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Its Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
TEXAS RAILWAY EXCHANGE LLC –	)	
Construction and Operation Exemption –	)	
Galveston County, TX – Petition for Issuance	)	FD 36186 (Sub-No. 1)
of a Crossing Order Pursuant to 49 U.S.C.	)	
§ 10901(d)	)	
	)	

**TREX RESPONSE TO UNION PACIFIC’S REPLY TO TREX’S
PETITION FOR INSTITUTION OF MODIFIED PROCEDURAL SCHEDULE**

The Texas Railway Exchange LLC (“TREX”) hereby responds in opposition to the Reply of Union Pacific Railroad Company (“UP”),¹ which asks the Board to establish a protracted procedural schedule of at least 125 days, without affording TREX any opportunity for Rebuttal. UP’s proposed schedule departs significantly from those that the Board has routinely utilized in § 10901(d) cases, without justification, and amounts to a stall tactic to delay the Board’s orderly consideration and processing of TREX’s crossing petition that will bring new direct, competitive rail service in Galveston, Texas. In contrast, TREX’s schedule proposal adheres to the Board’s standard practice, affords TREX due process, provides UP with more than ample time to file its reply, and should thus be adopted.

I. UP’s Request for Supplemental, Open-Ended Discovery Is Unwarranted

UP bases its protracted, one-sided proposal² on its purported need to supplement the voluminous discovery it already submitted, to which TREX finished responding less than a

¹ UP’s reply asks the Board to establish a procedural schedule departing significantly from TREX’s proposed schedule and is tantamount to a separate request to which TREX believes it is entitled to respond. However, to the extent deemed necessary, TREX respectfully requests leave to file this response.

² Under its proposal, UP has twenty days after a scheduling order to propound a new round of discovery requests in unspecified areas. TREX must review and respond to those requests in seven days. UP can then file a motion to compel, to which TREX must reply, over a

week ago. UP wishes to unleash a second round of unrestricted discovery that would consume at least seven weeks, but much longer if UP pursues its contemplated motion to compel. UP suggests that its new discovery could be completed in as soon as 50 days, but it took TREX 80 days to complete its responses to UP's previous discovery, without a motion to compel. UP's statement that the "unavoidable fact is that discovery can take time" is an understatement, especially when a party stands to benefit from introducing delay.

UP claims it propounded only "some discovery," intimating that its inquiries were limited. That is incorrect. TREX completed just last week an almost three-month period of intensive discovery. *See* TREX Notification of Discovery Completion filed Feb. 22, 2019. UP propounded 62 detailed and wide-ranging discovery requests on TREX on December 4, 2018, to which TREX provided 62 pages of responses and objections on December 19, 2018. (**Exhibit 1**). TREX provided supplemental discovery responses (**Exhibit 2**), responsive documents, and document redesignations in response to UP's follow-up requests over a several month period. *See* Joint Status Report filed Feb. 13, 2019.

TREX's Construction Petition disclosed and addressed TREX's need to cross UP's line, and included detailed maps of the four proposed routings. UP was thus on notice and propounded an expansive range of discovery crossing-related matters. Nearly half of UP's 62 discovery requests addressed crossing issues, which TREX has provided UP with significant responsive information. A summary of UP's document production requests addressing crossing issues is included at **Exhibit 3**.

two-week period. TREX's responses are due thirty days after discovery is first propounded, unless UP elects to file a motion to compel, which extends the discovery period indefinitely. Once discovery ends, UP has 45 days to address the merits of TREX's Petition, but TREX has no rebuttal.

UP claims that it requires further unspecified discovery because “TREX objected to several of Union Pacific’s request as ‘speculative and premature’ because they appeared ‘to pertain to a possible future crossing petition.’” UP Reply at 2 n.2. However, UP misrepresents TREX’s responses. As to those requests, TREX still provided responsive information in most instances, to the extent any existed. TREX also responded as part of its discovery responses that its expected crossing petition:

will include an appropriate information and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

TREX has now provided that information in its Crossing Petition, which includes witness statements, an extensive Operations Report and construction plan, and voluminous support exhibits, appendices, and workpapers as TREX’s case-in-chief. A listing of those substantial workpapers provided to UP (and the Board) is included at **Exhibit 4**.

Almost all instances where TREX objected on grounds of prematurity related to UP discovery directed to crossing matters, (*e.g.*, Int. No. 2, relating to future track operating matters), TREX has supplied ample responsive information in its Crossing Petition, along with its supporting exhibits, appendices, and workpapers. Thus, TREX has now provided responsive information to the few requests that were speculative and premature, including those relating to TREX’s operating plan (RFP 2), traffic volumes (RFP 3), reduction in at-grade crossings and switching (RFP 24), and the amount of time trains/cars will occupy UP property (RFP 25).

TREX has compared each of the discovery requests where it objected based on prematurity and checked that responsive information was provided in its Crossing Petition and supporting exhibits, appendices, and workpapers. TREX believes its discovery responses are

now complete, including its responses to the UP's 26 crossing-related questions.³ UP has not followed up to date with TREX on any part of its crossing petition where UP believes the testimony, workpapers, or other supporting materials are incomplete or require supplementation,⁴ and UP has not informed the Board of any specific areas it believes might require supplemental discovery.⁵

Additionally, even apart from TREX's responses to UP's voluminous discovery requests, UP already knows all of the facts and circumstances relevant to the transportation at issue because it presently carries 100 percent of the traffic to TIT.⁶ UP thus already has whatever information it may need to reply to TREX's crossing petition and address the § 10901(d) statutory interference factors. TREX's proposed construction and operations are relatively short and uncomplicated, relative to other previous § 10901(d) crossing petitions, and TREX has filed some of the most detailed and thorough construction and crossing petitions and

³ While UP has not yet requested it, the only supporting workpaper item that might be outstanding is the underlying videos for the train movement data used in TREX's traffic study. TREX will be sending UP a hard drive with this additional information shortly.

⁴ UP posed one follow-up question to TREX on February 25, 2019, as to location of one document and the existence of any additional documents. That same today, TREX confirmed the location and the non-existence of other documents relating to that document.

⁵ The Board has sometimes provides for discovery in crossing petitions, but usually only in limited areas directly related to traffic volumes and related information. *See, e.g., Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – for Constr. in Will Cnty., IL*, No. 34060 (Sub-No. 1) (STB served Oct. 4, 2002) at 5. TREX has already provided UP with all of this information.

⁶ *E.g., Ill. Cent. R.R. – Pet. for Crossing Auth. – In E. Baton Rouge Parish, LA*, FD 33877 (STB served Nov. 20, 2001) at 3 (“*Illinois Central*”) (“KCS should know as much as IC does about the operation of trains, the installation and maintenance of crossing diamonds, and the installation and operation of interlocking signal systems. And KCS knows a great deal more than IC about KCS's operations. In short, if KCS wishes to argue that the proposed construction unreasonably interferes with its operations or that the proposed operations materially interfere with its own, it does not appear to require any further information from IC in order to make those arguments.”).

has provided all supporting workpapers. TREX's Crossing Petition sets forth all of the facts and information on which the Board can make its findings under § 10901(d), and UP is already in full possession and control of all the facts and information it needs to respond to TREX's petition.⁷

UP's request for at least 50 more days to engage in an open-ended, supplemental discovery fishing expedition is unjustified and should be rejected by the Board.

II. TREX's Schedule Follows Standard Precedent, But UP Relies on an Inapposite, Outlier

TREX showed that its proposed procedural schedule conforms to those routinely adopted in crossing cases, including *WFEC*⁸ and *Superior*,⁹ where the initial crossing petition is sufficiently complete to be treated as the opening statement under the Board's modified procedure rules, and the parties are afforded an opportunity for reply and rebuttal. Very similar procedural schedules were adopted in *OPPD*,¹⁰ *PSCo*,¹¹ and *Illinois Central*.¹² These standard

⁷ Nonetheless, TREX commits to acting expeditiously to supplement its responses where they may be inadvertently incomplete.

⁸ *WFEC R.R. – Constr. & Operation Exemption – Choctaw & McCurtain Cntys., OK – Pet. for Issuance of an Order Pursuant to 49 U.S.C. 10901(d)*, FD 32607 (Sub-No. 1) (STB served May 5, 1995).

⁹ *Chi. and Nw. Transp. Co. – Constr. and Operation Exemption – City of Superior, Douglas Cnty. WI – Pet. for Issuance of an Order Pursuant to 49 U.S.C. 10901(d)*, FD 32433 (Sub No. 1) (STB served Nov. 30, 1994).

¹⁰ *Omaha Pub. Power Dist. – Pet. Under 49 U.S.C. 10901(d)*, FD 32630 (ICC served Nov. 30, 1995).

¹¹ *Pub. Serv. Co. of Colo. – Pet. for Crossing Auth. Under 49 U.S.C. 10901(d)*, FD 33862 (Sub-No. 1) (STB served Oct. 10, 2001).

¹² FD 33877 (Sub-No.1) (STB served Oct. 25, 2001).

schedules in § 10901(d) cases provide more extensive periods for reply and rebuttal than is afforded in cases where a modified schedule is not invoked, such as in *Midwest Generation*.¹³

Nevertheless, UP asserts that the standard § 10901(d) schedule proposed by TREX is inappropriate because in *Superior*, the railroad being crossed did not object to the crossing. However, in *Superior*, several parties, including rail labor, and the railroad being crossed, hotly contested the petition itself. Further, when the *Superior* schedule was adopted, the railroad being crossed had not taken a position on the proposed at-grade rail crossing itself, but had vociferously disputed significant aspects of the crossing of its property. Moreover, in most, if not all, of the other referenced crossing cases (*WFEC*, *OPPD*, *PSCo*, and *Illinois Central*), one or more parties opposed the crossing petition. Nonetheless, the Board adopted the routine § 10901(d) schedule TREX proposes here.

UP further maintains that “the most appropriate, most analogous procedural schedule is the one adopted in *HolRail*.”¹⁴ However, *HolRail* was an anomaly and is inapposite. The *HolRail* parties *voluntarily agreed* to the non-standard procedural schedule, further *agreed* that additional discovery was required, and *agreed* that rebuttal was unnecessary.¹⁵ Here, TREX objects to: (a) the non-standard procedural schedule, (b) additional discovery, (c) the open-ended supplemental discovery period premised on the need for more discovery, and (d) the removal of an opportunity for rebuttal. Also, unlike *HolRail*, TREX sought to avoid such delay

¹³ *Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – for Const. in Will Cnty., IL – Pet. for Line Crossing Auth. Under 49 U.S.C. 10901(d)*, FD 34060 (Sub-No. 1) (STB served Oct. 4, 2002).

¹⁴ *HolRail LLC – Pet. for Crossing Auth. Under 49 U.S.C. 10901(d)*, FD 34421 (Sub-No. 1) (STB served Oct. 6, 2005).

¹⁵ In *HolRail*, the petitioner later sought leave to file, and did file rebuttal.

by filing a complete Construction Petition¹⁶ and Crossing Petition, and responding fully to UP's voluminous discovery requests.¹⁷

UP contends that *HolRail* is somehow analogous because one of TREX's proposed routings could traverse UP's property for as much as 43 percent of the total route. However, the *HolRail* "crossing" would have occupied the existing carrier's property for 1.7 miles, approximately two-thirds of the route's length, before exiting the right-of-way on the *same side* from which it entered. There was no actual crossing of the tracks. In contrast, TREX's proposed a 2,823-foot track will cross UP's tracks directly, with one routing crossing only approximately 19% of UP's property. This amount of property being crossed is consistent with, or significantly below, that of many other crossing petitions. In *MERC*, the UP/CNW proposed line required 77% of the crossing carrier's property, far more rail property than the 66% in *HolRail*.¹⁸ Despite the significantly greater intrusions in *MERC*, and UP/CNW's flat refusal to respond to any of the modest discovery requests served on it,¹⁹ the Commission did not adopt the protracted schedule UP seeks here.

¹⁶ Cf. *HolRail* (STB served Oct. 20, 2004) at 2 ("Due to this lack of a complete record, as well as the unique facts and issues presented in this case, it would be premature to dismiss the case at this time.").

¹⁷ In *HolRail*, the carrier originally propounded more limited discovery, and only limited carload data and preliminary construction and budgetary plan responses had been provided at the time of the filing of the crossing petition.

¹⁸ Also, the *MERC* line required three common carrier railroad crossings, of which two were at grade highway crossings, and impacted 1.7 acres of crossed railroad property, far more significant intrusions onto railroad property than that involved with TREX's Crossing Petition. Additionally, the existing lines being crossed by UP/CNW in *MERC* handled over twice the amount of train movements (7-8 trains per day) per day than the existing UP line will handle once the BNSF unit train traffic is routed over the TREX line. See TREX Crossing Petition at 13, Sullivan Second V.S. at 7-8.

¹⁹ *MERC* (ICC served May 11, 1994), 1994 WL 178841 at *6 n.7 (noting that petitioner UP/CNW "refuse[d]" to answer limited interrogatory requests served on it by another party).

For these reasons, the procedural schedule voluntarily adopted by the parties in *HolRail* is not appropriate here. UP's proposed schedule is further unwarranted because it would thwart Congressional intent for expedited processing of § 10901(d) cases,²⁰ and an expedited decision by the Board which TREX requires to avoid substantial financial and project delay risks arising in connection with its construction, as explained in TREX's Crossing Petition.

WHEREFORE, for the reasons set forth above, TREX respectfully requests that the Board adopt its proposed procedural schedule and deny UP's proposed procedural schedule.

Respectfully submitted,

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Dated: February 28, 2019

Its Attorneys

²⁰ *Class Exemption for Rail Const. Under 39 U.S.C. 10901*, 1 S.T.B. 75, 1996 WL 316448 at *7 n.10 (1996) (“[T]he legislative history of the 1995 Act indicates that Congress was concerned that some cases filed with the ICC under section 10901(d) were not adjudicated expeditiously. Congress consequently required, under the new Act, that crossing disputes be disposed of within 120 day[s]. This new statutory deadline will expedite track construction cases where crossing is involved.”).

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of February, 2019 caused a copy of the foregoing to be served by U.S. Mail, postage prepaid or by more expedited means upon all parties of record.

/s/

Katherine F. Waring

An Attorney for Texas Railway Exchange LLC

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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TEXAS RAILWAY EXCHANGE LLC –	)	
Construction and Operation Exemption –	)	FD 36186
Galveston County, TX	)	
	)	

**TEXAS RAILWAY EXCHANGE LLC’S RESPONSES AND OBJECTIONS
TO UNION PACIFIC RAILROAD COMPANY’S FIRST DISCOVERY REQUESTS**

Texas Railway Exchange LLC (“TREX”) pursuant to 49 C.F.R. Part 1114, hereby responds to the First Set of Interrogatories and First Request for Production of Documents (“Requests”) served on December 4, 2018 by the Union Pacific Railroad Company (“UP”).

TREX is conducting a reasonable, good faith search for non-privileged information and documents responsive to the Requests. Subject to, and without waiving the general and specific objections that follow, and to the extent reasonably available, responsive non-privileged information and documents will be produced.

GENERAL RESPONSES AND OBJECTIONS

In addition to the specific objections raised below in response to individual Requests, TREX objects to UP’s Definitions, Instructions, Interrogatories, and Requests for Production of Documents as follows:

1. TREX objects to UP’s Requests on the grounds that UP has not sought to intervene or obtain party status in this proceeding. 49 C.F.R. § 1112.4 (specifying the standards for requesting intervention in proceedings set for modified procedure). Under the Board’s rules, only parties may seek discovery. *Id.* § 1114.21. TREX also objects to UP’s

Requests under 49 C.F.R. § 1114.21(a), which does not authorize discovery in informal proceedings. In addition, TREX objects to UP's requests on the grounds that, "in determining whether the [exemption] criteria are met, the Commission considers proposals contained in exemption petitions on their merits without seeking public comment." *Rail Exemption Procedures*, EP 400 (Sub-No.3), 8 I.C.C.2d 114, 116 (1991). UP is not entitled to provide comments, and therefore seek discovery in anticipation of possible comments that might be filed in this proceeding, especially as UP has made no attempt to show how the sought discovery information is relevant, and might be able to affect the outcome of the proceeding. Further, TREX objects to UP's Requests as overbroad and in many cases irrelevant, and to the extent they have been propounded for improper purposes and as a means of delay and an attempt to control the orderly review of the exemption petition under the Board's strict standards of review and 90-day deadline for a decision. Without waiver of the foregoing objections, TREX has indicated to the Board that it intends to respond in good faith to UP's discovery requests, formally or informally, and provide UP with relevant, responsive information in relevant areas. In the Acting Director's December 11, 2018 Decision (*"December Decision"*), the Board found that: "TREX has indicated that it will be responsive to UP's discovery requests, which are due by December 19, 2018," and it therefore "grant[ed] UP's motion for extension of time, so that UP can reply to TREX's petition informed by the information obtained through discovery." TREX's discovery responses therefore are being made in good faith as previously indicated by TREX and in compliance with the *December Decision*.

2. TREX objects to UP's Requests to the extent that they seek documents or information protected by the attorney-client privilege and/or subject to the attorney work-product doctrine.

3. TREX objects to UP's Requests to the extent they would impose burdens or obligations on TREX exceeding those specified in applicable provisions of the Board's Rules of Practice at 49 C.F.R. Part 1114, or otherwise in exemption and similar proceedings as interpreted and applied in prior Board rulings, and reserves the right to supplement its objections as necessary.

4. TREX objects to UP's Requests to the extent they request the information in a format not maintained by TREX in the regular course of business or not readily available in the form requested by UP. Where a Request seeks relevant, non-privileged information in a form different from that maintained by TREX in its ordinary course of business, TREX will produce any responsive information in the form in which it is maintained by TREX in the ordinary course of business.

5. TREX objects to UP's Requests as unduly burdensome to the extent that they seek documents or information in UP's own possession and are more readily available to UP than TREX, or are readily available from public sources.

6. TREX objects to UP's Instruction 1 to the extent that it may be interpreted to request documents or information from TREX that is not in the possession, custody, or control of TREX, including, but not limited to documents or information in the possession, custody, or control of its outside counsel and consultants. In addition, TREX objects to UP's Instruction 3 on grounds of burden and relevancy, and as beyond that

required in the Board's *December Decision*, insofar as it requests the assembly and production of a privilege log.

7. TREX objects to UP's Requests seeking TREX to "identify" as unduly burdensome and beyond the scope of permissible discovery to the extent the Requests would impose a burden or obligation on TREX exceeding those specified in applicable provisions of the Board's Rules of Practice at 49 C.F.R. Part 1114, and specifically, § 1114.26(b), "Option to produce business records."

8. TREX objects to UP's Requests as overbroad and attempting to impose an undue burden on TREX to the extent they seek "any" and "all" documents "regarding" "relating to," "containing," "reflecting," "addressing," or "supporting" a particular subject, insofar as such all-encompassing terms could require TREX to produce an unlimited volume of documents having some connection to a subject, regardless of relevance. Subject to and without waiving these objections, TREX is conducting a good faith search of its records to which the Requests are directed or connected with that might have information or documents responsive to the Requests that can be obtained through a reasonable search, given the time limitations in this proceeding and the scope of responses addressed in the Board's *December Decision*.

9. TREX objects to UP's Requests as unduly burdensome and oppressive and contrary to the Board's rules to the extent they seek documents or information in a form not maintained by TREX in the regular course of business or not readily available in the form requested by UP, on grounds that such documents or information could be developed, if at all, only through an unduly burdensome special study or analysis, which TREX objects to performing in response to UP's Requests.

10. TREX's search for responsive documents and information is ongoing, and such materials (if otherwise not subject to an objection) will be produced as expeditiously as reasonably possible under the circumstances.

11. TREX objects on grounds of burden and overbreadth to production of documents or information preceding January 1, 2018, or as otherwise objected to in any individual response. Moreover, the production by TREX of documents that pre-date this time in response to Requests that may be interpreted as seeking such documents shall not be construed as an agreement by TREX to produce other documents that pre-date this time in response to other Requests.

12. TREX's willingness to provide responsive information and produce documents containing commercially sensitive, proprietary, and/or trade secret information is conditioned upon compliance with the Protective Order governing the production and disclosure of confidential or highly confidential information and documents in this proceeding. TREX reserves its right to designate documents or information produced in this litigation as "Confidential" or "Highly Confidential" at the time they are produced, or at any other time, and to revise or amend such designations at any time.

13. Consistent with past practice in cases of this nature, TREX has not secured verifications of the answers to interrogatories herein.

TREX's following specific objections, answers and responses to UP's Requests are subject to, and without waiver of, the foregoing General Objections.

INTERROGATORIES

Interrogatory No. 1

What shipper facilities other than TIT's facility will be or could be served by the Proposed Track? If shipper facilities other than TIT will be or could be served by the Proposed Track, identify all communications regarding those shipper facilities.

Response: TREX objects to this interrogatory on the grounds that "shipper facilities" is unduly vague and open-ended, as is the request that TREX identify all such facilities that "will be or could be served," which is also speculative. TREX also objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria under 49 U.S.C. § 10502; *see also Ill. Cent. R.R. – Constr. & Operation Exemption – In E. Baton Rouge Parish, LA*, FD 33877 (STB served May 25, 2001), at 3 ("[petitioner] need not demonstrate insufficient service capacity, service failures, a shortage of storage capacity, or multiple industries' support for its proposal. [Party's] requests for information pertaining to public need are irrelevant to our review under the statute."). Subject to, and without waiving these objections, TREX states that the purpose of TREX's proposed rail line construction is to provide more efficient and direct rail service for the existing rail traffic to TIT. A facility receiving rail service presently located near the Proposed Track is MI-SWACO. TREX has no plans at this time to provide service to MI-SWACO. Possible service to MI-SWACO over the Proposed Track in the future would require coordination with UP and BNSF. Further, depending on the existing agreements between MI-SWACO, BNSF, and/or UP, additional landing tracks and/or connecting track may need to be installed. TREX is performing a reasonable search and will provide any

responsive non-privileged communications related to this interrogatory. 49 C.F.R. § 1114.26(b) (option to produce business records).

Interrogatory No. 2

Will TREX or the entity providing service over the Proposed Track provide regularly scheduled service over the Proposed Track? If so, describe the service schedule. If not, describe the projected timing and frequency of service over the Proposed Track.

Response: TREX objects to this interrogatory on the grounds that “regularly scheduled service” is unduly vague and open-ended. TREX also objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the possible future operations associated with such operation could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). TREX further objects to this interrogatory as unnecessary, because UP, as the carrier that presently handles

all rail traffic destined to TIT, is already aware of all of the present schedule of its own trains and BNSF's trains, and the times in which new, alternative service would be available, and can easily ascertain that there would be minimal, if any, potential schedule conflicts or burden on UP's local operations. Subject to, and without waiving these objections, TREX states that the purpose of TREX's proposed rail line construction is to provide more efficient and direct rail service for the existing rail traffic to TIT. The anticipated traffic routed over the Proposed Track is expected to be limited to the BNSF unit train traffic destined to TIT's facility. Regularly scheduled service will be established to meet the reasonable needs of the BNSF unit train traffic destined to TIT's facility, while not materially interfering with UP's service to TIT or the operations of the crossed line. It is not anticipated at this time to depart from existing traffic levels – although new BNSF-direct service will be provided on a more efficient basis, with less conflicts in UP and BNSF operations, and faster turn-around times than with UP's existing reciprocal switching service. TREX will also provide responsive documents to RFP 3, from which UP will be able to derive the expected service requirements for receipt of BNSF's unit train traffic. BNSF traffic is anticipated to be delivered during regular weekday business hours, as well as on weekday nights, and on weekends, as necessary to meet the reasonable service needs of TIT, whereas UP's existing train service is generally limited to weekday only service, during limited business hours. Additionally, TREX anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include an appropriate information and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which

UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Interrogatory No. 3

What volume of traffic is projected to move over the Proposed Track, assuming construction is completed?

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the traffic volumes of future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). TREX further objects to this interrogatory as unnecessary, because UP, as the carrier that presently handles all rail traffic destined to TIT, is already aware of all of the present traffic volumes of its own trains and BNSF's trains. Subject to, and without waiving these objections, TREX states that the purpose of TREX's

proposed rail line construction is to provide more efficient and direct rail service for the existing rail traffic to TIT. The anticipated traffic routed over the Proposed Track is expected to be limited to the BNSF unit train traffic destined to TIT's facility, the traffic levels are not anticipated at this time to depart from existing levels, and therefore TIT's receipt of trains is anticipated to be consistent with existing receipts. TREX will also provide responsive documents to RFP 3, from which UP will be able to derive the projected traffic volumes of BNSF unit train traffic. Additionally, TREX anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information on anticipated traffic volumes and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Interrogatory No. 4

Who will maintain the Proposed Track, assuming construction is completed?

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether future maintenance activities could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked

UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states as the common carrier and owner of the Proposed Track, it will be responsible for ensuring that the track is properly maintained.

Interrogatory No. 5

Will the Proposed Track be used to switch cars between BNSF’s Valley Yard and TIT’s loop track, assuming construction is completed?

Response: TREX objects to this interrogatory on the grounds that “switched cars” is unduly vague and open-ended. TREX also objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. In addition, TREX objects to this interrogatory as speculative and premature because it pertains to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the switching of cars over the Proposed Track could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was

“carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that the Proposed Track will be used to transport railcars between BNSF’s Valley Yard in Galveston, Texas and TIT’s loop track.

Interrogatory No. 6

Identify every instance in which Union Pacific “declined TIT’s special switch requests” where “TIT has provided UP with adequate notice of requested special switches and has complied with all UP instructions.” (Sullivan V.S. ¶ 30.)

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. Subject to, and without waiving these objections, TREX is performing a reasonable search and will provide documents sufficient to show the special switch requests that were declined by UP. 49 U.S.C. § 1114.26(b) (option to produce business records).

Interrogatory No. 7

Identify every instance in which Union Pacific “failed to switch BNSF half unit trains on weekdays.” (Sullivan V.S. ¶ 27.)

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. Subject to, and without waiving these objections, TREX is performing a reasonable search and will provide documents sufficient to show the dates and times for when UP “failed to switch BNSF half unit trains on weekdays.” 49 C.F.R. § 1114.26(b) (option to produce business records).

Interrogatory No. 8

Identify the specific dates of the “seven (7) times since December 2018” when Union Pacific “delivered entire BNSF unit trains in one switch to TIT.” (Sullivan V.S. ¶ 18.)

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. Subject to, and without waiving these objections, TREX is performing a

reasonable search and will provide documents sufficient to show the dates and times “when UP ‘delivered entire BNSF unit trains in one switch to TIT.’” 49 C.F.R. § 1114.26(b) (option to produce business records).

Interrogatory No. 9

How much traffic does TREX project or expect will shift from Union Pacific service to BNSF service as a result of construction and operation of the Proposed Track?

Response:

TREX objects to this interrogatory on the grounds that how much traffic “will shift from Union Pacific service to BNSF service” is unduly vague and open-ended. TREX also objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. In addition, TREX objects to this request on the grounds that UP, as the present handler of all traffic to TIT, is in the best position with access to pricing, contracts, and origin information to attempt to project potential traffic “shifting” from UP to the BNSF. Subject to, and without waiving these objections, TREX states that the purpose of TREX’s proposed rail line construction is to provide more efficient and direct rail service for the existing rail traffic to TIT. The purpose is not to “shift [traffic] from Union Pacific service to BNSF service.” TREX does not have access to individual rail contracts or pricing information and thus has no way to project and has not projected how much, if any, existing traffic to TIT could change from UP service to BNSF service as a result of the Proposed Track. Again, the purpose of its proposed track is not to shift traffic volumes from one carrier to another, other than replace

inefficient reciprocal switching currently being performed by UP for BNSF trains to TIT with more efficient and direct rail service to TIT.

Interrogatory No. 10

How much does TREX project or expect BNSF traffic to TIT will increase as a result of construction and operation of the Proposed Track?

Response: TREX objects to this interrogatory on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the traffic volumes of future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). TREX further objects to this interrogatory as unnecessary, because UP, as the carrier that presently handles all rail traffic destined to TIT, is already aware of all of the present traffic volumes of its own trains and BNSF's trains. Subject to, and without waiving these objections, TREX states that the purpose of TREX's

proposed rail line construction is to provide more efficient and direct rail service for the existing rail traffic to TIT. The anticipated traffic routed over the Proposed Track is expected to be limited to the BNSF unit train traffic destined to TIT's facility, the traffic levels are not anticipated at this time to depart from existing levels. TREX will also provide responsive documents to RFP 3, from which UP will be able to derive the projected traffic volumes of BNSF unit train traffic. Additionally, TREX anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information on anticipated traffic volumes and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Interrogatory No. 11

How much traffic has TIT lost because of the alleged "significant operational problems and service constraints on BNSF train service to TIT?" (Petition at 12.)

Response: TREX objects to this interrogatory on grounds it misstates and mischaracterizes the Petition, which does not state that TIT has lost traffic because of UP's reciprocal service limitations. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as "inadequacy of existing service is not a necessary showing under the statutory criteria for the

licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. Subject to, and without waiving these objections, TIT has not attempted to quantify how much traffic it may have lost as a result of UP’s service limitations. However, UP’s refusal to conduct BNSF reciprocal switching except on limited weekday service hours, and its refusal of TIT’s requests for extra switches, are harmful to TIT and its Customers’ businesses because they cause significant delays and increased costs for TIT and its customers. Additionally, UP’s excessive train turnaround times for reciprocal switching service harms TIT’s BNSF-served customers, and its ability to market its service to new BNSF-served customers.

For example, one of TIT’s largest customers, Valero Marketing and Supply Company (Valero), has expressed considerable frustration with train delays and excessive train turnaround times with its reciprocal switching service, as confirmed by Valero in a letter to the Board dated November 5, 2018.

Currently, TXIT is served by both UP and BNSF, however, BNSF unit trains must be switched by UP into service TXIT’s facility. Unfortunately, UP’s operational restrictions and rules with respect to the reciprocal switching service for BNSF trains has resulted in unnecessary delays, excessive switching, increased train turnaround times, and increased transportation costs for VMSC. Notably, the UP has also refused to perform special or additional switching when requested by TXIT on behalf of VMSC, which adds to the delay and further hinders operations. For example, a vessel be can be ready and waiting, but if the ethanol unit train is not timely moved into TXIT’s facility it cannot be transloaded and vessel demurrage charges may occur.

A copy of the Valero letter is included as **Exhibit 3** to TREX’s Petition.

Interrogatory No. 12

Do TIT's customers or potential customers ask about turnaround times for cars that are or might be transported to TIT by BNSF? If so, does TIT explain that BNSF unit trains must be switched by Union Pacific into and out of TIT's facility?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as "inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines." *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. Subject to, and without waiving these objections, TREX states that TIT is a terminal receiver, and its customers (the actual shippers) enter into transportation agreements, not with TIT, but with UP and BNSF. TREX presumes that shippers ask UP and BNSF about turnaround times for cars that are or might be transported to TIT by BNSF. On information and belief, TREX believes that TIT's customers know about train turnaround times and ask about them, and TIT informs its customers that BNSF trains are received via UP reciprocal switch. For example, one of TIT's largest customers, Valero Marketing and Supply Company (Valero), has expressed considerable frustration with train delays and excessive train turnaround times with its reciprocal switching service, as confirmed by Valero in a letter to the Board dated November 5, 2018.

Currently, TXIT is served by both UP and BNSF, however, BNSF unit trains must be switched by UP into service TXIT's facility. Unfortunately, UP's operational restrictions and rules with respect to the reciprocal switching service for BNSF trains has resulted in unnecessary delays, excessive switching,

increased train turnaround times, and increased transportation costs for VMSC.

A copy of the Valero letter is included as **Exhibit 3** to the Sullivan V.S. Additionally, another of TIT's major customers, International Raw Materials, Ltd. ("IRM") has also expressed concern about poor UP service and slow-turn around times, that it believes will be alleviated by the proposed rail line construction:

- 1) **Improved and more competitive rail service.** Elimination of UP's switching fees and control over BNSF unit trains at TIT will promote improved competitive service. Such improved competitive service to destinations throughout the Midwest and Western United States, as well as to Canada, will benefit IRM and the farmers it serves.
- 2) **Streamlined operations.** The U.S. demand for crop nutrients exceeds supply, making it necessary to import these products. Farmers, and thus the U.S. food supply, hinges on a reliable receipt and distribution of these critical commodities. TREX's project will yield efficiencies through BNSF-direct service that will result in a stronger and more efficient supply chain for these nutrients.
- 3) **More timely and predictable service.** The proposed rail line will eliminate labor and time intensive switching operations between the carriers at the terminal, simplify carrier coordination, and provide for a more expeditious means for IRM to ship fertilizer products to all destinations through reduced train turnaround times.

A copy of the IRM letter is included as **Exhibit 4** to the Sullivan V.S.

Interrogatory No. 13

Do TIT's contracts with customers address car turnaround times? If so, what do those contracts provide with regard to turnaround times for cars transported to TIT by BNSF?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as "inadequacy of existing

service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. TREX further objects to this request to the extent it seeks confidential contract information, and further that such contracts may contain provisions that expressly prohibit TIT from disclosing the existence or terms of such contracts to third parties without consent of the other contracting party. Subject to, and without waiving these objections, TREX states generally that TIT is a terminal receiver, and its customers (the actual shippers) enter into transportation agreements, not with TIT, but with UP and BNSF. Those contracts presumably address train and car service standards and possibly train turn around times. TIT’s contracts with its customers do not contain any specific train turnaround time standards, although TIT informs its customers that it generally receives unit trains 24 hours per day, 365 days per year, and it will coordinate with its customers on the scheduling of inbound and outbound customer trains in order to move the commodity volumes in a reasonable manner.

Interrogatory No. 14

Under TREX’s operating plan, would cars transported by BNSF use the train landing or railcar storage trackage “that was paid for by TIT and installed on leased property owned by Union Pacific Railroad Company?” (Sullivan V.S. ¶ 11.) If so, how would TREX use that trackage and how would cars move between the Proposed Track and that trackage?

Response: TREX objects to this interrogatory on the grounds that “train landing or railcar storage trackage” is unduly vague and open-ended. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review

criteria of exemption petitions under 49 U.S.C. § 10502. TREX further objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the traffic volumes of future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

TREX further states that that the Proposed Track will be used to move railcars between BNSF’s Valley Yard in Galveston, Texas and TIT’s loop track, and not the referenced “train landing or railcar storage trackage.”

Interrogatory No. 15

How does TREX propose to fund (a) construction of the Proposed Track, and (b) acquisition of real property required to construct the Proposed Track?

Response:

TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the financing of proposed rail line projects. Subject to, and without waiving these objections, TREX states that its managing members expect to be directly financing the construction of the Proposed Track and acquisition of real property. TREX also refers UP to further pertinent investor and financing information for proposed construction contained in the Sullivan V.S. at ¶¶ 53-57.

Interrogatory No. 16

Identify all communications TREX has had with any other entity regarding funding for (a) construction of the Proposed Track, and (b) acquisition of real property required to construct the Proposed Track.

Response: TREX objects to this interrogatory on the grounds that the request for communications with "any other entity" is unduly vague and open-ended. Trex also objects to this request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the financing of proposed rail line

projects. Subject to, and without waiving these objections, please see TREX's response to INT No. 15. TREX further states that it is not seeking financing with any other entity for the line construction project and there are no such communications with any such parties.

Interrogatory No. 17

What is TREX's projected net income from operations over the Proposed Track in the two years following completion of construction, assuming construction is completed?

Response: TREX objects to this interrogatory on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX it will be operating over the Proposed Track. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the financing or possible revenues associated with proposed rail line projects. Subject to, and without waiving these objections, TREX states that TREX's proposed rail line will provide a dependable connection from the BNSF Valley Yard to TIT's loop track that will allow BNSF trains to move directly to and from TIT's facility. It is anticipated that BNSF would serve TIT through overhead trackage rights on the line. TREX would also have the option to provide common carrier switching on the line, or possibly through arrangements with an existing short line, or have TIT provide private switching of BNSF trains. TREX has performed no projected net income analysis from its potential operations.

Interrogatory No. 18

How will TREX pay for operation and maintenance of the Proposed Track?

Response: TREX objects to this interrogatory on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX will be operating over the Proposed Track, which it does not. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board’s exemption procedures do not require a “hard look” at the operation and maintenance costs associated with proposed rail line projects. Subject to, and without waiving these objections, TREX states that its managing members will be financially responsible for any costs which TREX may be responsible for associated with the operation and maintenance of the Proposed Track. TREX also refers UP to further pertinent investor and financing information for proposed construction contained in the Sullivan V.S. at ¶¶ 53-57.

Interrogatory No. 19

Does TREX expect TIT customers to pay more to move traffic to TIT via BNSF after construction of the Proposed Track? If not, how does TREX expect to earn revenue from construction or operation of the Proposed Track?

Response: TREX objects to this interrogatory on the grounds that what “TREX expect[s]” is of its customers is unduly vague and open-ended. TREX also objects to this interrogatory on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX will be operating the Proposed Track. In addition, TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board’s

exemption procedures do not require a “hard look” at possible revenues associated with proposed rail line projects. Subject to, and without waiving these objections, TREX states that TREX’s proposed rail line will provide a dependable connection from the BNSF Valley Yard to TIT’s loop track that will allow BNSF trains to move directly to and from TIT’s facility. It is anticipated that BNSF would serve TIT through overhead trackage rights on the line. TREX would also have the option to provide common carrier switching on the line, or possibly through arrangements with an existing short line, or have TIT provide private switching of BNSF trains. TREX has performed no projected revenue analysis from its potential operations, and has no expectation at this time of receiving any specific revenues, especially if it does not operate the line. If it operates the line, it may seek revenues on a per car basis. However, TREX believes that TIT will be able to conduct more efficient operations and lower costs because it will be able to process BNSF trains as full unit trains, instead of being limited to receiving a maximum of one-half unit trains per day. TREX expects more competitive railroad costs, and customer savings because, if BNSF unit trains can be brought directly into TIT, which is how UP trains are received, TIT’s customers that rely on BNSF will have more dependable service, train turnaround times will be significantly reduced, and it will minimize the risk to TIT’s customers of being assessed vessel demurrage fees. By providing a direct connection to BNSF, TREX’s proposed construction will save time, crew resources, and energy to the benefit of UP, BNSF, TIT, and all of their customers. Further information on the business justification and need for the proposed construction is contained in the Sullivan V.S. at ¶¶ 38-52.

Interrogatory No. 20

Has TREX discussed compensation for BNSF's use of the Proposed Track with BNSF? If so, describe the substance of those discussions, including proposed amounts of compensation.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at possible compensation associated with proposed rail line projects. Subject to, and without waiving these objections, TREX states that TREX's proposed rail line will provide a dependable connection from the BNSF Valley Yard to TIT's loop track that will allow BNSF trains to move directly to and from TIT's facility. It is anticipated that BNSF would serve TIT through overhead trackage rights on the line. TREX would also have the option to provide common carrier switching on the line, or possibly through arrangements with an existing short line, or have TIT provide private switching of BNSF trains. *See also* response to Interrogatory No. 19. TREX has no expectation at this time of receiving any specific revenues from BNSF, and has not yet entered into any trackage rights agreement with BNSF.

Interrogatory No. 21

Identify any owners of, or partners in, TREX other than Todd Sullivan, William Sullivan, and John Sullivan, and identify the percentage interests of all the owners/partners in TREX.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. Subject to, and without waiving these objections, TREX states that there are no other owners of, or partners in, TREX other than Todd Sullivan, William Sullivan, and John Sullivan.

Interrogatory No. 22

Do any of the owners of, or partners in, TREX have any experience operating a railroad? If so, describe that experience.

Response: TREX objects to this interrogatory on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX will be operating the Proposed Track. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. Subject to, and without waiving these objections, TREX states that TREX's proposed rail line will provide a dependable connection from the BNSF Valley Yard to TIT's loop track that will allow BNSF trains to move directly to and from TIT's facility. It is anticipated that BNSF would serve TIT through overhead trackage rights on the line. TREX would also have the option to provide common carrier switching on the line, or possibly through arrangements with an existing short line, or have TIT provide private switching of BNSF trains. William Sullivan, John Sullivan, and Todd Sullivan ("Sullivan Brothers") are the managing members of TREX, and they have a 99.9% ownership interest in TIT, which has private rail operations. Specifically, TIT has two independent rail loop tracks of 11,000 feet, access to approximately 30,000 feet of additional train landing and railcar storage trackage, two locomotives, and 8-10 employees that are experienced locomotive operators

and are tasked with switching UP unit trains of distances similar those contemplated to be operated over the proposed rail line, and reassembling and performing air brake testing for all UP trains that leave TIT's facility.

Interrogatory No. 23

Does TREX have insurance that would cover damage to Union Pacific property and business resulting from construction and operation of the Proposed Trackage? If so, describe TREX's insurance coverage.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the possible future operations associated with such operation could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. Subject to, and without waiving these objections, TREX states that it has no such specific insurance policy at this time "that would cover damage to Union Pacific property and business resulting from construction and operation of the Proposed Trackage" and that obtaining such policies at this

time would be unnecessary and premature, especially prior to Board certification of construction. TREX will reasonably negotiate with UP and obtain the necessary and proper insurance to cover damage to UP's property resulting from construction and operation of the Proposed Trackage, and if the parties cannot agree then a request can be made to the Board for it to make an appropriate determination under 49 U.S.C. § 10901(d)(2).

Interrogatory No. 24

Identify all communications involving BNSF regarding the proposed routing, construction, and operating plan described in the TREX Petition.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as grossly overbroad and a disguised document production request in seeking TREX to identify "all communications involving BNSF." In addition, TREX objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the traffic volumes of future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth,*

Missabe and Iron Range Ry. Co., STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it has been in communications with BNSF pertaining to its proposed railroad line. TREX anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information and an operating plan that TREX anticipates will have been approved by BNSF to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Interrogatory No. 25

What “engineering and other plans relating to the proposed line” (Petition at 14-15), apart from ordering crossing diamonds, would TREX not move forward with absent a conditional grant of exemption?

Response:

TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. Subject to, and without waiving this objection, TREX states that it will need to finalize design and construction drawings, will need to work with the City of Galveston regarding the construction, prepare a traffic plan, and complete designs for any mitigation measures. Additionally, procuring the crossing diamonds necessitates additional engineering drawings,

generating a Request for Proposal, obtaining bids, entering into a contract with a manufacturer, and then working with the manufacturer on the design for the diamonds.

Interrogatory No. 26

Do any entities other than Union Pacific and TIT own real estate or other real property required for the construction, operation, and maintenance of the Proposed Track? If so, identify those entities, and identify all communications with those entities regarding the Proposed Track.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as grossly overbroad and a disguised document production request in seeking TREX to identify "all communications with . . . entities [that own underlying real estate] regarding the Proposed Track." In addition, TREX objects to this Request as overbroad and unduly burdensome because it seeks information that is publicly available or already in UP's possession and control. *See* General Objection No. 5. Subject to, and without waiving this objection, TREX states that the ownership of real estate underlying the proposed rail line by other parties, including the City of Galveston and BNSF, is public information and is available on Galveston County's website.¹ Information on the property traversed by the Proposed Track is also included as Exhibits 1-4 submitted with R. Lee Meadows Verified Statement.

¹<http://galvcountymaps.maps.arcgis.com/apps/webappviewer/index.html?id=d619c89878cd4c399b376b51996a7541>. TREX makes no representation as to the accuracy of the Galveston County's website.

Interrogatory No. 27

Identify all communications between TREX and any shipper served using the Union Pacific tracks that would be crossed by the Proposed Track.

Response: TREX objects to this interrogatory on grounds that “any shipper served using the Union Pacific tracks that would be crossed by the Proposed Track” is unduly vague and open-ended, and also speculative. TREX also objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. TREX also objects to this interrogatory as grossly overbroad and a disguised document production request in seeking TREX to identify “all communications . . . [with] any shipper served.” Subject to, and without waiving this objection, TREX states that TIT has been in communications with a number of its customers served by the UP about the proposed rail construction project, including Valero and IRM, each who strongly support the project. *See Sullivan V.S. Exhibits 3 and 4.*

Interrogatory No. 28

Identify the “engineering drawings provided by TREX” that are referenced on page 4 of the Meadows V.S.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. §

10502. TREX also objects to this interrogatory as overbroad and unnecessary, as all relevant engineering drawing information has been included on the draft engineering drawings TREX filed with the Board on November 21, 2018 with its Petition, at Exhibits 1-4. TREX also objects for the request being overbroad and duplicative, because it overlaps with RFP Nos. 16 and 17. Subject to, and without waiving these objections, TREX states that it will provide responsive non-privileged information to RFP Nos. 16 and 17, from which UP will be able to derive the requested information.

Interrogatory No. 29

Describe TREX's plan for constructing track between the crossing diamonds it plans to install (see pages 8-9 of the Meadows V.S.) and the at-grade crossing at Old Port Industrial Road (see pages 10-11 of the Meadows V.S.), particularly, describe how long construction will occur on Union Pacific property, whether and where construction equipment will occupy Union Pacific property outside the Proposed Track's right-of-way, and the impacts of the construction on Union Pacific operations to TIT and other affected customers of Union Pacific.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as overbroad and unnecessary, as detailed site description, track alignment, routing, and track construction plans have already been provided to UP as part of TREX's Petition. See Meadows V.S. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether track construction could

materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on the line construction necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of unreasonable interference of track construction with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Interrogatory No. 30

When BNSF loaded unit trains are divided into two cuts to facilitate spotting the cars for unloading, as described in Exhibit 5 to the Meadows V.S., where will the trains be divided into two cuts?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information. TREX further states that it expects that the operating plan for BNSF unit trains over the Proposed Track to TIT's facility will be designed to minimize the obstruction of and to prevent unnecessary stopping over the proposed crossing.

Interrogatory No. 31

When the two cuts of empty cars from BNSF unit trains are assembled into a single, outbound empty unit train that would be returned to BNSF's Valley Yard, as described in Exhibit 5 to the Meadows V.S., where would the two cuts of cars be assembled into a single unit train?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the

requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information. TREX further states that it anticipates the empty BNSF trains will be reassembled east of the proposed UP crossing such that the reassembly will not obstruct the crossing.

Interrogatory No. 32

Describe the train movements required and the tracks that will be used for the movements during the “approximately three times per train” a BNSF unit train will be switched, as described in Exhibit 5 to the Meadows V.S.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing

petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information, including “train movements required and the tracks that will be used for the movements.”

Interrogatory No. 33

How many movements on the Proposed Track will cross Union Pacific tracks per day?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition.

On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information, including the approximate or average number of “movements on the Proposed Track [that] will cross Union Pacific Tracks per day.”

Interrogatory No. 34

How many cars per movement on the Proposed Track will cross Union Pacific tracks?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and

whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was “carefully evaluating” the request and “will substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information. TREX further states that it expects that the operating plan for BNSF unit trains over the Proposed Track to TIT’s facility will be designed to minimize the obstruction of and to prevent unnecessary stopping over the proposed crossing.

Interrogatory No. 35

How long will a BNSF loaded unit train take to move between Valley Yard and TIT’s facility, from the time the train begins moving out of Valley Yard until the time the last car

clears (a) Union Pacific tracks to be crossed by the Proposed Track, and (b) Union Pacific property?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential

reply filing in such future proceeding, and from which UP will be able to derive this information. TREX further states that it expects that the operating plan for BNSF unit trains over the Proposed Track to TIT's facility will be designed to minimize the obstruction of and to prevent unnecessary stopping over the proposed crossing.

Interrogatory No. 36

How long will a BNSF empty unit train take to move between TIT's facility and Valley Yard, from the time the train enters Union Pacific property until the last car clears the Union Pacific tracks to be crossed by the Proposed Track?

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that,

due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information.

Interrogatory No. 37

Will TREX or the entity maintaining the Proposed Track need to occupy Union Pacific property to maintain the Proposed Track, assuming construction is completed? If so, describe TREX's plans for maintaining the Proposed Track, including the frequency of maintenance and the Union Pacific property that would be occupied while maintenance is performed.

Response: TREX objects to this interrogatory because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this interrogatory as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will

substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s interrogatory, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding, and from which UP will be able to derive this information.

DOCUMENT REQUESTS

Request for Production No. 1

Produce all documents identified in TREX’s responses to the Interrogatories.

Response: TREX objects to this request on grounds that it is overbroad, vague, and unduly burdensome. Subject to, and without waiving these objections, and subject further to the individual objections on providing information or responsive documents contained in response to each individual Interrogatory, TREX will conduct a reasonable search for responsive documents that it has identified in its responses to the Interrogatories, and will produce responsive, non-privileged documents.

Request for Production No. 2

Produce all documents relating to TREX's operating plan.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this request on grounds that producing "all documents" on an operating plan, without the showing of need, would require a special review of innumerable files without limitation, the burden of which far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. TREX also objects to this Request as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether trail operations over the proposed line could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's Request, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include

appropriate additional information on line operations necessary to meet the requirements of Section 10901(d), which will provide UP with additional supporting information and an operating plan, including all documents supporting the operating plan, demonstrating the lack of material interference of rail operations with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Request for Production No. 3

Produce all documents relating to the projected or expected volume of traffic that will move over the Proposed Track.

Response:

TREX objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this request on grounds that producing "all documents" on projected or expected traffic, without the showing of need, would require a special review of innumerable files without limitation, the burden of which far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. TREX also objects to this Request as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the traffic volumes of future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will

substantively respond to your inquiry with all deliberate speed,” yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP’s Request, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to “preview” case). TREX further objects to this Request as unnecessary, because UP, as the carrier that presently handles all rail traffic destined to TIT, is already aware of all of the present traffic volumes of its own trains and BNSF’s trains. *See* TREX’s response to Interrogatory No. 3, which TREX incorporates by reference. Subject to, and without waiving these objections, TREX will provide responsive documents from which UP will be able to derive the projected traffic volumes of BNSF unit train traffic. Additionally, TREX anticipates that, due to UP’s refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information on anticipated traffic volumes and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Request for Production No. 4

Produce all documents relating to coordination between BNSF and TREX “regarding the proposed routing, construction, and operating plan described in the TREX Petition for Exemption,” as described in Counsel’s Exhibit 1 to the Petition.

Response: TREX objects to this request for the same reasons it objects to Interrogatory No. 24, and incorporates those objections and responses by reference. Subject to, and without waiving these objections, TREX states that it will perform a reasonable search for responsive documents and provide responsive non-privileged documents, if any.

Request for Production No. 5

Produce all contracts between TREX and TIT relating to the Proposed Track, including but not limited to contracts addressing construction, operation, and maintenance of the Proposed Track.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request as speculative and premature because it appears to pertain to a possible future crossing petition under 49 U.S.C. § 10901(d), and whether the construction of track or future operations could materially interfere with the operation of the crossed line. Over three weeks ago, on November 27, 2018, TREX asked UP about its willingness to discuss rail line operations and crossing issues associated with the Petition. On December 5, 2018, UP responded that it was "carefully evaluating" the request and "will substantively respond to your inquiry with all deliberate speed," yet it has failed to follow-up to the request to date, further demonstrating the prematurity of UP's Request, and leaving open the issue of whether TREX may need to file a formal Section 10901(d) crossing petition with the Board. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to

date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information on track construction and operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on the lack of material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding. TREX also states that it will perform a reasonable search for responsive documents and provide responsive non-privileged documents, if any.

Request for Production No. 6

Produce all contracts between TREX and BNSF relating to the Proposed Track, including but not limited to contracts addressing construction, operation, and maintenance of the Proposed Track.

Response: TREX objects to this request for the same reasons it objects to Request No. 4 and Interrogatory No. 24, and incorporates those objections and responses by reference. Subject to and without waiving these objections, TREX states that it has no such responsive documents.

Request for Production No. 7

Produce all documents containing or reflecting communications with Union Pacific regarding service issues involving (a) Union Pacific direct service to TIT, or (b) Union Pacific's provision of reciprocal switching service for BNSF.

Response: TREX objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. §

10502. TREX is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4. TREX also objects to this request on grounds that producing “all documents” related to UP’s service to TIT, without the showing of need, would require a special review of innumerable files without limitation, the burden of which far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. In addition, TREX objects to UP’s Request as unduly burdensome and unnecessary to the extent that they seek documents or information in UP’s own possession and are more readily available to UP than TREX. *See* General Objection No. 5. Subject to, and without waiving these objections, TREX states that it will perform a reasonable search and provide responsive non-privileged communications with UP, specifically “regarding service issues involving (a) Union Pacific direct service to TIT, or (b) Union Pacific’s provision of reciprocal switching service for BNSF.” *See also* Sullivan V.S., Exhibits 1 and 2.

Request for Production No. 8

Produce all documents containing or reflecting communications with TIT customers or potential customers regarding (a) the Proposed Track; (b) service issues involving Union Pacific direct service to TIT; or (c) service issues involving Union Pacific’s provision of reciprocal switching service for BNSF.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX

is under no obligation to provide this information as “inadequacy of existing service is not a necessary showing under the statutory criteria for the licensing of new lines.” *Midwest Generation LLC – Pet. for Line Crossing Auth.*, FD 34060 (STB served Mar. 21, 2002) at 4; *see also Ill. Cent. R.R. – Constr. & Operation Exemption – In E. Baton Rouge Parish, LA*, FD 33877 (STB served May 25, 2001), at 3 (“[petitioner] need not demonstrate insufficient service capacity, service failures, a shortage of storage capacity, or multiple industries’ support for its proposal. [Party’s] requests for information pertaining to public need are irrelevant to our review under the statute.”). TREX also objects to this request on grounds that producing “all documents” related to the broad issues of the Proposed Track and UP’s service, without the showing of need, would require a special review of innumerable files without limitation, the burden of which far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. Subject to, and without waiving these objections, TREX states that it will perform a reasonable search for responsive documents and provide responsive non-privileged documents, if any, specifically related to the identified Proposed Track and the identified UP service issues.

Request for Production No. 9

Produce all documents relating to the October 18, 2018, conference call between TIT and Union Pacific described in paragraph 24 of the Sullivan V.S.

Response: TREX objects to this request for the same reasons it objects to Request No. 8, and incorporates those objections and responses by reference. Subject to, and without waiving these objections, TREX states that it will perform a reasonable search for responsive documents and provide responsive non-privileged documents, if any.

Request for Production No. 10

Produce all studies, analyses, and reports created since January 1, 2017, regarding turnaround times for cars transported to TIT by BNSF (via reciprocal switching provided by Union Pacific).

Response: TREX objects to this request for the same reasons it objects to Request No. 8, and incorporates those objections and responses by reference. TREX also objects to this Request to the extent that it would require a special study, or that otherwise may require the disclosure of privileged information. *See* General Objection Nos. 2 and 9. In addition, TREX objects to this Request to the extent it seeks information that is in the possession, custody, and control of UP, or that UP has underlying information in which it could conduct its own special turnaround time study. Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition is anticipated to include an operations report in connection with the operating plan that will contain information responsive to this Request. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). This report will provide UP with additional information which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Request for Production No. 11

Produce a copy of TREX's most current income statement and balance sheet.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to

the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the income of petitioners. Subject to, and without waiving these objections, TREX will perform a reasonable search for responsive documents and provide responsive and non-privileged documents, if any.

Request for Production No. 12

Produce all documents relating to the funding of (a) construction of the Proposed Track, and (b) acquisition of real property required to construct the Proposed Track.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the financing of proposed rail line projects. TREX also objects to this Request on the grounds that the request for "all documents relating to the funding" is unduly vague and open-ended, and far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. Subject to, and without waiving these objections, see TREX's response to Interrogatory Nos. 15 and 16, which TREX incorporates by reference. TREX also refers UP to further pertinent investor and financing information for proposed construction contained in the Sullivan V.S. at ¶¶ 53-57.

Request for Production No. 13

Produce all documents relating to funding of operations or maintenance of the Proposed Track.

Response: TREX objects to this Request on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX will be operating over the Proposed Track. TREX also objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at the costs associated with proposed rail line projects. In addition, TREX objects to this Request on the grounds that the request for "all documents relating to funding" is unduly vague and open-ended, and far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. Subject to, and without waiving these objections, see TREX's response to Interrogatory Nos. 15 and 18, which TREX incorporates by reference. TREX also refers UP to further pertinent investor and financing information for proposed construction contained in the Sullivan V.S. at ¶¶ 53-57.

Request for Production No. 14

Produce all documents relating to TREX's projected revenue or income from construction or operation of the Proposed Track.

Response: TREX objects to this Request on grounds it misstates and mischaracterizes the Petition and mistakenly presupposes that TREX will be operating over the Proposed Track. TREX also objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, including that the Board's exemption procedures do not require a "hard look" at possible revenues associated with proposed rail line projects. Subject to, and without

waiving these objections see TREX's response to Interrogatory No. 19, which TREX incorporates by reference.

Request for Production No. 15

Produce a copy of any insurance policies that would cover damage to Union Pacific property or business during the construction, operation, or maintenance of the Proposed Track.

Response: TREX objects to this request for the same reasons it objects to Interrogatory No. 23, and incorporates those objections and responses by reference.

Request for Production No. 16

Produce all engineering drawings relating to the Proposed Track created on or after January 1, 2017, including but not limited to drawings showing preliminary or alternative routings for the Proposed Track as described in the Meadows V.S.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to the Request to the extent that it requests information on routings and alternatives being reviewed by the Board as part of the project's environmental review.

Dakota, Minn. & E. R.R. Constr. into the Powder River Basin, FD 33407 (STB served Feb. 2, 2000), at 1 (environmental matters are addressed as part of the Board's environmental review, and such requests are not authorized under the National Environmental Policy Act or the Board's rules). In addition, TREX objects to this Request as overbroad and unnecessary, as all relevant engineering drawing information has been included on the draft engineering drawings TREX filed with the Board on November 21, 2018 with its Petition, at Exhibits 1-

4. Subject to, and without waiving these objections, TREX will provide responsive non-privileged engineering drawings “as described in the Meadows V.S.”

Request for Production No. 17

Produce all documents relating to the site inspection described in the Meadows V.S.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request on the grounds that the request for “all documents relating to the site inspection” is unduly vague and open-ended, and far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. In addition, TREX objects to the Request to the extent that it requests information on routings and alternatives being reviewed by the Board as part of the project’s environmental review. *Dakota, Minn. & E. R.R. Constr. into the Powder River Basin*, FD 33407 (STB served Feb. 2, 2000), at 1 (environmental matters are addressed as part of the Board’s environmental review, and such discovery requests are not authorized under the National Environmental Policy Act or the Board’s rules). In addition, TREX objects to this Request as overbroad and unnecessary, as all relevant information has been included in Meadows V.S. filed with the Board on November 21, 2018 with its Petition. Subject to, and without waiving these objections, TREX will provide responsive non-privileged documents it provided to Mr. Meadows, and from Mr. Meadows, relating to the site inspection referenced in Meadows V.S.

Request for Production No. 18

Produce the Wetland Delineation Report, dated August 8, 2018, referenced in Counsel's Exhibit 2 to the Petition.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. In addition, TREX objects to the Request as it seeks information being reviewed by the Board as part of the project's environmental review. *Dakota, Minn. & E. R.R. Constr. into the Powder River Basin*, FD 33407 (STB served Feb. 2, 2000), at 1 (environmental matters are addressed as part of the Board's environmental review, and such discovery requests are not authorized under the National Environmental Policy Act or the Board's rules). Subject to, and without waiving these objections, TREX will provide a copy of the Wetland Delineation Report, dated August 8, 2018.

Request for Production No. 19

Produce documents sufficient to show the ownership of the real estate and other real property to be traversed by the Proposed Track.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request as overbroad and unduly burdensome because it seeks information that is publicly available or already in UP's possession and control. *See* General Objection No. 5. Subject to, and without waiving this objection, see TREX's response to

Interrogatory No. 26, which includes information sufficient to show the ownership of the real estate underlying the Proposed Track.

Request for Production No. 20

Produce all documents containing or reflecting communications with entities other than Union Pacific that own real estate or other real property to be traversed by the Proposed Track.

Response:

TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request on the grounds that the request for "all documents containing or reflecting communications with entities other than Union Pacific that own real estate or other real property to be traversed" is unduly vague and open-ended, and far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8.

Request for Production No. 21

Produce all documents relating to "[e]fforts [that] have been made in the past to directly connect with BNSF." (Sullivan V.S. ¶ 28.)

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request as overbroad and unduly burdensome because it seeks information that is already in UP's possession and control. *See* General Objection No. 5.

Subject to, and without waiving these objections, TREX will provide responsive non-privileged documents sufficient to support the above referenced statement.

Request for Production No. 22

Produce all documents relating to efforts to obtain support for construction of the Proposed Track at the Surface Transportation Board.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board's pertinent review criteria of exemption petitions under 49 U.S.C. § 10502, and amounts to a discovery fishing expedition. TREX also objects on the grounds that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include an appropriate information and an operating plan to meet the requirements of Section 10901(d), which will provide UP with all necessary supporting information on the construction and operation of the proposed line and the lack of unreasonable or material interference with the operation of the crossed line which UP will have available to review and use for purposes of any potential reply filing in such future proceeding. *See also Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (denying requests to "preview" case). Subject to, and without waiving these objections, TREX states that it will perform a reasonable search for documents reflecting support statements and provide responsive non-privileged documents, if any.

Request for Production No. 23

Produce all documents addressing support for construction of the Proposed Track by “TIT’s neighbors.” (Sullivan V.S. ¶ 52.)

Response: TREX objects to this request for the same reasons it objects to Request No. 22, and incorporates those objections and responses by reference. Subject to, and without waiving these objections, TREX states that it will perform a reasonable search for documents reflecting support statements from TIT’s neighbors and provide responsive non-privileged documents, if any.

Request for Production No. 24

Produce all documents supporting the conclusions in Exhibit 5 to the Meadows V.S. regarding the reduction in the number of at-grade road crossings and the reduction in the number of times a BNSF unit train will be required to be switched.

Response: TREX objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the Board’s pertinent review criteria of exemption petitions under 49 U.S.C. § 10502. TREX also objects to this Request on the grounds that the request for “all documents supporting the conclusions” pertaining to at-grade crossings and switching is unduly vague and open-ended, and far outweighs the probative value of any information or documents that might be discovered. *See also* General Objection Nos. 1 and 8. In addition, TREX objects to the Request to the extent that it requests information on crossings being reviewed by the Board as part of the project’s environmental review. *Dakota, Minn. & E. R.R. Constr. into the Powder River Basin*, FD 33407 (STB served Feb. 2, 2000), at 1 (environmental matters are addressed as part of the Board’s environmental review, and such discovery requests are not

authorized under the National Environmental Policy Act or the Board's rules). In addition, TREX objects to this Request as overbroad and unnecessary, as all relevant information has been included in Meadows V.S. filed with the Board on November 21, 2018 with its Petition. Subject to, and without waiving these objections, TREX states that it anticipates that, due to UP's refusal to date to discuss with it crossing and operational issues with its proposed rail line, it will likely need to file a formal Section 10901(d) crossing petition. That petition will include appropriate information and an operating plan to meet the requirements of Section 10901(d), which will provide UP with additional supporting information on "the reduction in the number of at-grade road crossings and the reduction in the number of times a BNSF unit train will be required to be switched," which UP will have available to review and use for purposes of any potential reply filing in such future proceeding.

Request for Production No. 25

Produce all documents relating to the amount of time trains or cars moving between Valley Yard and TIT would occupy property owned by Union Pacific as they move over the Proposed Track.

Response: TREX objects to this request for the same reasons it objects to Request No. 2, and incorporates those objections and responses by reference.

Respectfully submitted,

TEXAS RAILWAY EXCHANGE LLC

/s/ Peter A. Pfohl

Peter A. Pfohl

Robert D. Rosenberg

Katherine F. Waring

SLOVER & LOFTUS LLP

1224 Seventeenth St., N.W.

Washington, D.C. 20036

(202) 347-7170

Dated: December 19, 2018

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of December 2018 caused to be served copies of these Responses and Objections by email to outside counsel of Union Pacific Railroad Company, as follows:

Michael L. Rosenthal
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

/s/ Katherine F. Waring
Katherine F. Waring
An Attorney for Texas Railway Exchange LLC

EXHIBIT 2



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

January 3, 2019

VIA EMAIL

Michael L. Rosenthal
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001-4956

Re: *Texas Railway Exchange LLC – Construction and Operation
Exemption – Galveston County, TX, STB FD 36186*

Dear Mike:

This letter is in follow-up to our meet and confer call held on December 21, 2018 regarding Texas Railway Exchange LLC's ("TREX's") objections and responses ("Responses") to the First Set of Interrogatories and First Request for Production of Documents ("Requests") of Union Pacific Railroad Company ("UP") that TREX provided to UP on December 19, 2018. In response to questions you raised during our call as to certain of TREX's Responses, and UP's willingness to narrow the scope of certain of its Requests, we agreed to review and supplement the Responses further. Subject to all general and specific objections included with TREX's original Responses, TREX provides the following supplemental Responses to Interrogatories ("INTs") Nos. 20 and 27, and Discovery Requests ("RFPs") Nos. 12-13, 16, 20, and 21-23:

**Funding/compensation for use of TREX's Proposed Track
(INT 20; RFPs 12 and 13)**

TREX will perform a reasonable search for documents relating to discussions with BNSF regarding compensation for BNSF's use of the Proposed Track (including proposed amounts of compensation) and/or documents discussing the funding of construction and operations or maintenance, and acquisition of property for the Proposed Track, and will produce any relevant, non-privileged documents.

Engineering Drawings (RFP 16)

TREX will perform a reasonable search for draft engineering drawings of TREX's Proposed Track other than those TREX filed with its Petition, and will produce any relevant, non-privileged documents.

Landowner Communications (RFP 20)

TREX will perform a reasonable search for documents containing or reflecting communications with entities other than UP that own real estate or other real property to be traversed by the Proposed Track relating to the value of the property or routings for the proposed line, and will produce any relevant, non-privileged documents.

Past Efforts to Connect to BNSF (RFP 21)

TREX will perform a reasonable search for documents relating to past efforts by the Texas International Terminals to connect directly with BNSF Railway, and will produce any relevant, non-privileged documents.

Communications re: Support for Proposed Track (INT 27; RFPs 22 and 23)

TREX will perform a reasonable search for communications with UP shippers, or with existing or potential TIT customers and neighbors, relating to efforts to obtain support for the construction of the Proposed Track at the Surface Transportation Board, and will produce any relevant, non-privileged documents.

Based on the additional information provided during our meet and confer session, and that contained in the above supplemental Responses, we believe that all of UP's meet and confer questions have been addressed, subject to the production of responsive documents. TREX is currently compiling responsive materials and will produce responsive documents as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Pfohl", with a long horizontal flourish extending to the right.

Peter A. Pfohl

An Attorney for Texas Railway Exchange LLC

From: [Rosenthal, Michael](#)
To: [Peter Pfohl](#)
Cc: [Robert Rosenberg](#); [Katherine F. Waring](#)
Subject: RE: FD 36186_TREX Discovery Responses
Date: Friday, January 4, 2019 11:38:14 AM
Attachments: [image001.png](#)

Thanks.

From: Peter Pfohl <pap@sloverandloftus.com>
Sent: Friday, January 04, 2019 11:37 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Mike: I inadvertently transposed the numbers below. I meant RFP 14 and INT 19. Pete.

From: Peter Pfohl
Sent: Friday, January 4, 2019 11:19 AM
To: 'Rosenthal, Michael' <mrosenthal@cov.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Mike: Yes, on review our notes reflect we also discussed RFP 19. RFP 19 references and incorporates INT 14, which states that "TREX has performed no projected revenue analysis from its potential operations, and has no expectation at this time of receiving any specific revenues, especially if it does not operate the line." However, in response to your follow-up request, TREX will nevertheless perform a reasonable search for documents requested in RFP 19 related to TREX's projected revenue or income from construction or operation of the Proposed Track and will produce any relevant, non-privileged documents. Regards, Pete.

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, January 3, 2019 3:27 PM
To: Peter Pfohl <pap@sloverandloftus.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Peter,

I've reviewed your letter, and I believe it addresses all of Union Pacific's meet and confer questions except our questions relating to Document Request No. 14. My notes from our call indicate TREX would search for the requested information. Could you double-check your notes?

Regards,

Mike

From: Peter Pfohl <pap@sloverandloftus.com>
Sent: Thursday, January 03, 2019 1:31 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Mike: Please see attached follow-up reply letter to the questions you raised at our meet and confer session. Regards, Pete.

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Friday, December 21, 2018 10:05 AM
To: Peter Pfohl <pap@sloverandloftus.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Peter,

Can we find some time to discuss TREX's responses to the discovery requests? I plan to be around next week.

Regards,

Mike

From: Peter Pfohl <pap@sloverandloftus.com>
Sent: Wednesday, December 19, 2018 6:39 PM
To: Rosenthal, Michael <mrosenthal@cov.com>; Katherine F. Waring <KFW@sloverandloftus.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Mike: Our client is reviewing and gathering them now, and we see the Board has issued a Protective Order. We hope to have substantial materials to you next week, but will need to see with the Holidays. Regards, Pete

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Wednesday, December 19, 2018 6:35 PM
To: Katherine F. Waring <KFW@sloverandloftus.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Peter Pfohl <pap@sloverandloftus.com>
Subject: RE: FD 36186_TREX Discovery Responses

Thank you. Do you have a sense of when you will complete your production of the documents you've agreed to search for and produce?

Regards,

Mike

From: Katherine F. Waring <KFW@sloverandloftus.com>
Sent: Wednesday, December 19, 2018 5:37 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Robert Rosenberg <rdr@sloverandloftus.com>; Peter Pfohl <pap@sloverandloftus.com>
Subject: FD 36186_TREX Discovery Responses

Mr. Rosenthal,

Attached are Word and PDF versions of *Texas Railway Exchange LLC's Responses and Objections to Union Pacific Railroad Company's First Discovery Requests* for STB Docket No. FD 36186.

-Katherine



KATHERINE F. WARING
KFW@SLOVERANDLOFTUS.COM
SLOVER & LOFTUS LLP

DIRECT: (202) 454-4421 | MAIN: (202) 347-7170 | CELL: (202) 281-5985
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EXHIBIT 3

UP Discovery Requests Relating to the Crossing Petition	
INT/RFP	Request
INT 2	Will TREX or the entity providing service over the Proposed Track provide regularly scheduled service over the Proposed Track? If so, describe the service schedule. If not, describe the projected timing and frequency of service over the Proposed Track.
INT 3	What volume of traffic is projected to move over the Proposed Track, assuming construction is completed?
INT 9	How much traffic does TREX project or expect will shift from Union Pacific service to BNSF service as a result of construction and operation of the Proposed Track?
INT 10	How much does TREX project or expect BNSF traffic to TIT will increase as a result of construction and operation of the Proposed Track?
INT 14	Under TREX's operating plan, would cars transported by BNSF use the train landing or railcar storage trackage "that was paid for by TIT and installed on leased property owned by Union Pacific Railroad Company?" (Sullivan V.S. ¶ 11.) If so, how would TREX use that trackage and how would cars move between the Proposed Track and that trackage?
INT 24	Identify all communications involving BNSF regarding the proposed routing, construction, and operating plan described in the TREX Petition.
INT 26	Do any entities other than Union Pacific and TIT own real estate or other real property required for the construction, operation, and maintenance of the Proposed Track? If so, identify those entities, and identify all communications with those entities regarding the Proposed Track.
INT 27	Identify all communications between TREX and any shipper served using the Union Pacific tracks that would be crossed by the Proposed Track.
INT 29	Describe TREX's plan for constructing track between the crossing diamonds it plans to install (see pages 8-9 of the Meadows V.S.) and the at-grade crossing at Old Port Industrial Road (see pages 10-11 of the Meadows V.S.), particularly, describe how long construction will occur on Union Pacific property, whether and where construction equipment will occupy Union Pacific property outside the Proposed Track's right-of-way, and the impacts of the construction on Union Pacific operations to TIT and other affected customers of Union Pacific.
INT 30	When BNSF loaded unit trains are divided into two cuts to facilitate spotting the cars for unloading, as described in Exhibit 5 to the Meadows V.S., where will the trains be divided into two cuts?
INT 31	When the two cuts of empty cars from BNSF unit trains are assembled into a single, outbound empty unit train that would be returned to BNSF's Valley Yard, as described in Exhibit 5 to the Meadows V.S., where would the two cuts of cars be assembled into a single unit train?
INT 32	Describe the train movements required and the tracks that will be used for the movements during the "approximately three times per train" a BNSF unit train will be switched, as described in Exhibit 5 to the Meadows V.S
INT 33	How many movements on the Proposed Track will cross Union Pacific tracks per day?
INT 34	How many cars per movement on the Proposed Track will cross Union Pacific tracks?
INT 35	How long will a BNSF loaded unit train take to move between Valley Yard and TIT's facility, from the time the train begins moving out of Valley Yard until the time the last car clears (a) Union Pacific tracks to be crossed by the Proposed Track, and (b) Union Pacific property?
INT 36	How long will a BNSF empty unit train take to move between TIT's facility and Valley Yard, from the time the train enters Union Pacific property until the last car clears the Union Pacific tracks to be crossed by the Proposed Track?
INT 37	Will TREX or the entity maintaining the Proposed Track need to occupy Union Pacific property to maintain the Proposed Track, assuming construction is completed? If so, describe TREX's plans for maintaining the Proposed Track, including the frequency of maintenance and the Union Pacific property that would be occupied while maintenance is performed.
RFP 2	Produce all documents relating to TREX's operating plan.
RFP 3	Produce all documents relating to the projected or expected volume of traffic that will move over the Proposed Track.
RFP 16	Produce all engineering drawings relating to the Proposed Track created on or after January 1, 2017, including but not limited to drawings showing preliminary or alternative routings for the Proposed Track as described in the Meadows V.S.
RFP 17	Produce all documents relating to the site inspection described in the Meadows V.S.

UP Discovery Requests Relating to the Crossing Petition	
INT/RFP	Request
RFP 19	Produce documents sufficient to show the ownership of the real estate and other real property to be traversed by the Proposed Track.
RFP 20	Produce all documents containing or reflecting communications with entities other than Union Pacific that own real estate or other real property to be traversed by the Proposed Track.
RFP 21	Produce all documents relating to “[e]fforts [that] have been made in the past to directly connect with BNSF.” (Sullivan V.S.
RFP 24	Produce all documents supporting the conclusions in Exhibit 5 to the Meadows V.S. regarding the reduction in the number of at-grade road crossings and the reduction in the number of times a BNSF unit train will be required to be switched.
RFP 25	Produce all documents relating to the amount of time trains or cars moving between Valley Yard and TIT would occupy property owned by Union Pacific as they move over the Proposed Track.

EXHIBIT 4

Workpapers Submitted to STB and UP with Crossing Petition	
File name	Description
10-10-2018A - OUT.TXT	Survey Information and Drawing Files
10-12-2018A - OUT.TXT	
10-17-2018A - OUT.TXT	
10-22-2018B - OUT.TXT	
10-31-2018A - OUT.TXT	
18-0893 OUT 1 Nov 2018.dwg	
18-0893 OUT 10-24-2018.dwg	
roadway elevations.jpg	Survey Information
TREX - 30% Track Design (10-31-2018) BLUE (NEW BASE).pdf	Draft File with Elevation Data
GCOR gcor-effective-2015-04-01 most current as of 2018 09-04.pdf	General Code of Operating Rules (Eff. Apr. 1, 2015). These rules were cited to within the Operations Report.
GCOR Source of copy of General Code of Operating Rules.docx	Word document that provides links to GCOR sources.
UP Gen Code of Operating Rules 2018.pdf	UP's General Code of Operating Rules. These rules were cited to within the Operations Report.
UP Houston Area Timetable #4 Eff 2007 07-30.pdf	Houston Area Timetable (Eff. July 30, 2007)
# 10-23-18 Track Occupancy final data sheet Capy Work.xlsx	Workpaper cited within Operations Report. Includes spreadsheets used for track occupancy and capacity. Includes spreadsheet with Galveston 77th ST Camera.
10-23-18 Track Occupancy final data from V(2) KH -10-18 Data collection sheet...WORK Z Annotated 8.7.2018 JWM.xlsx	Workpaper cited within Operations Report. Includes track occupancy graphs.
10-23-18 Track Occupancy final data sheet only.xlsx	Workpaper cited within Operations Report. Includes track occupancy analysis.
2018 Inbound Railcar Log 1-27-19.xlsx	Workpaper cited within Operations Report. Provides 2018 inbound railcar data for TIT and also a monthly summary.
Track Occupancy Moves by Carrier.xlsx	Workpaper cited within Operations Report. Provides the track occupancy time and percentage of track time available.
# TREX Conceptual Operating Plan Matrix BNSF 1 cut.xlsx	Workpaper cited within Operations Report. Provides running times and distances over UP property for Primary Operating Plan.
# TREX Conceptual Operating Plan Matrix BNSF.xlsx	Includes supporting work and analysis for Operations Report.
1 JWM KH 08-27-18 V(2) KH 8-10-18 with BNSF Data Data collection sheet.xlsx	Workpaper cited within Operations Report. Provides train moves by handling crew.
Car Elapsed Time Under Proposed Ops Plan.xlsx	Includes supporting work and analysis for Operations Report.
Elapsed Time by Segments & Carrier - Train Sheet Publish.xlsx	Workpaper cited within Operations Report. Provides train cycle times and dwell times of BNSF and UP Unit trains.
Elapsed Time by Segments & Carrier -UP Trains Adjusted Moves by Handling Carrier.xlsx	Includes supporting work and analysis for Operations Report.
Elapsed Time by Segments & Carrier.xlsx	Workpaper cited within Operations Report. Provides car elapsed time for BNSF and UP Unit trains.
LCLORC13 Ex 3-3.jpg	Image used for Exhibit 3-20 in Operations Report.
Providing Connecting Rail Service to Texas International Terminals.pdf	Slides that depict how UP and BNSF unit trains to TIT are handled.
Speed and Run Time WORK.xlsx	Workpaper cited within Operations Report. Provides speed and run times.
TIT Industry - Loops Lite Pwr Run.jpg	Image used for Exhibit 3-19 in Operations Report.
TREX Conceptual Operating Plan Matrix BNSF TIT 2 cut mod for print.pdf	Workpaper cited within Operations Report. Provides run times and occupancy times on UP property for Secondary Operating Plan. This version "hides" some of the columns for printing.
TREX Conceptual Operating Plan Matrix BNSF TIT 2 cut.xlsx	Workpaper cited within Operations Report. Provides run times and occupancy times on UP property for Secondary Operating Plan.
Copy of 2018 Inbound Railcar Log 1-27-19.xlsx	List of all cars to TIT's facility in 2018. Includes summary by month, customer, and carrier.
UP Issue Log.pdf	TIT's notes on UP's switching service issues.
1-27-19 Rail Cargo Totals 2015-2019.xlsx	Contracted for Unit Train Traffic to TIT
4 Force Proposal Template New Letterhead-Rev.pdf	Bid for installation of crossover.
TREX AFE Diamonds.pdf	Authority for Expenditure for Diamonds with terms and conditions.