and necessity require or permit" the discontinuance. *Id.* at 10903(d). In making this finding, the Board "shall consider whether the [discontinuance] will have a serious, adverse impact on rural and community development." *Id.* A rail operator may be exempted from this pre-approval process only

² See NETEX, About, <http://orgs.tamuc.edu/netex/about/about.htm>.

if the petitioner shows that “(1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.” *Boston and Maine Corp.–Abandonment Exemption–In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 75X) and *Springfield Terminal Railway Co.–Discontinuance of Service Exemption–In Hartford and New Haven Counties, CT*, STB Docket No. AB-355 (Sub-No. 20X), at 4 (Service Date Dec. 31, 1996).

The Board has stated that the exemption process “is used only when the information provided is sufficient for [the Board] to reach an informed decision” and where “the shippers do not contest the abandonment or, if they do contest it, where revenue from their traffic is clearly marginal compared to the cost of operating the lines.” *CSX Transportation, Inc.–Abandonment Exemption–(Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X) (Service Date Dec. 12, 2001) (emphasis added). Here, NETEX has expressed public opposition to the Board granting the Petition because there are serious issues that would be left unresolved and would pose harm to the future ability of freight-rail dependent businesses to receive necessary materials and components required to keep their businesses running without interruption. Moreover, as discussed more fully below, decreased revenue or shipment volumes on the NETEX Line are largely a result of BLR’s deficient services. Shippers want to use the NETEX Line for additional volumes and materials but are being forced into other more expensive and/or less efficient modes of transportation because of BLR’s unreliable and erratic service.

III. STB Regulation Is Necessary to Carry Out the Federal Rail Transportation Policy

49 U.S.C. § 10101 provides numerous federal objectives related to the national rail system and it is the duty of STB to carry out these objectives. STB regulatory oversight is necessary to ensure these goals are met if and when BLR discontinues its service as operator on the NETEX Line and operations transition to a new entity.

For example, § 10101(4) states that it is the Board’s obligation to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.” If the Board allows BLR to abruptly discontinue operations on the NETEX Line as requested in the Petition, it would cause a complete disruption in operations along the NETEX Line for an unknown amount of time. NETEX does not have the resources to fix the line or operate the line on a temporary basis.³ In addition, NETEX (or a successor operator) has not had an opportunity to adequately understand the physical condition of the track and bridges in order to assure the customers a smooth transition to a successor operator to serve their freight rail needs. In addition to the concern of whether BLR will support a cooperative transition period, it is unclear

³ The Petition states that NETEX is itself a Class III rail carrier, similar to BLR. See Petition at 2. NETEX believes this statement is incorrect.

whether any operator would be willing to take on this task since BLR will maintain control over the 7.9-mile segment of track that it leases directly from UP; operators may not be willing to serve on a route where access to the main interchange could be cut off at any time if BLR restricts access over its leased track under the auspices of track maintenance or other reasons. At one point NETEX was told that any successor operator would have to ask BLR for permission to run over the track. STB regulation is necessary to ensure that BLR's continued exercise of control over this small segment of the NETEX Line does not interfere with the sound and continuous operation of rail traffic after BLR discontinues its service as NETEX's operator.

Moreover, if the Board grants the Petition, BLR would leave the NETEX Line track in seriously deteriorated condition. The operating agreement between NETEX and BLR requires that BLR maintain the track in Class 1 condition. *See* Exhibit A (NETEX-BLR Operating Agreement) at Section 2(C)(i): "During the term of this Agreement, Contractor will perform, or cause the performance of, all maintenance, repairs and rehabilitation, whether capital or expensed, necessary to maintain the Rail Lines at a condition of no less than FRA Class 1." Despite numerous requests from NETEX, BLR has been unwilling to provide a true assessment of the track condition. Therefore, NETEX recently was forced to engage a third party engineer to provide an inspection report and seek Federal Railroad Administration inspection documents via the Freedom of Information Act. The engineer determined that all but a small segment (less than one mile) of the NETEX Line is in "excepted" (less than Class 1) condition. *See* Exhibit B (NETEX Line Rail Assessment performed by V3 Companies, dated Jan. 3, 2019). BLR has indicated that it has no intention of performing the necessary upgrades to return the track to Class 1 condition. *See* Exhibit C (Letter from BLR to NETEX Board of Directors, dated Jun. 6, 2019). NETEX has already had preliminary discussions with experienced Short Line Railroad operators. Some have stated they are not in a position to correct the BLR maintenance deficiencies, and NETEX is concerned that it will be challenging to secure an experienced operator that will be willing to take over common carrier operations unless the tracks are improved from their excepted status, or unless key maintenance issues are addressed to ensure reliable/safe operations. The Board should ensure this issue is appropriately handled before allowing BLR to discontinue serving shippers on the NETEX Line.

In addition, 49 U.S.C. § 10101(5) states that the Board is responsible "to ensure effective competition and coordination between rail carriers and other modes." BLR's intention to maintain control over a 7.9-mile segment of the NETEX Line poses potential coordination and competition issues for NETEX customers seeking to interchange with UP at Mt. Pleasant.

The Board's regulation is also necessary to ensure that BLR's discontinuance does not harm the ability of freight rail to compete with other modes of transportation, including trucking in the NETEX region. BLR argues that it has expended great effort in marketing the NETEX Line and meeting the needs of its customers, but that revenues and shipping volumes have been decreasing year-over-year. Petition at 6-9, 17-18. BLR argues that this pattern is expected to continue into the foreseeable future in part because

shippers are utilizing other transportation options. *Id.* at 16-17. In reality, decreased shipping volumes and revenues are a product of BLR's unreliable service over the past several years. NETEX hears regularly from shippers regarding BLR's inadequate services. For example, one shipper wrote to the NETEX board and attended a NETEX Board Meeting earlier this year stating that it has been forced to incur additional costs for bulk truck deliveries because BLR had unexpectedly decreased the number of trips per week to the shipper's facility and because BLR's turnaround times continue to increase to an unreasonable level. The shipper concluded: "we are actively losing money to inefficiency because of [BLR's] inability or lack of concern with servicing our facility." Exhibit E (Letter from AB Mauri to NETEX, dated Mar. 4, 2019).

Other shippers have shared similar concerns. Shippers in the Greenville Industrial Park have noted unreliable service and a lack of responsiveness from BLR to their freight rail needs and feel they have been provided less service than other businesses in neighboring cities. Exhibit E (Letter from S. Young to W. Defebaugh, dated Nov. 13, 2019). These are shippers that have been BLR customers for years and only began having issues with BLR within the past several years. At least two of these customers are ordering materials by truck due to BLR's unreliable service. In general, these shippers want to use rail more and have business opportunities that would increase their shipment volumes (and would also, assumedly, increase BLR's operator revenues). However, because of BLR's poor service, these shippers are instead being forced to select other more expensive options – such as trucks – for deliveries in order to keep their processes running. This is a major factor in the decreased volumes and revenues cited in the Petition.

IV. BLR's Discontinuance Would Have an Extensive Economic Impact

The impacts from BLR's abrupt discontinuance without sufficient cooperation related to infrastructure and operations would not be limited. Rather, it would severely impact existing shippers and their suppliers and customers. It would also negatively impact economic development opportunities in the region while NETEX works to find a new operator.

As mentioned above, BLR intends to exercise control over the 7.9-mile rail segment that it leases directly from UP, even after it discontinues service as NETEX's operator. In addition, BLR apparently intends to leave the NETEX Line track almost entirely in "excepted" condition. Thus, if the Board were to grant the Petition and allow BLR to abruptly cease operations on this line, NETEX would be handed an untenable task: find a new operator who will begin service immediately, despite the fact that almost none of the track is in Class 1 condition and despite the fact that BLR's continued control over a small segment of the NETEX Line could impede access to the Mt. Pleasant interchange at any given time. Since it is highly likely that any new operator would be hesitant to take up this task, granting this Petition would at a minimum cause a substantial interruption in service to these customers' operations. This would obviously cause substantial and widespread impact to shippers on the NETEX Line, as well as their suppliers and customers. Cessation of operations on the NETEX Line would also hamper

economic development in these six counties and could be fatal to several shippers who rely on freight rail for delivery of necessary components for their business and would deter future business from locating on this rail line for a long period of time.

V. STB Regulation is Necessary to Protect Shippers From Abuse of Market Power

BLR argues that granting the Petition “will not and cannot subject shippers to any market power abuse” because “BLR’s common carrier operations will be replaced by common carrier operations provided by, or under the auspices of, NETEX.” Thus, BLR argues, “one operator will merely be replaced by another, with no impact on market position.” Petition at 22. However, as detailed in Section III and IV, this is not the case. Contrary to assertions contained in the Petition, BLR’s abrupt discontinuance will not allow for a seamless transition to a new operator. NETEX is not a rail operator. Rather, NETEX is a political subdivision of the state of Texas that represents the interests of the public. Moreover, it will be extremely difficult for NETEX to find a new operator on short notice given the situation BLR seeks to leave behind: severely deteriorated track conditions and a separate leasehold for the 7.9-mile segment over which BLR will continue to exert control.

BLR is unable to cite to a single STB proceeding where the Board granted an exemption under conditions similar to this matter. In fact, the instant scenario stands in stark contrast to the cases cited by BLR in the Petition. In *Southwestern Railroad, Inc.—Discontinuance of Service Exemption—In Curry, Roosevelt, Chaves, and Eddy Counties, N.M.*, STB Docket No. AB-1251X (Service Date Apr. 27, 2017), the operator discontinued service at the request of the track owner, who desired to (and did in fact) immediately take up the role as operator on the relevant line. In addition, no shipper in that case expressed any concern or opposition. Here, there is limited prospect of a successor operator and the conditions of the NETEX Line may cause extreme hardship in finding a successor. And here, NETEX and shippers have expressed opposition to the Petition. Therefore, *Southwestern Railroad Inc.* provides no support for the Petition.⁴

BLR also argues that shippers have access to, and already use, alternatives to the NETEX Line. See Petition at 23 (“UP maintains significant facilities at Mount Pleasant, DGNO serves Greenville, and KCS may be accessed at either Greenville or Sulphur Springs”). Again, this simply is not the case. For example, while DGNO does have rail to Greenville and currently serves customers there on their DGNO line, they do not currently have direct access to the NETEX Line to serve any customers on the NETEX

⁴ The exact same can be said for the one other STB case cited by BLR to support its argument that the Petition causes no concern for market power abuse. In *Yellowstone Valley Railroad, L.L.C.—Discontinuance of Lease and Trackage Rights Operations Exemption—In Richland, Sheridan, Roosevelt, and Daniels Counties, Mont., And McKenzie County, N.D.*, STB Docket No. AB-991 (Sub-No 1X) (Service Date May 10, 2013), the Board stated: “Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Although there are 23 shippers on the leased lines, all would receive service from BNSF once YVRR discontinues operations.” Therefore, this case provides no support for granting BLR’s exemption request.

Infrastructure. DGNO could possibly provide temporary service to NETEX customers in Greenville if KCS allowed DGNO to switch through a few thousand feet of KCS line to get to the NETEX Line. For DGNO to access the NETEX Line without crossing over the KCS line, it would require installation of two switches and a couple hundred feet of track at a current diamond location at an estimated cost of \$300,000-\$400,000.⁵

In addition, while the KCS line may be accessed at Greenville or Sulphur Springs via the Boomer Spur, KCS is a Class I railroad that does not consistently direct serve NETEX's shippers and has not expressed any interest in doing so. KCS brings cars to the NETEX Line in Sulphur Springs and in Greenville and it is then the role of the NETEX operator to make final deliveries to the NETEX customers.

BLR states that "[r]emaining shippers have access to, and have utilized, truck transportation for their shipping needs." Petition at 23. NETEX customers do not want to use trucks for transportation at a higher cost: this is why they have located their businesses on the NETEX Line. See, e.g., Exhibit D (Letter from AB Mauri to NETEX, dated Mar. 4, 2019) and Exhibit E (Letter from S. Young to W. Defebaugh, dated Nov. 13, 2019).

Finally, NETEX is concerned that BLR may utilize its control over the 7.9-mile segment of the NETEX Line in a manner that negatively impacts shippers in the region. BLR has shown an unwillingness to abide by the terms of the NETEX-BLR operating agreement and NETEX is concerned that BLR may similarly ignore any access agreement that might be reached between the parties with regard to the 7.9-mile stretch after BLR ceases to serve as NETEX operator. STB oversight is necessary to ensure that BLR's discontinuance occurs only after NETEX and its BLR Successor have proper access to the UP interchange point in Mt. Pleasant.

VI. BLR's Revenue / Expense Figures Cannot Be Verified

The Petition contains several pages regarding the revenues and expenses related to the NETEX Line for recent years. BLR also provides a forecast going forward. Petition at 6-16. While NETEX does not currently dispute these figures, it is also unable to verify their accuracy. NETEX has sought audited financial statements and marketing plans from BLR in recent years, but BLR has refused to cooperate. See, e.g., Exhibit G (Email from P. Davila to W. Defebaugh, dated Sep. 25, 2018). It is unclear from the Petition whether any third party has verified BLR's revenue and expense figures. Therefore, the Board should provide for examination of these figures to determine whether they are accurate and complete.

BLR also states that its revenue calculation does not include revenues generated from its operation over the 7.9-mile segment of the NETEX Line that it leases directly

⁵ NETEX recently proposed to BLR that it investigate the possibility of DGNO serving NETEX customers at Greenville. BLR's counsel responded that it was opposed to this proposed solution. See Exhibit E (Letter from S. Young to W. Defebaugh, dated Nov. 13, 2019) and Exhibit F (Email from BLR counsel to NETEX counsel, dated November 19, 2019).

from UP and operates separate and apart from its role as NETEX's operator. Petition at 7, n. 6. It is unknown why BLR would not disclose the amount of revenue generated on this segment of the NETEX Line in the Petition. Regardless, this information is directly relevant to the determination of whether the NETEX Line as a whole is financially viable. How can the Board determine that revenue from the NETEX Line is "clearly marginal compared to the cost of operating the line[]" if BLR has not included its full revenue figures? *CSX Transportation, Inc.—Abandonment Exemption—(Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X) (Service Date Dec. 12, 2001). BLR's refusal to include this figure in the Petition indicates that BLR has not disclosed "the whole story" to the Board.

VII. Conclusion

BLR has openly stated that it desires to discontinue service as the NETEX operator as soon as possible. NETEX is not opposed to transitioning to a new operator, however, such transition must be overseen by the Board to ensure that it does not harm existing shippers and does not impede the continuous and efficient operation of rail traffic in the NETEX region. Therefore, the Board should reject the Petition and subject BLR's discontinuance request to the Board's full procedural requirements for determination of whether "the present or future public convenience and necessity require or permit the...discontinuance" and "whether the...discontinuance will have a serious, adverse impact on rural and community development." 49 U.S.C.. § 10903(d).

Sincerely,

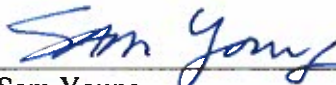


Sam Young
Chairman

Appendices

Certificate of Service

I hereby certify that on December 5, 2019, I caused copies of this letter and its exhibits to be served (1) by email or first class mail, postage prepaid, on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 800, Chicago, IL 60606 and (2) by first class mail, postage prepaid, on all customers identified by BLR in its Certificate of Service dated October 25, 2019.



Sam Young *PPD*

EXHIBIT A

OPERATING
AGREEMENT FOR CONTRACT SERVICES

This AGREEMENT OF CONTRACT SERVICES ("Agreement") is entered into as of this 30th day of January, 2011, by and between Northeast Texas Rural Rail Transportation District, a political subdivision created under the laws of the State of Texas ("NETEX"), and The Blacklands Railroad, a Texas railroad corporation ("Contractor")(NETEX and Contractor being sometimes referred to herein individually as "Party" and collectively as "Parties").

PURPOSE AND INTENT OF THIS AGREEMENT

Is to acknowledge that the Blacklands Railroad will have complete control of the administration of railroad operations and maintenance of NETEX's 86 miles of right of way and track, including all necessary train operations, rail yard operations and industrial switching services, interline interchanges with Class I, and shortline carriers, ongoing rail system maintenance, marketing/business development activities, and NETEX will have over site of these operations.

WITNESSETH:

WHEREAS NETEX acquired certain property rights over eighty six miles (86) miles of rail line running from just east of Wylie, Texas (MP 575.4) to just west of Winfield, Texas(MP 489.40) . all as more particularly described in **Exhibit 1** hereto (the "Rail Lines"); WHEREAS, NETEX entered into an Operating Agreement with Blacklands Railroad, Inc.(" BLR"), dated February 21, 1999, for the purpose of hiring and retaining BLR as a contractor to provide rail services by operating the Rail Lines as a common carrier for freight transportation (the "Operating Agreement"):

NOW THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are

hereby acknowledged, the Parties hereby agree as follows:

1. Term.

A. The term of this Agreement shall be ten years, commencing on January 19, 2011; provided, however, in the event of a material breach of the terms and conditions of this Agreement, this Agreement may be terminated by either party upon ninety (90) days' advance written notice to the other party delivered in accordance with Section 14 (the "Term").

B. Upon completion of the Term, NETEX agrees to extend the Agreement for additional ten years provided Contractor: (a) is in compliance with the conditions of this Agreement; (b) and (c) provided further that Contractor notifies NETEX of its intent to accept the extension no later than ninety (180) days prior to the expiration of the Term or the extension thereof. At the end of the Term, or the extension thereof, neither party will have any further liabilities or obligations to the other party (except for payment or performance of liabilities or obligations accruing during the Term) unless the parties agree, in writing, to extend the Term of this Agreement.

C. Furthermore it is agreed that prior to the execution of the additional term all provisions of agreement may be reevaluated and agreed on by both parties prior to renewal.

2. Obligations of Contractor.

A. The parties acknowledge and agree that NETEX has and shall continue to have during the Term complete and exclusive ownership of the Rail Lines, including the exclusive right to commence abandonment proceedings for the Rail Lines, or any portion thereof. With regard to all rail freight transportation operations on the Rail Lines, NETEX is contracting with Contractor to provide the personnel and supervision necessary for the maintenance of the Rail Lines as well as the locomotive power and personnel necessary for the movement of rail cars on

the Rail Lines. Subject to the foregoing, Contractor agrees to furnish all necessary equipment, machinery, manpower and support services related to operations on the Rail Lines for freight transportation, including without limitation providing the following specialized services: marketing and industrial or commercial development; routine inspection and routine maintenance of the Rail Lines (including railroad bridges and trestles, culverts, structures, signs, signals and lighting); equipment maintenance, repair and supply; car repair and maintenance; sufficient motive power, including fuel and supplies; subject to other provisions of this Agreement, hiring and training of qualified personnel; car accounting; handling of special charges; a system of insuring compliance with industry rules, regulations and practice and any other services directed by NETEX for the efficient operation of the Rail Lines and the transportation of freight there over.

B. (i) Notwithstanding the services and duties provided or performed by Contractor hereunder, the parties acknowledge and agree that NETEX is the owner of the right of way and that for all purposes relating to the ownership of the Rail Lines, including all filings with or appearances before the STB or any other Federal or state authority, NETEX shall be shown as the owner of the Rail Lines. Contractor, during the Term of this Agreement, shall be the exclusive operator of the Rail Lines and the common carrier for the freight transportation services provided on the Rail Lines. Contractor will not take any actions that could be considered inconsistent with NETEX's interests set forth in the immediately preceding sentence. All contracts for freight transportation over the Rail Lines shall be in the name of Contractor and Contractor shall be responsible for the operating policies, billing rates and scheduling of transportation over the Rail Lines and the relationship with all shippers and connecting rail carriers. Blacklands, as the existing operator, shall have an exclusive right to either: (i) operate tourist or excursion train or (ii) subcontract with an operator to operate such trains at Contractor's

direction. If there is any future interest in the NETEX corridor(as described above) by a third party or state agency for high speed rail or higher speed rail the Blacklands Railroad or its successor will accommodate access within the right of way so as not to disturb freight service to customers along the right of way.

C. (i) During the term of this Agreement, Contractor will perform, or cause the performance of, all maintenance, repairs and rehabilitation, whether capital or expensed, necessary to maintain the Rail Lines at a condition of no less than FRA Class 1 ~ provided, however, that Contractor shall not be required to maintain any portion of the Rail Lines that are not necessary in order for Contractor to serve an active customer, except to a level capable of being brought to FRA class 1 condition within thirty (30) days. All materials and supplies utilized to perform such repairs, maintenance or rehabilitation shall be of a like kind and quality as any items repaired or replaced in performance of such maintenance, repairs or rehabilitation.

(ii) The costs and expenses of the maintenance, repairs and rehabilitation to be performed by Contractor under the terms of Section 2.C.(i) hereof will be borne by the Contractor.

(iii) All costs and expenses relating to any improvements or upgrades to the Rail Lines, and to any repairs necessitated by acts of God (e.g., earthquakes, flood, lightening, wind, fire) shall be the joint responsibility of the BLR. and NETEX to pursue public funding and grants necessary to assist the railroad in restoring and making the necessary repairs to structures or right of way.

E. Contractor shall provide reasonable and adequate liability and property insurance acceptable to NETEX to cover NETEX, its Board members, officers, employees and authorized agents, and the Texas Department of Transportation ("TxDOT"). To the extent that Contractor shall be required to operate over the tracks of the Union Pacific, it shall provide reasonable and

adequate insurance as required by UP. Notwithstanding the foregoing, in no event shall Contractor's aggregate policy limit for any insurance required under the terms of this Agreement exceed an annual aggregate of 20,000,000.00.

F. Contractor shall be responsible for negotiating directly with all connecting railroads with respect to switch charges, divisions of revenue, car hire interchange agreements and clerical/data exchange agreements.

G. Contractor shall file an annual report with NETEX which will include a financial statement prepared in the ordinary course of business consistent with GAAP, and a summary of the physical statistics and condition of the property (the "Annual Report"). A quarterly summary pertaining to the same subjects also shall be filed (the "Quarterly Report"). The Annual Report shall be provided by Contractor to NETEX no later than March 30th of the year following the fiscal year for the which such report is made, and the Quarterly Report shall be provided by Contractor to NETEX with the quarterly Rental Fee for the preceding quarter in accordance with the terms of Section 4 hereof

3. Representations and Warranties.

(a) NETEX represents and warrants to Contractor as follows:

(i) It is a political subdivision duly organized and validly existing under the laws of the State of Texas;

ii) It has the power and authority to own, lease and operate the Rail Lines and to carry on its business related thereto, and to enter into and perform its obligations under the terms of this Agreement, without obtaining any authorizations, consents or approvals other than those that have been obtained;

(iii) The execution, delivery and performance by it of this Agreement,

and the consummation by it of the transactions contemplated by this Agreement, have been duly and validly authorized by all necessary action of its board of directors and by any other necessary action under applicable law, its charter and bylaws and otherwise (none of which actions have been modified or rescinded and all of which actions are in full force and effect), and will not:

(A) conflict with its charter or by-laws and will not conflict with, or result in a breach or termination of or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment or decree to which it is bound or to which the Rail Lines or any portion thereof is subject; or

(B) constitute a violation by it of any law or regulation applicable to it; and

(iv) That NETEX's real property, leasehold and contractual rights and interests in the Rail Lines are sufficient to enable Contractor to conduct rail freight common carrier operations on the Rail Lines as contemplated herein.

(b) Contractor represents and warrants to NETEX as follows:

(i) It is a Texas railroad corporation duly organized and validly existing under the laws of the State of Texas;

(ii) It has the power and authority to operate the Rail Lines and to carry on its business related thereto, and to enter into and perform its obligations under the terms of this Agreement, without obtaining any authorizations, consents or approvals other than those that have been obtained; and

(iii) The execution, delivery and performance by it of this Agreement, and the consummation by it of the transactions contemplated by this Agreement, have been duly and validly authorized by all necessary action of its board of directors and by any other necessary action under applicable law, its charter and bylaws and otherwise (none of which actions have been modified or rescinded and all of which actions are in full force and effect), and will not: (A) conflict with its charter or by-laws and will not conflict with, or result in a breach or termination

of or constitute a default under any lease, agreement, commitment or other instrument, or any order, judgment or decree to which it is bound; or (B) constitute a violation by it of any law or regulation applicable to it.

4. Compensation. (a) As full and complete satisfaction of all services and operations performed by Contractor hereunder, Contractor shall be entitled to all revenues of every sort gained from the operation of the Rail Lines, but which revenues shall not include monthly, annual or other rents paid to NETEX by third parties for use of NETEX real property. Contractor shall have no responsibility for the maintenance, repair or administration of any third party property or property rights on the Rail Lines for which Contractor does not receive rents or income, other than exercising due care not to damage or unreasonably interfere with or alter such property or property rights.

(b) As consideration for its rights and privileges under the terms of this Agreement, Contractor shall pay to NETEX on a quarterly basis, in arrears, an amount based upon revenue carloads handled by Contractor from interchange with a line haul carrier to or from an industry located on the Rail Lines in the preceding fiscal quarter ("Carloads"), which amount shall be equal to the lesser of: (i) ten percent (10%) of the gross revenue for each Carload; or (ii) \$20.00 per Carload. The Rental Fee shall be payable thirty (30) days after the end of each fiscal quarter. The first Rental Fee payment shall be due and owing on January 31, 2011.

(c) During the term of this Agreement, NETEX (or an auditor chosen by NETEX) shall have the right, upon written notice to Contractor, to access, review and copy Contractor's books and records during normal business hours, and to have such books and records audited, all at NETEX's expense, so long as such review and/or audit does not unreasonably interfere with Contractor's operations on the Rail Lines. Any and all such information acquired by NETEX under the terms of this Section 4(c), or otherwise, shall not be

divulged by NETEX at any time or in any manner except as may be required by law or any public authority or in connection with any administrative proceeding. This covenant of confidentiality is binding upon NETEX beyond the expiration of this Agreement.

5. Compliance with Laws and Inspection.

A. Contractor shall be responsible for compliance with all applicable laws of the United States and Texas and with all rules, regulations, orders and ordinances of any political subdivision, bureau or department thereof, relating strictly to the method or manner in which it performs or conducts its duties and activities hereunder, including without limitation all such laws, rules, regulations, orders and ordinances now in effect or made, enacted or issued during the term of this Agreement relating to the work environment of its employees; provided, however, Contractor reserves the right to appeal from any ruling, regulation, order or other determination and to carry on its duties and activities in accordance with Contractor's interpretation of the same pending final determination, in which event Contractor agrees to indemnify NETEX from any loss, liability or expense resulting from an adverse determination.

B. Contractor shall be responsible for compliance with all applicable laws of the United States and Texas and with all rules, regulations, orders and ordinances of any political subdivision, bureau or department thereof, relating strictly to the operation of the Rail Lines and the providing of freight transportation services thereon, including without limitation all such laws, rules, regulations, orders and ordinances now in effect or made, enacted or issued during the term of this Agreement relating to the operation of the Rail Lines; provided, however, Contractor reserves the right to appeal from any ruling, regulation, order or other determination and to carry on its operations in accordance with its interpretation of the same pending final determination, in which event Contractor agrees to indemnify NETEX from any loss, liability or expense resulting

from an adverse determination. NETEX agrees that it will not give to Contractor any direction or order which would cause Contractor to violate any railroad industry standards or any applicable law, rule or regulation.

C. If either Party receives notice of any alleged violation of federal, state or local laws, such Party immediately shall notify the other party of the receipt of such notice and forward to the other Party any records, reports, maps, schedules or other documents necessary to apprise the other party of the alleged violation.

D. NETEX, its agents or authorized representatives shall have the right to enter at all times the workings or operations of Contractor in order to inspect and examine same for the purpose of ascertaining the conditions of the operation, the methods of operation practiced or any other lawful purpose; provided, however, that such inspections shall not unreasonably interfere with Contractor's operations. Additionally, responsible officers of Contractor shall be available to consult with NETEX from time to time and as may be necessary or required by NETEX in order to advise NETEX of ongoing activities and the services performed by Contractor on the Rail Lines. It is mutually understood and agreed that NETEX, its agents or authorized representatives, when in or on the Rail Lines or any of Contractor's operations for any purpose, shall not be regarded under the law or otherwise as employees of Contractor. During any such inspection, Contractor shall have the right to have appropriate personnel available to accompany and guide the inspection party.

6. Indemnification and Insurance.

A. Contractor will defend, indemnify, and save harmless NETEX its successors and assigns, from any and all loss or liability for claims, demands and suits or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property or before any administrative body, arising out of (or claimed to have been caused by) or

in a manner related to the Contractor's: (i) failure to comply with applicable laws, rules and regulations as specified in Section 5 above or (ii) negligence or intentional acts; or (iii) breach of any warranty, covenant, condition or default under this Agreement.

B. NETEX, to the extent allowed by the Texas Constitution, as amended, and applicable Texas statutes, will defend, indemnify, and save harmless Contractor, its successors and assigns, from any and all loss or liability for claims, demands and suits or causes of action in law or equity for damages and injuries (including death) of every kind and nature to persons and property or before any administrative body, arising out of (or claimed to have been caused by) or in any manner related to the NETEX's: (i) failure to comply with applicable laws, rules and regulations as specified in Section 5 above; or (ii) negligence or intentional acts; or (iii) breach of any covenant, condition or default under this Agreement.

C. Contractor agrees to carry and maintain comprehensive railroad liability insurance coverage. Insurance shall be placed with insurance companies authorized to do business in the State of Texas in such form and amount as is at least equal to that carried by other substantial responsible operators in the industry and shall name NETEX, TxDOT or Contractor, as the case may be, as an additional insured. Contractor agrees to carry comprehensive liability and hazard insurance coverage on all personal property, including without limitation equipment, machinery and vehicles, owned and used by it, which coverage shall also be effective when such personal property is used either on the Rail Lines or at locations other than the Rail Lines. Contractor shall furnish to and maintain with NETEX and TxDOT certificates of such insurance evidencing current coverage, each containing agreements by the insurers not to cancel or modify the policies without giving NETEX and TxDOT at least 30 days' prior written notice. To the

extent possible, each party hereby waives all rights of subrogation under its insurance policies in favor of the other party.

7. Independent Contractor. Anything hereto to the contrary notwithstanding, it is the intention of the parties that Contractor shall be an independent contractor with regard to any and all activities and services performed and conducted by it under and pursuant to the terms hereof. All persons engaged by Contractor for purposes of discharging its duties hereunder ("Workers") shall be deemed employees, agents or subcontractors (as the case may be) of Contractor and shall not be deemed employees, agents, or subcontractors of NETEX, except as Contractor or NETEX may otherwise agree in writing with regard to particular Workers. Contractor shall be solely liable for compliance with all the laws of the United States and of the State of Texas and of any other proper authority relating to employee wages and benefits, FELA and worker's compensation, unemployment compensation, railroad retirement and withholding taxes, etc., and Contractor shall protect, indemnify and save harmless NETEX from any and all liability for and on account of the aforesaid matters as well as for any damages that may arise during the course of Contractor's operations hereunder.

8. Force Majeure

A. Subject to the limitations and requirements hereinafter set forth, Contractor shall be excused from its obligations under Section 2 above for such periods as NETEX is in default of its obligations hereunder or Contractor's performance hereunder shall be prevented or prohibited by law, ordinance, governmental regulation, restraint or court order (except as provided in Paragraph A or Section 10 hereof); by scarcity or inability to obtain equipment, material or fuel; by strike, lockout or industrial disturbance; by operation or force majeure (including, without limitation, lightning, earthquakes, fire, storms, flood, washout); by breakage or accident to equipment, machinery or facilities or by any cause beyond Contractor's control from performing

its duties hereunder provided that Contractor shall exercise reasonable diligence to resume performance of its duties hereunder. Contractor shall have the right to settle any strikes, lockouts or industrial disputes in its sole discretion and the aforesaid requirement of exercising reasonable diligence to resume performance of its duties shall not require Contractor to accede to any demand or position of any other party involved in such strike, lockout or industrial dispute.

B. In order to be entitled to relief hereunder, Contractor shall give NETEX notice of its claim for excuse from performance hereunder within five (5) working days after the commencement of the event and shall also give NETEX prompt notice of the termination thereof. Contractor shall furnish NETEX such information with respect to such claim as NETEX shall reasonably request.

C. If Contractor is unable to resume operations because of any event covered by Paragraph A of this Section within thirty (60) or reasonable period of time days after the commencement of such event, either party shall have the right to terminate this Agreement upon written notice thereof to the other party and neither party shall thereafter have any obligations or liability to the other party (except for obligations or liabilities accruing prior to the termination of this Agreement).

9. Confidentiality of Information. Any and all information or knowledge acquired by Contractor during the Term or any extension, renewal or replacement of this Agreement concerning or relating to the business enterprises and activities of Contractor's customers ("Shippers"), including without limitation, present and future operation and development plans of Shippers, operational costs, capital investments and expenditures made by Shippers and methods of operating practiced by Shippers, shall not be divulged or made public by Contractor at any time and in any manner except as may be required by law or any public authority or in connection with any administrative or judicial proceeding. This covenant of confidentiality is binding upon Contractor beyond the expiration of this Agreement. Nothing herein shall be construed as limiting

Contractor's right or ability to perform work and services for other railroads and contractors, provided such work or services does not contravene the obligations imposed upon Contractor pursuant to this Section 9.

10. Default by Contractor and Remedies.

A. The occurrence of any of the following events (collectively, "Events of Default" or individually, and "Event of Default") shall constitute a default by Contractor hereunder:

(i) Failure to provide service to any present or future customers in accordance with the terms of this Agreement at the direction of NETEX;

(ii) Failure to perform its duties in a manner required by law, rule, regulation or ordinance or, in the absence of such laws, rules, regulations or ordinances, in a manner consistent with generally accepted railroad safety practices or procedures or otherwise consistent with generally accepted railroad safety practices or procedures or industry-accepted practices and procedures;

(iii) The intentional discharge of hazardous material or other pollutants by Contractor onto the Rail Lines or other lands from the Rail Lines;

(iv) The performance of its duties in such a manner that results in a cessation or closure order from any governmental agency, department or bureau, including without limitation any order from any agency, department or bureau regulating the work environment of railroad employees;

(v) The breach of any other provision of this Agreement for a period of thirty (30) days after receipt of notice of such breach from NETEX;

(vi) The filing by Contractor of a voluntary petition in bankruptcy or for the appointment of a receiver, or the adjudication of Contractor a bankrupt or insolvent, or Contractor's seeking consent to or acquiesce in the appointment of any trustee, receiver or liquidator for all or any substantial part of its assets or be unable to meet its obligations to

creditors as they come due; or

(vii) The levy of a writ of execution, foreclosure or attachment or the filing of a mechanics' or materialmen's lien against the personal property of Contractor located on the Rail Lines or used in connection therewith which precludes Contractor's ability to perform its duties hereunder and Contractor shall not have acted to contest or dissolve the same prior to execution of sale thereof or for any period of thirty (30) days after NETEX shall have made written demand upon Contractor to institute proceedings for the contest or dissolution of the same.

B. If an Event of Default occurs, NETEX shall have, in addition to all other remedies at law or equity available to it, the following rights and remedies:

(i) NETEX may terminate this Agreement and initiate adverse discontinuance proceedings before the Surface Transportation Board to exclude Contractor from the Rail Lines; and

(ii) By proper actions at law or equity, NETEX may enforce all of the provisions of this Agreement or, in the alternative or in conjunction therewith, institute an action for damages for breach of contract. All of the rights and remedies of NETEX are cumulative and any exercise of any remedy shall not exclude or preclude NETEX from any other legal or equitable remedy which it may have. Failure of NETEX to enforce any of its rights hereunder upon an Event of Default shall not operate as a waiver or estoppel against NETEX or prevent it from exercising any or all of its rights at any subsequent time for any subsequent or continuing Event of Default.

11. Default by NETEX and Remedies.

A. The occurrence of any of the following events (collectively, "NETEX Events of Default" or, individually, an "Event of Default") shall constitute a default by NETEX hereunder:

(i) Willful failure of NETEX to comply with the rules and regulations of the Federal Railroad Administration or the State of Texas with respect to the operation of the Rail Lines; or

(ii) A breach of any of the provisions hereof by NETEX for a period of thirty (30) days after receipt of notice of such breach from Contractor.

B. If a NETEX Event of Default occurs, Contractor shall have, in addition to all other remedies at law or equity available to it, the following rights and remedies:

(i) Contractor may terminate this Agreement and initiate discontinuance proceedings before the Surface Transportation Board; or

(iii) By proper actions at law or equity, Contractor may enforce all of the provisions of this Agreement or, in the alternative or in conjunction therewith, institute an action for damages for breach of contract. All of the rights and remedies of Contractor are cumulative and any exercise of any remedy shall not exclude or preclude Contractor from any other legal or equitable remedy which it may have. Failure of Contractor to enforce any of its rights hereunder upon a NETEX Event of Default shall not operate as a waiver or estoppel against Contractor or prevent it from exercising any or all of its rights at any subsequent time for any subsequent or continuing NETEX Event of Default.

C. Each Party hereby covenants to the other that if such Party is in default of the terms of this Agreement, it will not oppose the non-defaulting Party's efforts to obtain authority from the Surface Transportation Board for the discontinuance of Contractor's operations on the Rail Lines.

12. Applicable Law. The parties agree that this Agreement shall be interpreted in accordance with the internal laws of the State of Texas and no presumption shall be deemed to exist in favor of or against either party as a result of the preparation or negotiation of the same; and no inference or covenant shall be implied as to either party, the full contractual obligation and covenants of each party being fully and expressly set forth in this Agreement. In the event any litigation arises in connection with this Agreement, the parties agree that jurisdiction will lie with either any Texas State court in Hunt County or Federal court in the Eastern District of Texas,

Tyler Division. All headings of the Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part of this Agreement and shall in no way affect the interpretation of any provision or Section of this Agreement.

13. Transfers and Assignments. Contractor may not assign this Agreement or transfer or delegate its obligations hereunder by operation of law or otherwise without the prior written consent of NETEX, which consent will not be unreasonably withheld, so long as the assignee or transferee is, in the reasonable opinion and discretion of NETEX, as financially viable and reputable as Contractor and is able to perform the duties of Contractor hereunder. The parties acknowledge and agree that the services and work performed by Contractor for NETEX are of a personal nature and any delegation, transfer or assignment by Contractor without NETEX's prior consent would materially alter the position of the parties to the detriment of NETEX. Any transfer or series of transfers of the issued and outstanding shares of Contractor which results in a change in the management or control of the Contractor shall be deemed an assignment of this Agreement and shall permit NETEX, if not consented to by NETEX, to terminate this Agreement upon notice to Contractor. As used herein, change of control shall mean one or more transfers or sales which cumulatively result in a majority of the shares being held by a party other than the owners of the shares of Contractor as of the date of the execution of this Agreement. NETEX shall not unreasonably withhold approval of such transfers provided that the transferee (s) accept in writing and are fully bound by the terms of this agreement, and meet the criteria set forth above.

14. Notices. All notices required or permitted hereunder shall be sent to the parties at the following addresses by regular mail, postage prepaid, or by telecopier or facsimile machine to the following numbers:

A. If to NETEX:

Northeast Texas Rural Rail Transportation Dist.
Franklin County Court House
P.O. Box 223 Mt. Vernon, TX 75457
Attn. Judge Paul Lovier
Phone # 903-537-4644

B. If to Contractor:

The Blacklands Railroad
641 Church St.
Sulphur Springs, TX 75482
Attention: Wayne Defebaugh
Fax No. (903) 439-0809

All notices deposited in the regular mail shall be deemed received four days (not including Sundays or Federal holidays) after deposit thereof with the U.S. Mail Service. Any notices sent by telecopier or facsimile machine shall be deemed received on the next business day following transmission thereof, provided the transmitting machine does not indicate any problems with the transmission or receipt of such notice to or by the other party. Either party may change its address email address or facsimile number by giving written notice thereof to the other party.

15. Integration: Original Duplicates.

A. This Agreement constitutes the entire contract between the parties and there are no other understandings, representations or warranties, oral or written, relating to the subject matter of this Agreement which shall be deemed to exist or obligate either party, their respective successors or assigns.

B. This Agreement is executed in multiple counterparts, each copy of which shall for all purposes be considered an original hereof

16. Waiver: Modification or Amendment. Failure of either party to exercise any of their respective rights hereunder upon the default, nonperformance or defective performance by

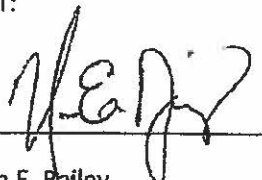
the other party of any condition, covenant or provisions herein contained shall not be construed as a waiver thereof or of any subsequent default, nonperformance or defective performance. No waiver, release, modification or amendment of any of the terms, conditions or provisions of this Agreement shall be valid or set up or relied upon by either party or offered at any judicial proceeding or otherwise, unless the same is in writing duly executed by the party against whom enforcement is sought.

18. **Conflicting Terms.**

In the event that any of the terms or provisions of this Third Amended Operating Agreement violate, conflict with or are inconsistent with any of the terms or provisions of the First or Second Acquisition Documents (as delineated in Section 2G hereof), or any other agreements between the parties regarding the subject matter of this Agreement, the terms and provisions of this Agreement shall govern and control for all purposes thereunder and hereunder. In the event that any of the terms or provisions of the Second Acquisition Documents violate, conflict with or are inconsistent with any of the terms or provisions of any of the First Acquisition Documents, the terms and provisions of the Second Acquisition Documents shall govern and control for all purposes thereunder.

WITNESS the due execution hereof: the day and year first above written.

ATTEST:

By: 

Nathan E. Bailey

Secretary

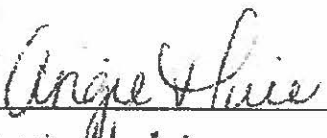
NORTHEAST TEXAS RURAL RAIL TRANSPORTATION DISTRICT

By: 

Paul F. Lovier

Chairman

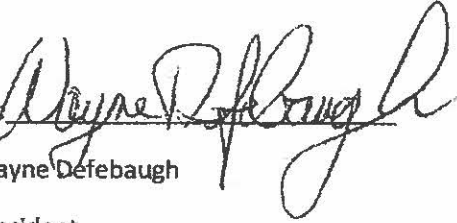
ATTEST:

By: 

Angie Huie

Secretary

THE BLACKLANDS RAILROAD

By: 

Wayne DeFebaugh

President

*This 30th day of March 2011
My Commission expires
11-6-13*

EXHIBIT B

From: Ted Niemeyer [tniemeyer@v3co.com]
Sent: Thursday, January 03, 2019 1:06 PM
To: Phil Davila
Subject: FW: Northeast Texas Rail District - Class 1 and 2, 11-28-18, 1824, 11-29-18, 0949, 1-3-19, 1305
Attachments: NETEX RR Assessment, 11-29-18.pdf; NETEX RR Assessment, 11-29-18.xlsx

Phil:

Attached hereto are both pdf and Excel files for class 1 and 2 estimates for NETEX segments 2 and 3. Per our conversation earlier today, all track is excepted track except for approximately MP 551.9 to MP 552.6 in Greenville, TX where the KCS is parallel to Your railroad. Please do not hesitate contacting me with questions and/or comments.

Have a safe and blessed new year 2019.

Sincerely Yours

ted niemeyer, P.E.
Director of Railroad Services
Direct: 630.729.6203 | Cell: 815-341-9050
tniemeyer@v3co.com



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[Twitter](#)

NORTHEAST TEXAS RURAL RAIL TRANSPORTATION DISTRICT ASSESSMENT
Upgrade from FRA Excepted Track to FRA Class 1

Note: All track is excepted track except from approximately MP 551.9 to MP 552.6 (0.7 miles) in Greenville, TX where the KCS is parallel to the NETEX line.

SEGMENT				TIES				ANCHORS		SURFACING		BRUSH CUTTING	Segment \$ Total
Segment Number	MP From	MP To	Distance Miles	Good Ties Percentage	Quantity Replacement Ties/mile	Surfacing Required Ties/mile	TOTAL Ties	Anchors per Tie	TOTAL Anchors	Track Surfacing Miles	Ballast Cars Required	Miles Required	
II	524	555	31	51.7	100	150	7,750	4	31,000	31	186	62	
Cost:							\$1,162,500		\$155,000	\$155,000	\$651,000	\$62,000	\$2,185,500

SEGMENT				TIES				ANCHORS		SURFACING		BRUSH CUTTING	Segment \$ Total
Segment Number	MP From	MP To	Distance Miles	Good Ties Percentage	Quantity Replacement Ties/mile	Surfacing Required Ties/mile	TOTAL Ties	Anchors per Tie	TOTAL Anchors	Track Surfacing Miles	Ballast Cars Required	Miles Required	
III	489.4	524	34.6	39.47	375	150	18,165	4	72,660	34.6	207.6	69.2	
Cost:							\$2,724,750		\$363,300	\$173,000	\$726,600	\$69,200	\$4,056,850

Total Cost							\$3,887,250		\$518,300	\$328,000	\$1,377,600	\$131,200	\$6,242,350
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				Ties	Anchors	Surfacing	Ballast	Brush Cutting
Item Totals				25915	103,660	65.6	393.6	131.2
Unit price installed				\$150	\$5	\$5,000	\$50	\$1,000
Units				Each	ea	mile	ton	mile
Assumptions								
Class 1 RR Tie cost \$126/tie				Material	\$75.00	Increase due to track conditions and lack of productivity		
cost per anchor				Material	\$2.00			
Surfacing 2" lift				1/2 mile per day	small gang	Class 1 RR Surfacing cost \$17,000/ mile 1 mile per day		
Ballast 70 tons per car				Material	\$10.00 per ton	Cost includes delivery by rail and Distribution		
Brush Cutting per mile				two sides				
No Additives								

ted niemeyer, P.E.
 Director of Railroad Services
 Direct: 630.729.6203 | Cell: 815-341-9050
tniemeyer@v3co.com

V3 Companies



7325 Jones Ave., Woodridge, IL 60517
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EXHIBIT C



A Texas Railroad Corporation

6/6/2019

To: Netex Board Members

RE: Summary of Condition of property, Find attached 2018 Financials

The condition of the Netex railroad has not changed much in 20 years it remains in class 1 condition for most of the railroad. As you know we have attempted to find funds in many different places to upgrade the railroad but to no avail. The railroad is in dyer need of a complete upgrade that can not be accomplished with the current traffic volume. I believe it is up to the Netex Board as the owner of the railroad to find the funds necessary to make this happen.

As the operator we have kept the railroad in operating condition for twenty years, maintained good customer service with all of challenges we have faced with the track and bridges. Going forward the railroad needs to be upgraded in the next couple of years to be able to continue service on the line.

641 Church St. * Sulphur Springs, Texas 75482

Toll Free 1-877-439-0738 * Phone 1-903-439-0738 * Fax 1-903-439-0809

EXHIBIT D

March 4, 2019

Northeast Texas Rural Rail Transportation District
 Attn. Phillip Davila, Executive Director
 208 Hwy 37 South
 Mt. Vernon, TX 75457

SUBJECT: Concerns with Blacklands Railroad

Mr. Davila,

Thank you for taking our call concerning our ongoing concerns with Blacklands Railroad. As I expressed on our call, we receive two ingredients via rail – corn starch and lime. We are considering other opportunities to receive propionic acid and sodium bicarbonate via rail, however, we are reluctant to move forward with those opportunities when Blacklands cannot effectively service the two ingredients we already have.

To give you a quick overview of our current rail requirements:

Supplier	Ingredion – Corn Starch	Mississippi – Lime
Annual Demand	32-33 Rail Cars	53-54 rail cars
Used in Production of	Baking Powders	Calcium Propionate
Production Times	M – Th 20 hrs per day	7 days per wk, down 12 hours to clean on Tuesday
Delivery requirement	Every 7-10 production days	Between 5-7 production days
Dedicated Rail Cars	N/A	8
Origin	Bedford Park, IL	St. Genevieve, MO

***Note that these requirements have been steady +/- 10% since 2015. However, as we list our demand in rail cars, lack of service prevents us from reaching that many rail cars on an annual basis.**

Below is an outline of the key concerns listed by our plant buyer as obstacles to success:

- **Consistent service days.** When I took over as buyer on 4/1/14, Blacklands was in town almost every Monday, Wednesday and Friday. It dropped to 2 days a week over the last few years and now they are down to 1 day a week. I spoke with Connor by phone the week of 2/11/19 asking for his opinion on a rail car and when he thought it could be to us. At that time, I asked what day each week we should plan for them to be in town and I was told Monday. We now have to plan our inventory around their service day of Monday, unless they are running behind then it can be Tuesday or Wednesday. This in turn results in the need for additional bulk trucks more often than we were ordering when they were servicing us 2 or 3 days a week.
- **Request for decreased service.** Wayne has asked us to invest in two unloading stations for each ingredient specifically, so he could decrease his service from 1x every week to 1x every two weeks. Certainly, this would help reduce the number of times a rail car would be spotted but it

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would also serve to decrease our turnaround times on our dedicated rail cars which has already been slowed – the next topic.

- **Decreased turnaround times.** (Predicated on Mississippi Lime reports. Lime is only ingredient affected due to its dedicated cars)

Year	Average Turnaround	Min/Max
2017	53 (on 41 rail cars)	48/60
2018	64 (on 38 rail cars)	56/74

Just in February 2019 alone, we were only able to receive 3 lime railcars for the month because we encountered a gap in service due to turnaround times. As a result, we had to order 7 trucks which replaces nearly 2 railcars worth of product which you would think is lost revenue to BLR.

- **Delayed return to Mt Pleasant** to return to Union Pacific Main line. Once released this is a 2-day transit for BLR, but because they will only service us 1x per week the cars sit and delay the turnaround time.

Average Return	Min/Max
7	3/24

- **Undelivered commitments.** Our lime cars are dedicated rail cars. We previously employed a supplier's fleet of 7 rail cars. We were advised by Wayne a few years ago that if we would get an additional car for Mississippi Lime's shipments, this would solve problems related to having to purchase trucks to fill the gaps between rail cars in the transit loop. We have done our part and added an 8th rail car despite having to pay underutilization fees on the 7th rail car. Now we are being told by Wayne the 8th car is not enough. Rather if we expand our rail usage by adding addition ingredients AND build out a spur to Wayne's specifications, the rail operation would run more smoothly. I'm sorry, but he does not and cannot tell us how to run our business. It's also rather disappointing that we followed through with are commitment to add an additional car per Wayne's request and he is still not willing to deliver them in a timely fashion to avoid having to order ingredients by truck.
- **Our additional cost** to date to Mississippi Lime for bulk truck deliveries since January 1, 2019 is \$8,088. We also incur underutilization on our rail cars if we do not meet a specific volume per quarter per rail car. It has become more and more difficult to meet this volume with the decline in service days per week. Our penalty was \$22,090 for 2018 underutilization charges plus an additional \$47,827. This is another concern we have with current rail service. Frankly, adding even 1 more ingredient to our mix by rail scares me knowing the service level we have from BLR and the effect it would have on our ROI of the project.
- **Lack of communication from BLR.** If BLR commits to a certain day to complete a swap and then run behind, they may not let us know until the day they are supposed to swap us. Corn Starch has an 8-week lead time and product from Mississippi Lime has a 1-week lead time. Therefore, when we find out that a swap may be delayed by a couple of days, we face a real risk to shutting down our operation. Fortunately, we have built a good relationship with our vendors. They know when I call for bulk trucks, that we are in a tight situation. I have been able to convert rail cars to bulk trucks to keep us from shutting down, but this does come at a higher cost to us.
- **The overall attitude** of Wayne and Conner is not welcoming. I feel I used to have a pretty good relationship with Wayne since I have dealt with him off and on since the late 1990s/early 2000s.

Passionate About Baking™

Since the late summer/early fall of 2018 I feel we have an even more strained relationship. I do not get the feeling that since we are the customer our needs are a priority for them. There have been quite a few instances where we would have shut down production had our suppliers not come through with bulk trucks. Additionally, I have recently encountered a situation where BLR told our lime supplier one thing about an inbound car to us but told me something different. This only adds to the strain in our relationship and a lack of trust.

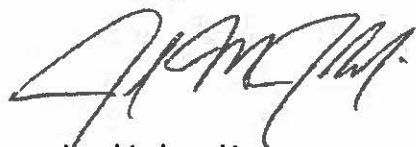
With the problems that we are having we are unable to commit to additional rail opportunities. Here is an overview of our opportunities.

Supplier	DOW – Propionic Acid	Solvay – Sodium Bicarbonate
Annual Demand	107 - 108 Rail Cars	39 - 40 rail cars
Used in Production of	Calcium Propionate	Baking Powders
Production Times	M – Th 20 hrs per day	7 days per wk, down 12 hours to clean on Tuesday
Delivery requirement	1 tanker every 2.5 days	1 rail car per week
Origin	Texas City, TX	Parachute, CO

While we have an opportunity to add the 2 additional Ingredients for our plant by rail, we are concerned that it may not be a good fit given the current service issues. This is a \$2.5M - \$3M project for us which includes us adding a spur and having 2 unloading stations for each ingredient. As we face the issue today of turnaround back to the supplier, we anticipate the same issue in a future state. However, with propionic acid specifically, we require the tanker to have a Kosher wash just as our dedicated trucking fleet does today. However, if we move forward with rail, we will sacrifice the trucking fleet. It is not a quick task to find a truck tanker to get a Kosher wash. Therefore, if the rail gets delayed, production will shut down.

As you can see, we are experiencing a great deal of trouble with Blackland Railroad. We are actively losing money to inefficiency because of Blackland's inability or lack of concern with servicing our facility. We hope that by writing you as the contract holder with Blackland, that change in service is affected and we see improvement. Additionally, AB Mauri representatives plan on attending the board meeting on April 4th at 1:30p at the Sulphur Springs EDC to discuss our concerns.

Thank you,



Jared Jurkowski
Supply Chain Manager
AB Mauri North America
903-454-3891 ext 1209 (office)
jared.jurkowski@abmauri.com

CC: (See Next Page)



6311 Industrial Blvd. • Greenville, Texas 75402 • USA • 903.454.3891

Dianne Clark – Plant Buyer
Susan Jubula – Senior Buyer
Stephen Cunningham – Plant Manager
David Hufford – VP Procurement
Trey Pope – VP Manufacturing Bakery Ingredients

EXHIBIT E

November 13, 2019

Wayne Defebaugh:

Customers of the Greenville Industrial Park can't continue with the current level of service. Based on your position that it is too costly for Blacklands to serve these customers, the lawsuit, the STB process and creation of a mutual termination agreement...NETEX would like to propose a solution:

- . NETEX can approach another operator to provide railcar delivery and pickup services in the Greenville Industrial Park on an emergency basis/temporary basis.
- . Union Pacific can be asked by the original shippers of the inbound cars to route their cars to Dallas to facilitate interchange in a Dallas/Mesquite...yard and these cars will no longer have to travel across the 65.6 miles.
- . The emergency/temporary operator will provide all services to these customers and you will not have to do anything.
- . A switch will be installed at the DNGO/NETEX diamond and this operational modification will only affect a minimal amount of track.
- . NETEX and the emergency/temporary operator will be responsible for all coordination including STB and Union Pacific.

Customers in Greenville will be able to plan their process around two swaps/week and stop ordering material by truck.

- . You will eliminate the cost you spoke of.
- . Customers will eliminate the added costs associated with truck transportation and
- . Maybe we can keep these customers from giving up on this railroad and transloading in the metroplex somewhere.

Do you object to this potential solution?

Sincerely,

Sam Young

Chairman - NETEX

EXHIBIT F

From: Lyn Robbins [<mailto:wlr@robbinstravis.com>]

Sent: Tuesday, November 19, 2019 3:32 PM

To: Jeffrey Wolf <jwolf@wolfawpc.com>

Cc: Lincoln Floyd <laf@robbinstravis.com>

Subject: RE: Greenville customers

Jeff,

On behalf of Blacklands, I am responding to Mr. Young's letter that is dated November 13 but was not received by Blacklands until yesterday, November 18.

Blacklands has served the Greenville customers efficiently for years and will continue to do so. Blacklands has no indication that those customers "can't continue with the current level of service," and the current weekly service is entirely appropriate, given the number of cars they receive from UP and KCS. Car volume simply does not dictate increased service, as Blacklands has explained repeatedly both to NETEX and to those customers.

Blacklands of course objects to the approach of an additional operator in violation of the Operating Agreement between Blacklands and NETEX.

Lyn Robbins
Robbins Travis PLLC
2485 E. Southlake Boulevard
Suite 160
Southlake, Texas 76092
(817) 918-2307 (direct)
(817) 918-2300 (front desk)
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WLR@RobbinsTravis.com

EXHIBIT G

From: Phil Davila [prdavila@sbcglobal.net]
Sent: Tuesday, September 25, 2018 5:44 PM
To: 'Wayne Defebaugh'
Cc: 'Brian Lee '; 'Jason Davis'; 'Nathan Bailey'; 'Sam Young'
Subject: RE: Friday's Appointment with WhitleyPenn

Ok, I have called WhitleyPenn and cancelled the audit.

For the record, NETEX was not asking for anything that is not allowed in our agreement. Our view is that somehow Blacklands' interpretation of the language is getting skewed. It is not rocket science. NETEX audit language is clear that NETEX is entitled to an audit every year, and it doesn't state that NETEX has an annual cutoff date for when those audits must happen. It doesn't say "current year", "one year" or "previous year".

With carload revenue and storage car revenue decreasing (per your past two quarterly traffic statements), we remain concerned how Blacklands is going to keep the track together and why you would continue to want to lose money, if that is the case? If we had audited the most recent four years and there was evidence that you were trying to fund maintenance items on the NETEX infrastructure with profits from other Blacklands Operations, that would have been a very positive position for the Board to consider. Should you decide you would like to support an audit of the past four years to validate your statements about losing money on this operation, please let us know.

Different subject.... you have given us a date of October 29th to have an independent third party perform an inspection of the NETEX infrastructure. If over a month from now, you plan to just delay and block us from performing that action item from our joint NETEX Blacklands Aug 3rd meeting, would you mind letting us know this week so we don't get within a couple days of the inspection and have to cancel the inspector like we had to do with WhitleyPenn.

Sincerely,

Phil

From: Wayne Defebaugh [mailto:wayne@blacklandsrailroad.com]
Sent: Tuesday, September 25, 2018 4:54 PM
To: Phil Davila
Cc: 'Brian Lee '; 'Jason Davis'; 'Nathan Bailey'; 'Sam Young'; Lyn Robbins
Subject: RE: Friday's Appointment with WhitleyPenn

Phil

Based on your response that a one year audit of the Netex railroad only is not acceptable then I guess there will be no audit, if you change your mind and agree to a one-year audit let me know.

Wayne Defebaugh
President/CEO



Blacklands Railroad / Black Gold Terminals
641 Church St.
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m: 903-348-3681
e: wayne@blacklandsrailroad.com

www.blacklandsrailroad.com



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From: Phil Davila <prdavila@sbcglobal.net>
Sent: Tuesday, September 25, 2018 3:25 PM
To: Wayne Defebaugh <wayne@blacklandsrailroad.com>
Cc: 'Brian Lee ' <Titusjudge@gmail.com>; 'Jason Davis' <Jason.Davis@tamuc.edu>; 'Nathan Bailey' <n.e.b@live.com>; 'Sam Young' <compct4@peoplescom.net>
Subject: RE: Friday's Appointment with WhitleyPenn

Wayne,

No problem... NETEX and WhitleyPenn have an engagement letter because we are paying the bill. WhitleyPenn will be happy to send you an NDA.

One year of Blacklands Only is not acceptable to NETEX. In our August 3rd meeting you suggested NETEX consider your other successful business startups all as part of your financial stability. We are only trying to do what you and your attorney suggested.

Thank you,

Phil Davila
Executive Director
Northeast Texas Rural Rail Transportation District
Ph: 817-903-2957
prdavila@sbcglobal.net

From: Wayne Defebaugh [<mailto:wayne@blacklandsrailroad.com>]
Sent: Tuesday, September 25, 2018 2:38 PM
To: Phil Davila
Cc: Brian Lee ; Jason Davis; Nathan Bailey; Sam Young; Lyn Robbins
Subject: RE: Friday's Appointment with WhitleyPenn

Phil

I replied on 9/13 that I would support an audit of 2017 and of Blacklands Netex railroad only, Also we have not received an engagement letter from Whitley Penn indicating intentions or confidentiality.

Wayne Defebaugh
President/CEO



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From: Phil Davila <prdavila@sbcglobal.net>

Sent: Tuesday, September 25, 2018 12:07 PM

To: Wayne Defebaugh <wayne@blacklandsrailroad.com>

Cc: Brian Lee <Titusjudge@gmail.com>; Jason Davis <Jason.Davis@tamuc.edu>; Nathan Bailey <n.e.b@live.com>; Sam Young <compct4@peoplescom.net>

Subject: Friday's Appointment with WhitleyPenn

Wayne,

I tried to reach you on your cell phone a few minutes ago.

I talked with WhitleyPenn and Angie said she had to check with your CPA and Attorney, which is all reasonable, however we've been working toward the start of the audit for some time now.

I had asked in my September 21st email if you would let me know if you were going to support this audit. Do you want me to cancel Friday, or are we going to waste WhitleyPenn's time and some more NETEX funds.

Phil Davila

Executive Director

Northeast Texas Rural Rail Transportation District

Ph: 817-903-2957

prdavila@sbcglobal.net