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October 25, 2019

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VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
October 25, 2019
Part of
Public Record

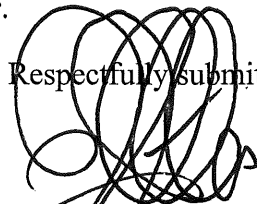
Re: **Docket No. AB-1108 (Sub-No. 1X)**
The Blacklands Railroad – Discontinuance of Service Exemption –
In Hunt, Delta, Hopkins, Franklin and Titus Counties, Texas

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Petition for Exemption of The Blacklands Railroad**, dated October 25, 2019. The appropriate filing fee for the Petition has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for The Blacklands Railroad

FEE RECEIVED
October 25, 2019
SURFACE
TRANSPORTATION BOARD

TJL/th

Attachment

cc: Parties on Certificate of Service

FILED
October 25, 2019
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1108 (SUB-NO. 1X)

THE BLACKLANDS RAILROAD
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN HUNT, DELTA, HOPKINS, FRANKLIN AND TITUS COUNTIES, TEXAS

**PETITION FOR EXEMPTION OF
THE BLACKLANDS RAILROAD**

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**ATTORNEYS FOR
THE BLACKLANDS RAILROAD**

Dated: October 25, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1108 (SUB-NO. 1X)

THE BLACKLANDS RAILROAD
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**PETITION FOR EXEMPTION OF
THE BLACKLANDS RAILROAD**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. §§ 1121 and 1152.60, The Blacklands Railroad (“BLR”) hereby petitions the Board for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its operations over a line of railroad owned by Northeast Texas Rural Rail Transportation District (“NETEX”) extending from Greenville (Simtrott) to Winfield, Texas, along with overhead trackage rights over Union Pacific Railroad Company (“UP”) between Winfield and a UP interchange at Mount Pleasant, Texas, a total distance of approximately 76.0 route miles (the “NETEX Line” or the “Line”) in Hunt, Delta, Hopkins, Franklin and Titus Counties, Texas. A map showing the location of the NETEX Line over which discontinuance is sought is attached to this petition as Exhibit A. A draft *Federal Register* notice of this petition in the form prescribed by 49 C.F.R. § 1152.60(c) is attached hereto as Exhibit B.

As explained further herein, BLR provides service on the NETEX Line pursuant to an operating agreement with NETEX, the line’s owner. As documented in BLR’s financial results since 2015, BLR’s operations over the NETEX Line have consistently resulted in significant financial losses. Despite using its best efforts to build on-line business, manage costs, and operate the NETEX Line efficiently, in recent years BLR has been unable to come close to

making its operation of the NETEX Line viable or profitable. Moreover, BLR does not believe that existing market conditions or business opportunities will change sufficiently to make a significant difference in the losses it incurs in operating the NETEX Line. Therefore, BLR seeks to discontinue its operation of the NETEX Line.

Upon discontinuance, no customer on the NETEX Line will be left without common carrier service. NETEX is itself a Class III rail carrier on the Line and retains the residual common carrier obligation over the entirety of the NETEX Line.¹ Moreover, customers generating approximately one-third of the freight business on the Line are also directly served by The Kansas City Southern Railway Company (“KCS”), and roughly one-third to one-half of the traffic on the Line is transload business, which by its nature is amenable to alternate rail service at nearby rail locations. In combination, since the start of 2018, more than 80% of BLR’s traffic has been from transload customers or customers also served by KCS. The remaining BLR customers currently use or in the past have used trucks for some portion of their transportation needs. Once BLR’s common carrier rights on the NETEX Line are discontinued, no customer will lose its right to common carrier rail service, and all of the customers will retain their current rail and alternative shipping options, albeit with NETEX rather than BLR as the rail service provider on the NETEX Line.

A copy of this petition has been served on each shipper that has utilized rail service on the Line since January of 2018.

¹ NETEX sought and received authority to acquire and operate the NETEX Line as a common carrier in separate transactions in 1996 and 2000. *Northeast Texas Rural Rail Transportation District – Purchase (Portion) Exemption – St. Louis Southwestern Railway Company*, Docket No. FD 32841 (STB served Jan. 26, 1996) (“NETEX I”); *Northeast Texas Rural Rail Transportation District – Acquisition Exemption – Lines of Union Pacific Railroad Company*, Docket No. FD 33892 (STB served Jul. 26, 2000) (“NETEX II”).

I. IDENTIFICATION OF PETITIONER

Petitioner BLR is a Class III common carrier by rail which currently operates two unconnected rail lines in northeastern Texas, only one of which is the subject of this petition. BLR first commenced operations on the NETEX Line as a common carrier in 1999, when it acquired the rights of East Central Texas Railroad (“ECTR”) to operate 38 miles of former St. Louis Southwestern Railway Company (“SSW”) line east of Greenville, Texas predominantly owned by NETEX. *The Blacklands Railroad Company – Operation Exemption – Lines of Northeast Texas Rural Rail Transportation District*, Docket No. FD 33708 (STB served Feb. 16, 1999) (“*Blacklands/NETEX I*”). BLR replaced ECTR as NETEX’s operator for those 38 miles. One year later, BLR agreed to operate an additional, connected line segment and trackage rights concurrently acquired by NETEX from SSW’s successor, UP. *The Blacklands Railroad Company – Operation Exemption – Northeast Texas Rural Rail Transportation District*, Docket No. FD 33893 (STB served Jul. 26, 2000) (“*Blacklands/NETEX II*”). Collectively, these two acquisitions form the NETEX Line, extending a total length of 76 miles between Greenville and Mt. Pleasant, Texas.

BLR’s second operation is over an unconnected, approximately 15-mile line of rail owned by Rusk County Rural Rail District between Overton and Henderson, Texas. *Blacklands Railroad, Inc. – Lease and Operation Exemption – Rusk County Rural Rail District*, Docket No. FD 35327 (STB served Dec. 11, 2009). That operation is unaffected by the current petition.

In addition to rail freight service, BLR also provides railcar storage and railcar maintenance/repair services. A subsidiary, Blacklands Locomotive Service, LLC, performs contractual locomotive maintenance and repair. Another subsidiary, Black Gold Terminals, LLC, provides transloading and contract switching services at locations in Texas and Nevada.

The complete name and address of BLR is:

The Blacklands Railroad
641 Church Street
Sulphur Springs, TX 75482

II. FACTUAL BACKGROUND

A. Description of Line

In 1999, BLR secured from ECTR rights under a written agreement with NETEX to provide local common carrier rail service over the portion of the current NETEX Line extending approximately 31 miles from milepost 524.0, located 6.2 miles west of Sulphur Springs, west through Hopkins and Delta Counties, to milepost 555.0, near Greenville (also known as Simtrott), in Hunt County.² The following year, BLR agreed to operate the remainder of what is now the NETEX Line, extending 34.59 miles from milepost 524.0 east to milepost 489.41, at the eastern county line of Franklin County, along with NETEX's trackage rights over UP from milepost 489.41 to milepost 479.0 at Mt. Pleasant.³ Collectively, these two transactions resulted in BLR operating local rail service on lines owned by NETEX between milepost 555.0 and milepost 489.41, and operating pursuant to trackage rights on UP's line between milepost 489.41 and milepost 479.0 for purposes of interchange. Discontinuance of all of that operation is sought herein.

² *Blacklands/NETEX I, supra*. The transaction included BLR's operation of approximately 7 additional miles of trackage rights acquired by NETEX from SSW between milepost 524.0 and milepost 517.0 into Sulphur Springs to effect interchange and related switching.

³ *Blacklands/NETEX II, supra*.

BLR currently operates the NETEX Line pursuant to a January 30, 2011 Operating Agreement (the “Agreement”) with NETEX.⁴

NETEX had acquired the NETEX Line in separate transactions with UP and a UP predecessor in 2000 and 1996, respectively. *See NETEX I* and *NETEX II, supra*. In each of these transactions, NETEX sought and obtained authority to acquire and operate the subject line as a common carrier, with its chosen contractor operating the acquired line pursuant to an STB operation exemption. Thus, upon discontinuance of BLR’s operations on the NETEX Line, NETEX will be fully authorized to operate the NETEX Line pursuant to its residual common carrier obligation. *See Bush Terminal R. Co. Entire Line Abandonment*, 342 I.C.C. 34, 50 (1971) (“When a carrier leases its rail facilities to another, it is under a revived obligation to operate its railroad property on its own behalf upon discontinuance of operations by the lessee....”); *see also Victor Wheeler – Petition for Declaratory Order – Rail Line in Erie County, PA*, Docket No. FD 35082 (STB served Aug. 26, 2008) at 7 & n.22 and cases therein; *Buffalo & Pittsburgh Railroad, Inc. – Discontinuance and Abandonment Exemption – Between DC Tower and Homer City, In Jefferson and Indiana Counties, PA, et al.*, Docket No. AB-369 (Sub-No. 2X) (ICC served Dec. 23, 1993) at 2, n.4 (“[U]pon the exercise by B&P of its discontinuance authority, the common carrier obligation will revert to [the carrier-owner] for the [relevant] portion of the line.”); *Savage Davenport Railroad Company – Discontinuance of Service Exemption – In Scott County,*

⁴ BLR has initiated suit against NETEX alleging breaches of the Agreement governing operation of the NETEX Line. *The Blacklands Railroad v. Northeast Texas Rural Rail Transportation District*, pending before the 62nd Judicial District Court in Hopkins County, Texas, Trial Court, No. CV 44014. A copy of BLR’s most recently filed Second Amended Petition and Request for Disclosure is attached hereto as Exhibit C. This Petition is not dependent on the outcome of that litigation, and the pendency of the state court matter does not provide any basis to deny BLR’s invocation of the exemption process to discontinue its continually unprofitable operations on the NETEX Line.

1A, Docket No. AB-1277X (STB served Sep. 30, 2019). NETEX's residual common carrier obligation will be revived upon BLR's discontinuance of operations on the NETEX Line.

In a separate transaction from the transactions detailed above, and in order to provide local freight rail service on a portion of UP's line subject to the NETEX/BLR interchange trackage rights, BLR leased directly from UP the rail line segment between milepost 489.40 and milepost 481.5 at Mt. Pleasant.⁵ Thus, between those two mileposts, BLR's operations are currently conducted both pursuant to the trackage rights held by BLR through NETEX, and by the separate lease rights held by BLR directly from UP. BLR's leased operations from UP are not the subject of, and will not be affected by, the discontinuance sought in this proceeding.

The NETEX Line connects with UP at Mt. Pleasant, with KCS at Sulphur Springs, and with KCS and the Dallas, Garland & Northeastern Railroad, Inc. ("DGNO") at Greenville. BLR interchanges traffic with UP at Mt. Pleasant and with KCS at Sulphur Springs.

B. Traffic and Revenue

Attached as Exhibit D to this petition is a listing of traffic volumes on the NETEX Line by shipper and carloadings for each full or partial year from January 1, 2015 through September 30, 2019, with a "forecast year" projection for 2020 traffic volumes. As can be observed from Exhibit D, traffic has fluctuated during the last four and one-half years, but has generally reflected a downward trend. In no year has it approached levels sufficient to profitably operate the service required for such traffic. Carload business in 2018 was down almost 30% from what had been moved by BLR just two years prior, and is on track in 2019 to remain flat

⁵ *Blacklands Railroad, Inc. – Lease and Operation Exemption – Union Pacific Railroad Company*, Docket No. FD 34723 (STB served Jul. 26, 2005).

from 2018 figures. Perhaps of more immediate concern to BLR, the customer and carload list reflects almost no significant businesses starting up operations on the NETEX Line during the last four years.

A review of individual shipper trends is consistent with an overall decrease in business on the NETEX Line. Large decreases in shipments of grain (SS CoOp was down in 2018 almost 200 cars from its 2017 shipping levels), chicken feed (Pilgrim's shipped 258 carloads in 2015, and zero in 2018 and 2019) and plastics (MG Polymer went from 226 carloads in 2016 to zero in 2018 and 2019) were only partially offset by one customer increasing its plastics movements (Custom Commodities up over 200 cars since 2016). It can also be noted from Exhibit D that many of the transload operators on the NETEX Line failed to ship anything in 2018, perhaps indicating greater competitive advantages for trucks in the region.

Unfortunately, but not unexpectedly, overall revenues on the NETEX Line (Exhibit E) have followed the downward trend reflected in revenue carloads. In 2015, total income from operations was \$2,395,086.32,⁶ with \$988,092.40 from freight car movements, \$437,575.00 in switch charges, \$351,401.85 in car storage fees, and \$618,017.07 in other income (including a non-recurring \$325,000.00 debt forgiveness from NETEX).

In 2016, total income realized through BLR's operation of the NETEX Line was down slightly, to \$1,957,243.90. For the second straight year, only a little over half of this revenue was received from freight revenue (\$1,012,178.03). Other major revenue sources included car storage fees of \$471,002.10, and switching charges of \$132,300.00.

⁶ Income figures do not include revenues from customers served on the segment of track BLR leases directly from UP.

In 2017, overall revenue from operations fell from 2016 levels by over \$350,000 to \$1,604,550.29, largely reflecting a decrease in freight revenue (to \$774,903.81), offset somewhat by increased car storage revenue (\$602,970.55). No other source of revenue exceeded \$100,000, with switching charges falling over 60% to \$49,670.00.

Calendar year 2018 looked to have slightly improved BLR's financial outlook over 2017 results, with a total revenue figure of \$1,805,477.33, with slightly higher freight revenues (\$798,043.98) and higher switching fees (\$288,720.00) more than offset by a 43% decrease in car storage fees, down to \$344,113.80.

Unfortunately, 2019 has proven to be a very tough year for BLR. Through August of 2019, BLR has realized \$538,296.68 in total income (straight-line projected to \$807,445.02 for the full calendar year). Freight revenues are down significantly, with \$367,202.32 realized through August (\$550,803.48 for year-end projection, which would represent a drop of almost \$250,000.00 year-over-year from 2018), with switching fees of \$74,790.00 (\$112,185.00 projected, less than half of the 2018 figure) and storage fees of \$39,815.00 (\$59,722.00.50 projected, over an 80% anticipated reduction) all falling far below historic ranges.

In summary, over the last four-plus years, BLR's income from all sources was as follows:

2015	\$2,395,086.32
2016	\$1,957,243.90
2017	\$1,604,550.29
2018	\$1,805,477.33
2019	\$807,445.02 (straight-line projected)

In other words, BLR's income has fallen almost 25% over the last four full calendar years, roughly paralleling reductions in revenue carloads, and is projected to fall by almost 2/3 this year over 2015. BLR notes that in this difficult time it has sought to supplement its income from providing rail service to on-line customers with railcar storage fees, which in 2017 generated revenue that was more than 75% of what BLR received in basic line-haul revenue. Even that source of revenue, however, appears to be drying up.

C. Service and Expenses

1. Overview

Over the last four years, service on the NETEX Line has been provided by BLR using either two or three locomotives stationed in Mt. Pleasant, with the crew making a round trip from Mt. Pleasant to Greenville and return. There is no precise daily schedule for the railroad. Instead, operations are driven primarily by demand, but on most weeks, two round trips of the railroad are completed. Either two or three person crews operate each train, depending upon workload and the specifics of the operation that day (such as the need for reverse movements).

To continue providing even minimal service on the NETEX Line has entailed the following expenses for BLR (including a straight-line projection for full year 2019):

	2015	2016	2017	2018	2019 (projected)
Transportation:					
- Labor	\$595,729.92	\$607,954.13	\$639,887.59	\$689,386.51 ⁷	\$749,207.15
- Fuel	\$191,003.06	\$142,290.52	\$132,310.51	\$178,843.05	\$139,794.50
- Car Hire	\$81,429.26	\$48,148.55	\$33,119.75	\$41,416.03	\$45,369.02
- Loco. Lease	\$122,921.00	\$136,880.00	\$106,080.00	\$96,270.00	\$75,054.00
<u>Transportation Total</u>	\$991,083.24	\$935,273.20	\$911,397.85	\$1,005,915.59	\$1,009,424.67
Maint. of Way	\$775,645.85	\$558,928.40	\$595,626.91	\$527,724.07	\$376,312.04
Maint. of Equipment	\$90,293.65	\$114,891.84	\$52,020.31	\$77,345.75	\$82,087.52
Right-of-Way Lease	\$77,420.47	\$84,704.84	\$77,097.65	\$47,709.15	\$42,033.80
Insurance	\$144,750.50	\$217,828.32	\$165,896.98	\$245,425.08	\$201,432.09
Depreciation	\$57,331.96	\$55,900.92	\$55,900.92	\$55,900.92	\$96,527.04
<u>Itemized Total</u>	\$2,136,525.67	\$1,967,527.62	\$1,857,940.62	\$1,960,020.56	\$1,807,817.16
Other Expenses	\$581,571.45	\$460,552.43	\$608,149.83	\$466,507.72	\$291,943.62
<u>Total Expenses</u>	\$2,715,921.34	\$2,428,080.05	\$2,466,090.45	\$2,426,528.28	\$2,099,760.78

2. Transportation and Support

Transportation expenses on the NETEX Line consist primarily of labor costs (including train and engine wages, administrative support, and taxes) approaching or exceeding \$600,000 per year. Locomotive fuel costs reflect actual fuel expense (predominantly diesel fuel for locomotives, with much smaller amounts paid for gasoline for section trucks and an executive vehicle). Recent average car hire expenses for BLR's operations have varied between \$3,000 and \$4,000 per month, fluctuating with traffic volumes. Finally, BLR has continued to lease locomotives to support operations of the NETEX Line.

3. Maintenance of Way

Although BLR is a tenant/operator on the NETEX Line, it has primary responsibility for both performing and paying for maintenance of the right of way. Maintenance

⁷ BLR's charges for 2018's "Wages – Other" (Account 505) included approximately \$300,000 of wages incurred by BLR but unrelated to operation of the railroad. In order to provide a comparable and conservative estimate of costs, BLR has removed \$300,000 from the total reflected herein.

of way expenses in recent years have generally been in the range of \$450,000-600,000 per year, and would be required to remain at that level for continued operations. In its Operating Agreement with NETEX, BLR is required to maintain the NETEX Line to FRA Class 1 standards, and it does so, although operations are conducted commensurate with FRA exempted track status, in order to prudently minimize the number of track inspections BLR is required to perform each month. For costing purposes in abandonment and discontinuance proceedings, maintenance expenses should reflect compliance with minimum FRA Class 1 standards. 49 C.F.R. § 1152.32(m)(2)(i); *see, e.g., Southrail Corp. -- Aban. -- Whistler Station, AL & Waynesboro, MS*, 7 I.C.C.2d 854, 859, 863-865 (1991); *Missouri Pacific Railroad Company -- Abandonment -- Between Centralia and Hoyleton in Clinton and Washington Counties, IL*, Docket No. AB-3 (Sub-No. 84) (ICC served Sep. 7, 1989) at 4, n.9 ("[FRA Class 1] is the minimum acceptable safe level, and our regulations permit a carrier to submit costs of maintaining the line at that level.").

BLR's historical average maintenance-of-way expenditures of approximately \$8,000 per track mile are well within the range of what the Board has found necessary for maintenance of a rail line to Class 1 standards. *E.g., Offers of Financial Assistance*, Docket No. EP 729 (STB served Sep. 30, 2016) at 16 ("In the past, the Board has accepted base maintenance costs for rail line of between \$4,000 and \$11,000 per mile per year."); *Conrail -- Aban. -- Bet. Warsaw & Valparaiso, IN*, 9 I.C.C.2d 1299, 1304 (1993) ("Overall, Conrail's normalized maintenance costs [for FRA Class 1 track], approximately \$6,500 per track-mile, appear to be reasonable compared to other recent abandonments."). More than twenty years ago, the Board explained that "[w]e know from extensive experience that \$6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad." *SWKR Operating Company --*

Abandonment Exemption – In Cochise County, AZ, Docket No. AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997) at 6. Using one of the inflation indexes published by the Board, that 1997 figure would be more than \$11,000 today. *See Indexing the Annual Operating Revenues of Railroads*, Docket No. EP 748 (STB served Jun. 14, 2019). BLR's costs for maintaining the NETEX Line are plainly reasonable.

4. Maintenance of Equipment

Maintenance of equipment expense represents various locomotive maintenance costs – parts, repairs, installation, labor, oil, filters, batteries and so on, along with much lesser costs for occasional railcar maintenance. While these expenses have been reduced in recent years, they remain a significant component of the overall cost of operating the NETEX Line.

5. Right of Way Lease

BLR's payments to NETEX for lease of the NETEX Line fluctuate year to year, based upon the amount of revenue business moved by BLR and other adjustments. In recent years, these payments have been decreasing, but remain significant.

6. Insurance Expense

As with any business, BLR must insure against catastrophic losses. The cost for commercial general liability insurance can be quite volatile, reflecting both BLR's claims history and general trends in railroad litigation and liability. In certain years, insurance expenses for BLR have comprised upwards of 10% of overall costs of operating the NETEX Line.

7. Depreciation

BLR employs a straight-line depreciation method, reflected on its income statement as a charge of \$55,900.92 per year over the last few years, a figure that has increased somewhat in 2019.

8. Other Expenses and Adjustments

BLR notes that the foregoing itemization does not include a litany of other expenses that are legitimately considered in discontinuance proceedings, such as real estate taxes, casualty expenses, job training costs, medical expenses, and other various general and administrative (G&A) expenses. These expenses have been combined in the table above and are detailed further in the profit and loss statements attached as Exhibit E to this Petition.

9. Profitability

As is demonstrated by the numbers set out above (and summarized immediately below), in all recent years, BLR's operation of the NETEX Line has proven to be a money-losing proposition.

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019 (projected)</u>
Total Income	\$2,395,086.32	\$1,957,243.90	\$1,604,550.29	\$1,805,477.33	\$807,445.02
Total Expenses	\$2,715,921.34	\$2,428,080.05	\$2,466,090.45	\$2,426,528.28 ⁸	\$2,099,760.78
Net Ordinary (Loss)	(\$320,835.02)	(\$470,836.15)	(\$861,540.16)	(\$621,050.95)	(\$1,292,315.76)

BLR acknowledges that the expenses reflected on its financial data include costs for providing service to customers located on the segment BLR leases from UP – customers that could not be served under the operating agreement with NETEX (as they are located on a segment over which NETEX possesses only overhead operating rights) and that would continue to be served by BLR after the discontinuance proposed herein. Currently, service to such customers generates little incremental cost, with the only additional expense being for actual movement off of the main line into the customers' facilities. Because BLR's revenues presented above do not include revenue for customers located on the leased segment, BLR has undertaken an analysis of the costs of providing service to the customers on that segment as a stand-alone

⁸ See footnote 7, *supra*.

operation, to facilitate backing out costs that will continue to be incurred by BLR post-discontinuance. As detailed in Exhibit F attached hereto, BLR calculates the cost of providing service on the leased segment, standing alone, will approximate \$250,000.00 per year. Even subtracting these costs from BLR's historic (2015-2019) loss calculations above reveals that BLR's losses on the NETEX Line are real, substantial and growing.

As this data demonstrates, it is clear that the expense of operating the NETEX Line exceeds by a wide margin the revenue that BLR could hope to generate from continuing to serve the diminished traffic base. The documented history of financial losses BLR has suffered in operating the NETEX Line shows no signs of reversal, and discontinuance is therefore appropriate.

D. Forecast Year

Although not mandated for a petition for exemption, BLR has projected forecast calendar year results for 2020, assuming that BLR continues operation of the NETEX Line (i.e., discontinuance is not granted). As can be seen on Exhibit D, BLR projects that it would move a total of 1,451 revenue carloads in 2020. It is relevant to note that 1,451 revenue carloads would be greater than the carloads moved by BLR in either 2018 (1,327 actual) or 2019 (1,196 projected for the full calendar year), but BLR has assumed the greater number to be conservative. The revenue to be projected for moving 1,451 revenue loads is easily calculated (using the per car rates and other adjustments that govern BLR's movement of cars for the past few years, and would continue to govern in 2020) and results in a figure of \$773,270.63 income for transporting loaded freight cars. Assuming that BLR's other sources of income (such as car storage fees and switching revenues) continue through the forecast year of 2020 as they have through the first eight months of 2019, BLR would realize a total income from operations in

2020 of \$1,029,912.17. That figure is significantly less than the revenues BLR realized from operations in any full actual calendar year since 2015, but it is over \$200,000.00 more in revenue than BLR is projected to realize for all of 2019.

While it would be rational to assume that BLR would incur additional expenses for moving the additional revenue carloads that it has projected for forecast year 2020 over the projected 2019 data, BLR has instead assumed that the additional traffic could be moved while keeping expenses at the levels incurred to date and projected through the end of 2019. Even with that conservative assumption, BLR anticipates (based on expenses for operations in 2019 through August) that it would incur \$2,099,760.78 in total expenses in forecast year 2020. Granted, some of those expenses are associated with BLR's service performed under its direct lease with UP, which expenses will continue to be incurred by BLR even after discontinuance. Backing out BLR's anticipated costs for operating the much shorter leased segment post-discontinuance (calculated by BLR at \$250,000.00 annually, as discussed above) from the overall expenses projected for the forecast year (\$2,099,760.78) provides an forecast year estimate of \$1,849,760.78 in expenses that BLR will be relieved from incurring if discontinuance is granted. Even with BLR's adjustment of expenses for continued operations, those projected expenses would swamp BLR's forecast year revenues (\$1,029,912.17), resulting in a projected net loss of \$819,848.61 for forecast year 2020.

BLR recognizes that, to date, financial results for calendar year 2019 have been particularly bleak, with an overall loss of approximately \$863,000.00 incurred through August 2019, and thus, using non-transportation revenue figures projected from 2019 year-to-date results (particularly the sharply reduced figures for car storage charges and switching fees) might not provide a historically representative baseline for a forecast year 2020. For purposes of providing

an alternative analysis, and to give additional context to BLR's forecast year results, BLR notes that if the 1,451 carloads that BLR projects to move in 2020 had been moved in the more normalized revenue conditions of 2018 (*i.e.*, assuming the forecast year carloads while also utilizing other income and expense items from 2018's more representative results), and again removing the costs of operating the leased segment, BLR would still realize a forecast year net loss of over \$640,000.00.

E. Transportation Alternatives

As referenced above, NETEX voluntarily assumed a common carrier obligation when it acquired the segments comprising the NETEX Line pursuant to STB authorization. For many years, BLR has satisfied NETEX's common carrier service obligations as NETEX's operator of the NETEX Line, but upon BLR's discontinuance of operations, NETEX will retain its common carrier obligations, and presumably will either provide service in its own name or locate another rail operator for the NETEX Line. Thus, BLR anticipates that upon its discontinuance of operations, all NETEX Line customers will continue to receive common carrier rail services, from NETEX or its future contractor.

In addition to the fact that no customer should lose rail service via the NETEX Line upon BLR's discontinuance, four existing grain customers on the NETEX Line – Feeders Supply Company in Sulphur Springs, Northeast Texas Grain Farmers Co-op in Sulphur Springs and Greenville, and Martinek Grain in Greenville – have direct access to rail service from KCS, which serves both of those cities and has rail sidings into those customers' facilities. As shown on Exhibit D, those four grain shippers include BLR's second and third largest shippers by carloads in 2018, and will retain rail service no matter what the future of the NETEX Line might be.

Four of BLR's other current on-line customers – including by far the largest shipper in 2018 – utilize BLR solely for transload movements (rail to truck or the reverse). Such traffic is presumptively truck competitive, and could easily be transloaded instead to and from KCS in Sulphur Springs or Greenville, DGNO in Greenville, UP in Mt. Pleasant, or even to BLR on the UP line segment near Mt. Pleasant that BLR will continue to lease. KCS direct-access and transload customers comprised eight of the eleven total shippers on the NETEX Line in 2018, and the remaining three shippers utilize truck transportation for a portion of their shipping needs today. Whether from BLR's successor operator on the NETEX Line, KCS, alternate transload locations or truck service, all shippers on the NETEX Line will retain multiple viable transportation alternatives after BLR's discontinuance of operations.

F. Efforts to Develop the NETEX Line

BLR does not come to this discontinuance petition lightly. BLR has two decades of experience as NETEX's operator, providing safe, efficient rail service, with a customer-first focus. BLR's diligence in its approach to railroading was acknowledged in 2011, when BLR was named the Shortline Railroad of the Year by Railway Age magazine.⁹ In more recent years, however, despite the many successes achieved by BLR and its customers, operations on the NETEX Line have not generated sufficient revenues to approach profitability.

To be clear, BLR has made efforts over the years to enhance operations on the NETEX Line. For example, BLR and NETEX applied multiple times to secure both federal grants (through the Transportation Investment Generating Economic Recovery (TIGER) program) and similar state funding. Unfortunately, these applications were not granted, leaving the NETEX Line to survive on the dwindling on-line traffic base.

⁹ <https://www.railwayage.com/news/short-line-railroad-of-the-year/>.

More recently, BLR has been involved in efforts to develop an on-line transload facility near Mt. Vernon, with convenient access to the NETEX Line and Interstate Route 30. While some public funding was secured by the involved communities to facilitate development of the transload facility, BLR understands that the project has stalled, due in some measure to NETEX's alternative efforts to develop a container/intermodal facility in the vicinity of the proposed transload facility. BLR believes that the indifference of the NETEX Line's connecting carriers (primarily UP) to the development of a container/intermodal facility renders that project commercially unviable. Without significant Class 1 support for a new container/intermodal facility in the area, BLR does not believe that the project pursued by NETEX can be a success, assuming that it is ever built.

III. JURISDICTION AND STATUTORY STANDARDS

The Board has jurisdiction over the proposed discontinuance of BLR's operations on the NETEX Line pursuant to 49 U.S.C. § 10903. Generally, a common carrier by rail must obtain authority from the Board under Section 10903 before discontinuing operations on a line of railroad. The statutory standard governing discontinuances is whether the present or future public convenience and necessity require or permit the discontinuance. 49 U.S.C. § 10903(d). In implementing this standard, the Commission balances the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and interstate commerce. *Colorado v. U.S.*, 271 U.S. 153 (1926).

However, 49 U.S.C. § 10502 requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that: (1) application of those requirements is not necessary to carry out the national Rail Transportation Policy of 49 U.S.C. § 10101 (the "RTP"); and (2) either

(a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power. In determining whether regulation is necessary to carry out the RTP, the Board's analysis focuses on the criteria relating to the underlying statute from which exemption is sought. *See Village of Palestine v. ICC*, 936 F.2d 1335 (D.C. Cir. 1991). Thus, in the context of this discontinuance proceeding, the Board would consider RTP factors relevant to the balancing test under Section 10903.

IV. CRITERIA OF 49 U.S.C. § 10502

A. Detailed Scrutiny Under 49 U.S.C. § 10903 Is Not Necessary To Carry Out The Rail Transportation Policy Of 49 U.S.C. § 10101.

Granting BLR an exemption to discontinue service over the NETEX Line is consistent with the relevant goals articulated in the RTP and the Board's discontinuance exemption standards. The NETEX Line has consistently lost money over the last four years, and there is no reasonable basis to believe a change of fortunes is imminent. As the evidence clearly demonstrates, even the most basic costs of operating the NETEX Line significantly exceed the revenue that is or could be generated by the remaining shippers. BLR has been unable to approach profitability in operating the NETEX Line for four years running, and overall costs for the operation have consistently exceeded revenues by a wide margin every year. At the same time, the remaining shippers on the NETEX Line will continue to receive common carrier service from NETEX or its new operator. And more than 80% of rail traffic on the NETEX Line is transloaded or can be serviced directly by KCS. In these circumstances, the inadequate (and dwindling) traffic base simply cannot justify continued operation of the NETEX Line by BLR. In short, the NETEX Line is no longer a viable component of BLR's rail system.

By permitting BLR to avoid the expense of operating an unprofitable line which generates insufficient traffic and revenue, the exemption sought by BLR to discontinue operations the NETEX Line will encourage the honest and effective management of railroads and promote the development of an economically sound and efficient transportation system. 49 U.S.C. §§ 10101(3), (4), (5) and (9). Despite its best efforts to manage costs and increase revenues, BLR has concluded that there is no reasonable likelihood that the NETEX Line could be operated profitably by BLR, and there is no justification under the relevant criteria of Section 10101 to burden BLR with continued operation of the NETEX Line.

The rail transportation policy also provides that the Board should minimize the need for federal regulatory control over the rail transportation system, expedite regulatory decisions and reduce barriers to exit. 49 U.S.C. §§ 10101(2), (7), and (15). The statutory exemption procedure of Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Section 10903, including the costs of preparing an application and the difficulties a Class III railroad like BLR confronts in the Board's detailed costing regulations. Reliance on the adequate and expeditious exemption procedure herein would minimize Board regulation of this transaction and reduce the regulatory burden on BLR.

The significant financial losses resulting from BLR's operation of the NETEX Line documented herein makes clear that use of the exemption process, rather than submission of an application seeking discontinuance, is appropriate. BLR is aware that the Board has previously cautioned petitioners regarding use of the exemption process where shippers oppose an abandonment or discontinuance and the petitioner's financial presentation does not provide the Board with ample evidence of the unprofitability of the operation of the rail line. *See Boston and Maine Corp. – Abandonment Exemption – In Hartford and New Haven Counties, CT,*

Docket No. AB-32 (Sub-No. 75X) (STB served Dec. 31, 1996); *Wyoming and Colorado Railroad Co., Inc. – Abandonment Exemption – In Carbon County, WY*, Docket No. AB-307 (Sub-No. 5X) (STB served Dec. 9, 2004). Such is not the case in this docket. While it is possible that some customer on the NETEX Line, or perhaps even NETEX itself, may oppose BLR’s discontinuance of operations, the mere fact of opposition, without more, should not serve as the basis for denial of an exemption request that firmly establishes the burden imposed by continued operation.¹⁰ Moreover, in previous proceedings in which the Board has denied an exemption petition and required either a revised petition for exemption or use of the application process, the petitioner had clearly failed to satisfy the requirement of establishing that the magnitude of the financial losses incurred in operation of the line presented a burden on interstate commerce that outweighed any harm that might befall the shipping public. *See, e.g., CSX Transportation, Inc. – Abandonment Exemption – In Anderson County, SC*, Docket No. AB-55 (Sub-No. 664X) (STB served Aug. 15, 2006) (“CSXT fails to demonstrate that continued operation of the line is a burden because CSXT does not substantiate the rehabilitation figures it provides.”); *Tulare Valley Railroad Co. – Abandonment and Discontinuance Exemption – In Tulare and Kern Counties, CA*, Docket No. AB-397 (Sub-No. 5X) (STB served Mar. 6, 1998) (“[S]erious questions have been raised about revenues and costs and about whether the line is profitable.”). In this instance, given that NETEX will assume the primary common carrier

¹⁰ Any opposition from NETEX should be viewed with skepticism, as it more likely arises from NETEX’s reluctance to honor its own common carrier obligation than from a genuine belief that BLR is somehow operating the NETEX Line profitably, or that customers of the NETEX Line will somehow be burdened if they are required to accept NETEX’s provision of common carrier services in lieu of that currently provided by BLR. Moreover, any contractual concerns that NETEX may present regarding the disputes at issue in the current litigation between the parties can be fully resolved by the 62nd Judicial District Court in Hopkins County, Texas, where that litigation is pending.

operation once BLR's operations are discontinued, it is difficult to imagine any harm (much less substantial harm) that will be visited on NETEX Line customers. By contrast, the financial losses documented by BLR are real, significant, and consistent.

None of the other rail transportation policy criteria will be adversely affected. All customers on the NETEX Line will retain access to common carrier rail services, and most will continue to enjoy direct access to a Class 1 rail carrier or continue to make use of transloading services at nearby access locations with other rail carriers.

B. Regulation Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

It is clear that the proposed discontinuance will not and cannot subject shippers to any market power abuse. BLR's common carrier operations will be replaced by common carrier operations provided by, or under the auspices of, NETEX. By definition, market power will not change on the NETEX Line; instead, one operator will merely be replaced by another, with no impact on market position. *See, e.g., Southwestern Railroad, Inc. – Discontinuance of Service Exemption – In Curry, Roosevelt, Chaves and Eddy Counties, N.M.*, Docket No. AB-1251X (STB served Apr. 27, 2017) ("*Southwestern Discontinuance*") at 2-3 (discontinuance by lessee where residual common carrier lessor will resume operations "would not result in an interruption of service and no shippers served by the Lines would be disadvantaged when [lessee] ceases operations."); *Yellowstone Valley Railroad, L.L.C. – Discontinuance of Lease and Trackage Rights Operations Exemption – In Richland, Sheridan, Roosevelt and Daniels Counties, Mont. and McKenzie County, N.D.*, Docket No. AB-991 (Sub-No. 1X) (STB served May 10, 2013).

In addition, the majority of on-line customers will retain access to a second common carrier by rail or could relocate their existing transload operations to other nearby railheads. *See New York City Economic Development Corporation – Adverse Abandonment –*

New York Cross Harbor Railroad in Brooklyn, NY, Docket No. AB-596 (STB served Aug. 28, 2003) at 5 (where shipments are already trucked to reach transload facility on abandoning railroad, “[t]he trucks that [shippers] are already using can be used to reach another rail transload facility . . .”), *rev’d on other grounds sub nom. New York Cross Harbor R. v. STB*, 374 F.3d 1177 (D.C. Cir. 2004); *CSX Transportation, Inc. – Abandonment Exemption – In Muskegon County, MI*, Docket No. AB-55 (Sub-No. 350X) (ICC served Oct. 11, 1990) (competition not affected by abandonment where on-line shipper will continue to use rail service from alternative rail carrier). UP maintains significant facilities at Mount Pleasant, DGNO serves Greenville, and KCS may be accessed at either Greenville or Sulphur Springs, to provide such opportunities. Remaining shippers have access to, and have utilized, truck transportation for their shipping needs. For each of these overlapping reasons, BLR’s discontinuance of service on the NETEX Line will not subject any shipper to an abuse of market power.

C. The Transaction Is of Limited Scope.

Since regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the proposed discontinuance is of limited scope. Nonetheless, the transaction for which exemption is sought consists solely of the discontinuance by an operator on 76 miles of rail in one state, and substitution of that operator’s services with rail service from NETEX under its residual common carrier obligation as the line’s owner, or NETEX’s subsequent contract operator. BLR does not believe that there are reasonable prospects for development of rail traffic on the NETEX Line sufficient to justify BLR’s continued operations, and on-line shippers retain access to existing transload, trucking and alternative direct rail service. The proposed discontinuance clearly is of limited scope.

V. LEVEL OF LABOR PROTECTION TO BE IMPOSED

BLR agrees that the appropriate level of employee protection to be imposed on this discontinuance is that established in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

VI. ENVIRONMENTAL/HISTORIC REPORT

The proposed discontinuance of service is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and historic reporting requirements under 49 C.F.R. § 1105.8(b). *See Southwestern Discontinuance* at 3 (“Because there would be environmental review during any subsequent proceeding for authority to abandon, this discontinuance proceeding does not require an environmental review.”).

WHEREFORE, BLR respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of BLR’s local operations on the NETEX Line between milepost 555.0 near Greenville, Texas and milepost 489.41, and its operation of NETEX’s trackage rights for purposes of interchange between milepost 489.41 and milepost 479.0 in Mount Pleasant, Texas.

Respectfully submitted,

By: _____

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**ATTORNEYS FOR
THE BLACKLANDS RAILROAD**

Dated: October 25, 2019

EXHIBIT A

MAP

**THE BLACKLANDS RAILROAD
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN HUNT, DELTA, HOPKINS, FRANKLIN AND TITUS COUNTIES, TEXAS**

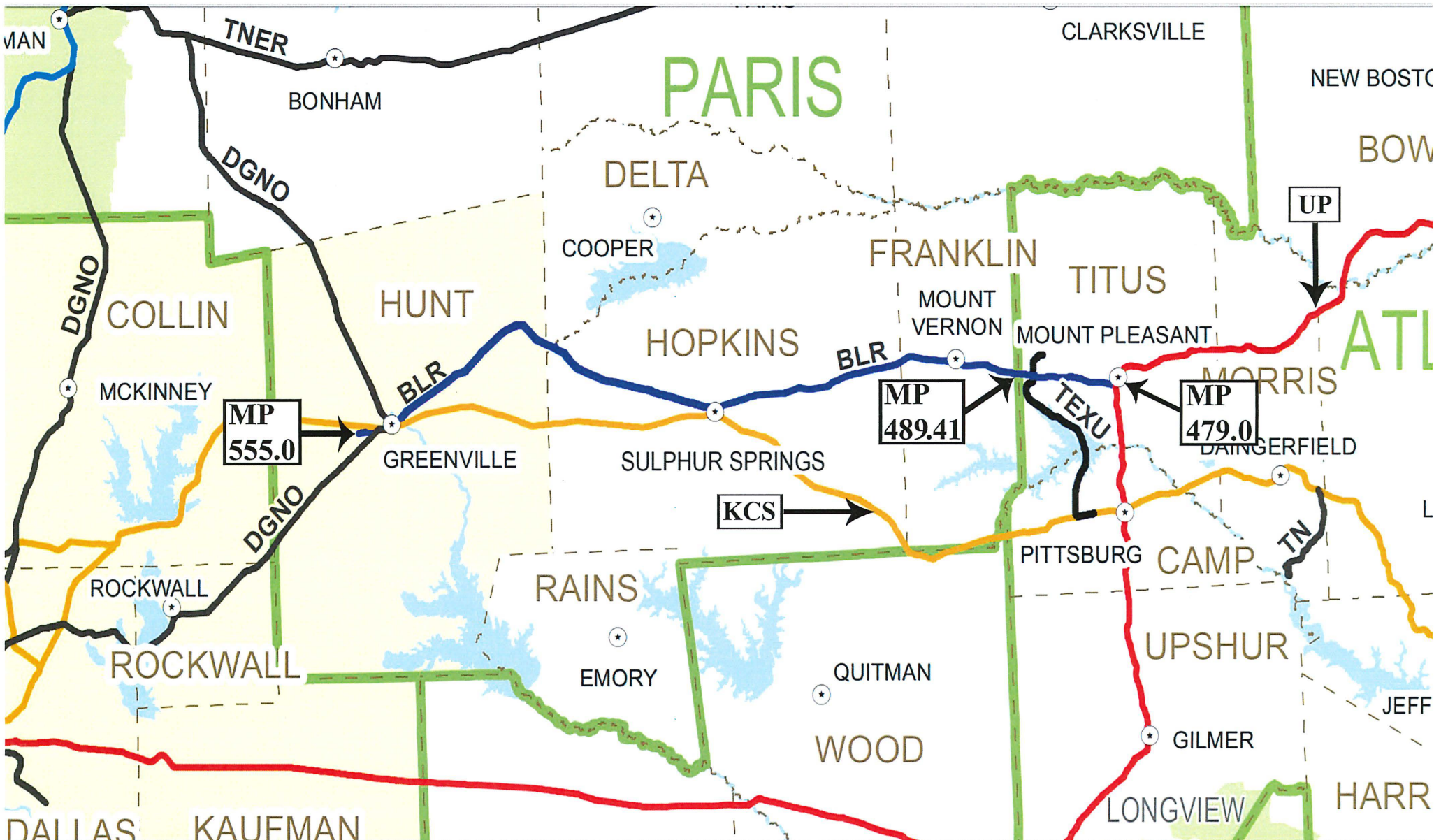


EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

Federal Register Notice

Docket No. AB-1108 (Sub-No. 1X)

Notice of Petition for Exemption to Discontinue Service

On October __, 2019, The Blacklands Railroad ("BLR") filed with the Surface Transportation Board, Washington, DC 20423, a petition for exemption for the discontinuance of its service on a line of railroad known as the NETEX Line, extending from milepost 555.00 at Greenville (Simtrott) TX to milepost 489.41 at the Eastern boundary of Franklin County, Texas, along with trackage rights for purposes of interchange over Union Pacific Railroad Company between milepost 489.41 to milepost 479.00 at Mount Pleasant, Texas, a total distance of approximately 76.0 miles in Hunt, Delta, Hopkins, Franklin and Titus Counties, Texas. The line for which the discontinuance exemption request was filed traverses United State Postal Service ZIP Codes 75455, 75493, 75457, 75478, 75482, 75433, 75428, 75401, and 75402, and includes the stations of Greenville (milepost 551), Commerce (milepost 537), Sulphur Springs (milepost 518) and Mount Vernon, Texas (milepost 495.3).

The NETEX Line is owned by Northeast Texas Rural Rail Transportation District ("NETEX") and is currently operated under written agreement between NETEX and BLR. NETEX retains a residual common carrier obligation to provide rail service on the NETEX Line after BLR's discontinuance of service. BLR does not believe the line contains federally granted rights-of-way. Any documentation in BLR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions specified in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by ____, 2019.

Any offer of financial assistance to subsidize continued rail service under 49 C.F.R. 1152.27(b)(2) will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner. Each offer must be accompanied by a \$1,800 filing fee. See 49 C.F.R. 1002.2(b)(25).

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. 1105.6(c) and from historic reporting requirements under 49 C.F.R. 1105.8(b). Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not available.

All filings in response to this notice must refer to STB Docket No. AB-1108 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Thomas J. Litwiler, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 800, Chicago, IL 60602. Replies are due ____, 2019.

Persons seeking further information concerning discontinuance procedures may contract the Board's Office of Public Assistance, Governmental Affairs, and Compliance

(OPAGAC) at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0291.

Board decision and notices are available on our website at "WWW.STB.GOV."

Allison C. David
Acting Director

EXHIBIT C

**SECOND AMENDED PETITION
AND REQUEST FOR DISCLOSURE**

NO. CV44014

THE BLACKLANDS RAILROAD,	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
	§	
v.	§	62nd JUDICIAL DISTRICT
	§	
NORTHEAST TEXAS RURAL RAIL	§	
TRANSPORTATION DISTRICT,	§	
<i>Defendant</i>	§	HOPKINS COUNTY, TEXAS

SECOND AMENDED PETITION AND REQUEST FOR DISCLOSURE

Plaintiff The Blacklands Railroad ("Blacklands") amends its Original Petition and sues Defendant Northeast Texas Rural Rail Transportation District ("NETEX") and alleges as follows:

DISCOVERY-CONTROL PLAN

1. Blacklands intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

RELIEF

2. Blacklands seeks monetary relief over \$1,000,000.00 in accordance with Texas Rule of Civil Procedure 47(c)(5).

JURISDICTION

3. This court has general jurisdiction over NETEX because NETEX has continuous and systematic contacts with Texas, in accordance with Texas Government Code §24.007 because the amount in controversy is over \$500.00, and in accordance with Texas Government Code §24.008 because district courts may hear and grant relief for legal and/or equitable claims.

VENUE

4. Venue is proper and mandatory in Hopkins County because NETEX is a Texas rural rail transportation district, a political subdivision under Texas Civil Practice and Remedies Code §15.0151(b). Texas Civil Practice and Remedies Code §15.0151(a) specifies that an action against a political subdivision located in a county with a population of 100,000 or less shall be brought in the county in which the political subdivision is located. NETEX owns track in five counties, but its principal place of business is located in Hopkins County, Texas at 1200 Enterprise Lane, Sulphur Springs, TX 75482.
5. Venue is also proper and mandatory in Hopkins County pursuant to Texas Civil Practice and Remedies Code § 15.017. Section 15.017 states that a suit for libel or slander, which includes business disparagement, shall be brought in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.
6. At least one—business disparagement—of the multiple causes of action in this Petition is governed by the mandatory venue provisions. All other causes of action in this Petition arise from the same transaction, occurrence, or series of transactions or occurrences and, therefore, shall be brought in this county in accordance with Texas Civil Practice and Remedies Code § 15.004.

REGISTERED AGENT FOR SERVICE OF PROCESS

7. Service is requested at this time. NETEX may be served by serving its Texas registered agent, Winford Dyer, 1504 Washington, P.O. Box 363 Commerce, Texas 75429.

8. In the event the registered agent cannot be served, BNSF is also serving NETEX at its business office as listed on its website c/o Sam Young, Chairman of the Board of NETEX, 208 Hwy. 37 S. Mt. Vernon, Texas 75457.

COUNT 1 – BREACH OF CONTRACT

9. On January 30, 2011, Blacklands and NETEX executed the Operating Agreement, which was and is a valid and enforceable written contract. The Operating Agreement provides that Blacklands is the exclusive operator of NETEX's eighty-six miles of right-of-way and track (from milepost 489.40 to milepost 575.40). Blacklands consistently provides service to NETEX by operating NETEX's right-of-way and tracks. Blacklands has complete control of the administration of railroad operations, including marketing/business development activities. NETEX merely has oversight of these operations.
10. Blacklands has substantially performed its contractual obligations under the Operating Agreement and has not materially breached the Operating Agreement.
11. In 2016, Blacklands and NETEX proposed that the city of Mount Vernon should apply for a federal grant to build a transload/container facility ("facility") along the NETEX-owned tracks. The facility would be an area in which freight would be transferred from one mode of transportation to another for further transportation. Once built, Blacklands would operate the facility, which is plainly within the exclusive right of Blacklands under the Operating Agreement.
12. In or about May 2018, NETEX materially breached the Operating Agreement. NETEX distributed a Request for Proposal ("RFP") to Blacklands' competitors to operate on NETEX-owned tracks. NETEX's distribution of the RFP to Blacklands' competitors, took marketing

and operating decisions away from Blacklands, notwithstanding Blacklands' exclusive rights to operate on the NETEX-owned tracks until January 19, 2021.

13. Furthermore, beginning November 2017 and thereafter, NETEX materially breached the Operating Agreement by refusing to perform under the Operating Agreement. NETEX pursued and continues to pursue endeavors to develop, market, and operate a proprietary facility along the NETEX-owned tracks notwithstanding NETEX's unambiguous, sole right to merely have oversight of Blacklands' unambiguous, exclusive right to operate a facility. This breach was a proprietary, *ultra vires* decision by NETEX.
14. NETEX's breach caused injury to Blacklands, which resulted in the following damages: expectancy interest, including lost profits, to operate the facility; expenditures Blacklands made in reliance on its contractual right to operate the facility; and nominal damages.
15. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.
16. Blacklands is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code Chapter 38 because this suit is for a breach of contract.

COUNT 2 – ANTICIPATORY REPUDIATION

17. Blacklands incorporates the allegations of paragraphs 9-11 hereinabove as if repeated here verbatim.
18. Beginning November 2017 and thereafter, NETEX materially breached the Operating Agreement by anticipatory repudiation. Notwithstanding Blacklands' unambiguous, exclusive right to operate a facility along the NETEX-owned tracks, NETEX pursued and continues to pursue endeavors to develop, market, and operate a facility along the same tracks. NETEX's

consistent actions to pursue operating a facility along the same tracks have displayed NETEX's fixed intention to abandon, renounce, and refuse to perform in accordance with the Operating Agreement. NETEX's fixed intention is not based on a genuine mistake or misunderstanding about matters of fact or law and was in the exercise of a proprietary function. Furthermore, it was an *ultra vires* decision by NETEX.

19. NETEX's anticipatory repudiation caused injury to Blacklands, resulting in the following damages: expectancy interest, including lost profits, to operate the facility; expenditures Blacklands made in reliance on its contractual right to operate the facility; and nominal damages.
20. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.
21. Blacklands is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code Chapter 38 because this suit is for a breach of contract.

COUNT 3 – BUSINESS DISPARAGEMENT

22. In or about May 2018, one or more authorized representatives of NETEX published, negligently or intentionally, disparaging oral statements about Blacklands' ability to remain in business and serve its customers. The statement was and is false because Blacklands has remained financially stable to remain in business and serve its customers and because NETEX has no reason to believe that Blacklands will not remain financially stable sufficiently to serve its customers.
23. Furthermore, in or about May 2018, NETEX published, negligently or intentionally, disparaging written and oral statements claiming Blacklands' inability to develop, market, and

- operate a facility. The statement was and is false because Blacklands has remained strategically, logistically, and financially able to develop, market, and operate a facility.
24. Additionally, in or about May 2018, NETEX published, negligently or intentionally, disparaging written and oral statements asserting that if Blacklands were to operate a facility, specific customers would refrain from conducting business there. The statement was and is false because no customer has indicated an intent to refrain from conducting business at the facility in the event Blacklands was to operate the facility.
25. These three statements created a substantially false and defamatory impression of Blacklands' financial position, knowledge, experience, and ability by omitting material facts and/or juxtaposing facts in a misleading manner. They were all *ultra vires* and proprietary function decisions of NETEX.
26. NETEX published the statements with malice because it knew the statements were false, acted with reckless disregard for whether the statements were true, acted with ill will, and/or intended to interfere with Blacklands' economic interests.
27. NETEX's false statements caused injury to Blacklands, which resulted in special damages, including the lost opportunity to operate the facility.
28. Blacklands further seeks to recover the expenses of counteracting NETEX's disparaging publications.
29. Blacklands also seeks to recover pre-judgment interest, post-judgment interest, and court costs.
30. Additionally, Blacklands is entitled to recover exemplary damages because NETEX published the statements with malice.

**COUNT 4 – STATUTORY TRADE SECRET MISAPPROPRIATION UNDER THE
TEXAS UNIFORM TRADE SECRETS ACT (TUTSA)**

31. Blacklands is in the business of operating as a common carrier by rail.
32. In the course of business, Blacklands has acquired and developed, and now owns business methods, customer information and lists, pricing data, supplier and vendor lists, and marketing information that are proprietary to Blacklands.
33. These business methods, customer information and lists, pricing data, supplier and vendor lists, and marketing information are trade secret because (1) Blacklands took reasonable efforts to keep the proprietary information secret and confidential and (2) the proprietary information has actual independent economic value to third parties because it is generally unknown and not readily ascertainable to third parties by proper means.
34. In or about May 2018, NETEX misappropriated Blacklands' trade secrets by disclosing and distributing Blacklands' customer information and lists, pricing data, and other confidential information to the public, including to Blacklands' competitors, customers, and potential customers, without Blacklands' consent. This action was not only clearly in the exercise of NETEX proprietary functions, but it was patently *ultra vires*.
35. At the time of the disclosure, NETEX knew or had reason to know the trade secrets were acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use. NETEX had access to this information solely for the purposes of obtaining state/federal funding. Blacklands and NETEX would work together on state/federal grant applications. These applications required Blacklands to submit customer information and lists and pricing data to demonstrate why funding was needed.
36. NETEX's misappropriation of Blacklands' trade secrets caused injury to Blacklands, which resulted in actual loss.

37. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, court costs, and reasonable attorney fees.
38. Additionally, Blacklands seeks to recover exemplary damages pursuant to Texas Civil Practice and Remedies Code § 134A.004.

COUNT 5 – COMMON-LAW TRADE SECRET MISAPPROPRIATION

39. Blacklands incorporates the allegations of paragraphs 31-33 hereinabove as if repeated here verbatim.
40. NETEX acquired knowledge of Blacklands' trade secrets through a confidential and/or contractual relationship with Blacklands that prohibited NETEX from using or disclosing Blacklands' trade secrets. NETEX had access to Blacklands' customer information, lists, pricing data, and other confidential information solely for the purposes of obtaining state/federal funding. Blacklands and NETEX would work together on state/federal grant applications. These applications required Blacklands to submit customer information and lists and pricing data to demonstrate why funding was needed.
41. In or about May 2018, NETEX misappropriated Blacklands' trade secrets by disclosing and distributing Blacklands' customer information and lists, pricing data, and other confidential information to the public, including to Blacklands' competitors, customers, and potential customers, without Blacklands' consent. This action was carried out in furtherance of NETEX proprietary intents and function.
42. NETEX's *ultra vires* misappropriation of Blacklands' trade secrets caused injury to Blacklands, which resulted in actual damages, including value lost by Blacklands and value gained by NETEX.

43. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.

COUNT 6 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

44. Blacklands has a valid contract with Union Pacific Railroad (“Union Pacific”) in which Blacklands has leased seven-and-nine-tenths (7.9) miles of Union Pacific-owned tracks to the east of NETEX-owned tracks.

45. NETEX knew of Blacklands’ contract with Union Pacific and Blacklands’ interest in the contract. On or about December 18, 2017 and February 1, 2018, NETEX sent e-mail correspondence to Blacklands regarding clarification of the terms of the lease agreement between Blacklands and Union Pacific.

46. On or about October 12, 2017 NETEX, without Blacklands’s permission or consent, sent e-mail correspondence to Union Pacific requesting Union Pacific to donate the Blacklands-leased tracks to NETEX. On or about November 1, 2017 NETEX again, without Blacklands permission or consent, sent e-mail correspondence to Union Pacific requesting Union Pacific to donate the Blacklands-leased tracks to NETEX. In January 2019, NETEX met with Union Pacific and requested Union Pacific to lease or sell the Blacklands-leased tracks to NETEX or allow NETEX to build tracks parallel to the Blacklands-leased tracks.

47. These e-mails to Union Pacific from NETEX and the meeting between Union Pacific and NETEX interfered with Blacklands’ contract with Union Pacific because NETEX has repeatedly sought ownership of the tracks that Blacklands has leased from Union Pacific and upon which Blacklands had and has the contractual right to operate.

48. NETEX willfully and intentionally interfered with Blacklands’ contract with Union Pacific,

which made Blacklands' performance more burdensome and difficult. This *ultra vires* action furthered no governmental purpose and was purely proprietary in nature.

49. NETEX's interference proximately caused injury to Blacklands, which resulted in damages for economic injury.

50. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.

51. Additionally, Blacklands seeks to recover exemplary damages because NETEX willfully interfered with Blacklands' contract with Union Pacific.

COUNT 7 – TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS WITH IOWA NORTHERN

52. Beginning in 2017, Iowa Northern Railway ("Iowa Northern") was a potential investor and/or partner in Blacklands.

53. In November 2017, NETEX, Blacklands, and Iowa Northern held a joint meeting at which Iowa Northern informed NETEX that it and Blacklands would enter a partnership or similar business arrangement whereby Iowa Northern would invest in Blacklands's operations in exchange for consideration, assuming NETEX would not interfere. Iowa Northern asked NETEX what NETEX could contractually do in terms of selling, leasing, or conveying the railroad property.

54. Iowa Northern decided to proceed with its plan of investing in and/or partnering with Blacklands.

55. In or about December 2017, Blacklands and Iowa Northern signed a confidentiality agreement, and then Blacklands began providing Iowa Northern material information necessary to create a partnership.

56. In or about January 2018, Iowa Northern's marketing team visited Blacklands to discuss more material information necessary to create a partnership, including customer information.
57. In or about May 2018, NETEX distributed a RFP to Blacklands' competitors to operate on NETEX-owned tracks, notwithstanding Blacklands' exclusive rights to operate on the NETEX-owned tracks until January 19, 2021. Attached to the RFP, NETEX distributed Blacklands' trade secrets—customer information and lists, pricing data, and other confidential information—to Blacklands' competitors without Blacklands' consent. Iowa Northern was a recipient of the RFP. These *ultra vires* actions were done in furtherance of NETEX's proprietary functions.
58. NETEX's distribution of the RFP and Blacklands' trade secrets to Blacklands' competitors and its overall hostile interactions with Blacklands caused Iowa Northern to question NETEX's intent to breach and/or cancel the Operating Agreement with Blacklands, which ultimately caused Iowa Northern to withdraw its interests as an investor in and/or partner with Blacklands.
59. Blacklands and Iowa Northern were mutually prepared, determined, and in the midst of proceeding with due diligence to enter into an investment and/or partnership contract.
60. NETEX knew of Blacklands' prospective contract with Iowa Northern since November 2017, but willfully and intentionally interfered with it because it desired to bring about the interference or at least knew its interference was certain or substantially certain to occur as a result of its conduct. NETEX's interference was more than an incidental result because it knew Iowa Northern's intent to invest in Blacklands' operations, and yet intentionally sought out Blacklands' competitors to operate its tracks. These actions were *ultra vires* and were part of NETEX's exercise of its proprietary functions.
61. NETEX's actions were independently tortious, regardless of the effect those actions had on

Blacklands' prospective contract with Iowa Northern, because it misappropriated Blacklands' trade secrets to Blacklands' competitors.

62. Blacklands suffered actual loss because NETEX's interference prevented Blacklands from entering into the prospective contract with Iowa Northern because Iowa Northern withdrew its interests as an investor in and/or partner with Blacklands.
63. NETEX's interference proximately caused injury to Blacklands, which resulted in damages for economic injury, including lost profits.
64. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.
65. Additionally, Blacklands seeks to recover exemplary damages because NETEX willfully interfered with Blacklands' prospective contract with Iowa Northern.

COUNT 8 – TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS WITH THE EDC

66. In 2016, Blacklands and NETEX proposed that the city of Mount Vernon should apply for a federal grant to build a facility along the NETEX-owned tracks. The facility would be an area in which freight would be transferred from one mode of transportation to another for further transportation. Once built, Blacklands would operate the facility, which is plainly within the exclusive right of Blacklands under the Operating Agreement.
67. In or about January 2018, the Mount Vernon Economic Development Corporation ("EDC") announced that it received the United States Economic Development Administration Grant of \$1.5 million to build a facility along NETEX-owned tracks in Mount Vernon.
68. In or about May 2018, NETEX's representative sent the EDC a contract to operate and/or manage the facility, which caused the EDC concerns and confusion. Then, the EDC formally

requested Blacklands to operate the facility and Blacklands agreed.

69. In or about May 2018, NETEX attempted to block the EDC from building the facility, unless NETEX and Franklin County are involved to the exclusion of Blacklands. Irrespective of any attempt to block that facility, NETEX has proceeded with plans to build a separate proprietary facility in which Blacklands would not be the “exclusive operator” as contemplated by the Operating Agreement instead of proceeding with the planned facility.
70. In or about May 2018, NETEX distributed a RFP to Blacklands’ competitors to operate on NETEX-owned tracks, notwithstanding Blacklands’ exclusive rights to operate on the NETEX-owned tracks until January 19, 2021. Attached to the RFP, NETEX distributed Blacklands’ trade secrets—customer information and lists, pricing data, and other confidential information—to Blacklands’ competitors without Blacklands’ consent.
71. NETEX’s distribution of the RFP and Blacklands’ trade secrets to Blacklands’ competitors and its overall hostile interactions with Blacklands and the EDC caused the EDC to reconsider and likely withdraw its plan to build the facility because the EDC was and is concerned that NETEX will build a separate proprietary facility along the same tracks. Due to the short segment of track, however, it was and is impossible for there to be two profiting facilities along the same track.
72. Blacklands and the EDC were mutually prepared, determined, and in the midst of proceeding with due diligence to enter into a contract under which the EDC would build the facility and Blacklands would operate the facility.
73. NETEX knew of Blacklands’ prospective contract with the EDC since 2016, but willfully and intentionally interfered with it. NETEX’s interference was more than an incidental result because it knew the EDC wanted to build the facility and have Blacklands be the exclusive

operator of the facility, and yet it continued to pursue building and operating a different facility along the same tracks. These actions were *ultra vires* and proprietary in nature.

74. NETEX's actions were independently tortious, regardless of the effect those actions had on Blacklands' prospective contract with the EDC, because it misappropriated Blacklands' trade secrets to Blacklands' competitors.

75. Blacklands suffered actual loss because NETEX's interference prevented Blacklands from entering into the prospective contract with the EDC because the EDC will now likely withdraw or substantially alter, to Blacklands's detriment, its plan to build the facility.

76. NETEX's interference proximately caused injury to Blacklands, which resulted in damages for economic injury, including lost profits.

77. Blacklands further seeks to recover pre-judgment interest, post-judgment interest, and court costs.

78. Additionally, Blacklands seeks to recover exemplary damages because NETEX willfully interfered with Blacklands' prospective contract with the EDC.

COUNT 9 – VIOLATION OF 49 U.S.C. §11904

77. NETEX has, both as a part of its RFP and otherwise, disclosed information about the nature, kind, quantity, destination, pricing, and routing of property transported by Blacklands to persons unauthorized to receive such information, including, but not limited to, Blacklands' competitors, customers, and potential customers.

78. NETEX has also, both as a part of its RFP and otherwise, disclosed information about the contents of its contract with Blacklands to persons unauthorized to receive such information, including, but not limited to, Blacklands' competitors, customers, and potential customers.

These *ultra vires* actions in no way fulfilled any governmental function of NETEX.

79. NETEX's unlawful disclosures of this information are in direct contravention of 49 U.S.C. §11904.

80. NETEX's violations of 49 U.S.C. §11904 have damaged Blacklands by unlawfully and unfairly disclosing confidential and protected information such that Blacklands has lost negotiating power and otherwise suffered substantial monetary damages.

PRAYER

81. Blacklands therefore prays that it be awarded a judgment against NETEX for compensatory damages, pre-judgment interest, post-judgment interest, court costs, attorney's fees, exemplary damages, and all other relief to which it may be entitled.

JURY DEMAND

82. Blacklands demands a jury trial and tendered the appropriate fee with its Original Petition.

REQUEST FOR DISCLOSURE

83. Blacklands requests that NETEX disclose, within fifty days of service of its Second Amended Petition and request, the information and material described in Texas Rule of Civil Procedure 194.2.

/s/ Tania Sethi

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COUNSEL FOR PLAINTIFF

THE BLACKLANDS RAILROAD

EXHIBIT D

NETEX LINE TRAFFIC VOLUMES

Customer	2015	2016	2017	2018	1-1 to 9-30 2019	Forecast	Commodity
Aaron Ranch				1	1		hay
Cellecore	16	14	11	15	12	14	plastics
Custom Comm	439	346	385	551	413	550	plastics
Legacy Housing	2	17	9	16			lumber
MG Polymer	7	226	187				plastics
Matrix	2						plastics
Marco Polo		1					plastics
Pilgrim's	258	198	74				chicken feed
Pleasant Oil		1					lube oil
Oncor	1						transformer
Quanex	69	44					plastics
Rice			12				grain
Vulcan Materials		42					asphalt
Wolf City Grain	8						grain
Feeders	187	230	152	185	135	189	grain
GV CoOp	41	28	1	5	1	19	grain
Martinek	52	15	12	14	4	23	grain
SS CoOp	287	421	481	287	169	369	grain
Fleischmann's	76	77	75	47	43	69	lime/starch
FSTI	88	105	40	70	25	76	costic soda
New Phoenix	124				4	25	scrap
Pine Mtn	91	122	119	136	90	117	wax
Total	1748	1887	1558	1327	897	1451	

Color Code					
	: Transload				
	: Direct KCS Access				
	Solely rail served by BLR, but may use trucks				

EXHIBIT E

BLR FINANCIAL RESULTS

Jan - Dec 15

Ordinary Income/Expense

Income

400 · Construction.	162,935.93
401 · Freight Revenue Car Contract	988,092.40
410 · Demurrage.	98,168.25
429 · Rail Lease	15,000.00
431 · Annual RR Xng Program	9,914.00
432 · Excursions - Rail	240.00
433 · Storage Fees	351,401.85
436 · Switching Charges	437,575.00
439 · Insurance Claims	6,758.89
442 · Other Income	325,000.00

Total Income 2,395,086.32

Gross Profit 2,395,086.32

Expense

Freight Operations	7,351.34
500 · Wages - RR Retirement	63,958.60
505 · Wages - Other	482,133.35
575 · Payroll Taxes	49,637.97
585 · Medical Exam	10,304.33
601 · Quarterly Lease - Rail Line	77,420.47
610 · Insurance	144,750.50
630 · Real Estate Taxes	10,450.96
631 · Texas State Franchise Tax	1,521.30
633 · License & Permits	205.88
635 · Losses, Claims - Other	232,356.10
649 · Fuel	191,003.06
662 · Locomotive Lease	122,921.00
665 · Locomotive Repair & Maintenance	66,812.63
669 · Car Repairs	1,404.74
670 · Locomotive Inspection	21,499.55
671 · Contract Labor - Freight	110.00
685 · Supplies	46,417.24
700 · Equipment Lease/Rentals	37,571.66
705 · Equipment Repairs	572.40
710 · Vehicle Repair & Maintenance	23,481.02
715 · Car Hire Expense	81,429.26
720 · Signal Utilities	23,645.11
725 · Signal Maintenance	55,018.26
730 · Track Maintenance	720,627.59
745 · Depreciation Expense.	57,331.96
750 · Job Training	3,837.00
752 · Office Equip Repair/Maint	194.92
753 · Postage	6,014.34
755 · Office Supplies	2,644.69

757 · Bank Service Charges	2,072.95
760 · Rent - Other	22,750.00
765 · Accounting Fees	26,981.50
767 · Commissions	19,098.00
770 · Telephone, Computer Expense	11,317.31
771 · Utilities - 641 Church St.	5,705.12
772 · Utilities - Transload Site(s)	386.98
775 · Legal Fees	3,046.00
780 · Travel	12,455.74
781 · Petty Cash.	200.00
785 · Entertainment	14.13
786 · Meals	2,174.05
790 · Advertising	4,993.35
795 · Dues & Subscriptions	2,486.21
815 · Interest Expense	33,863.75
820 · Contributions	2,411.81
825 · Public Relations	65.93
840 · Freight/Delivery Expense	19,468.18
890 · Miscellaneous Expenses	-4,620.91
891 · Misc. Clearing Account	206.01
900 · Construction Expenses, Other	8,218.00
Total Expense	<u>2,715,921.34</u>
Net Ordinary Income	-320,835.02
Other Income/Expense	
Other Income	
440 · Reimbursement	296,648.96
445 · Clearing Accounts	-806.78
Total Other Income	<u>295,842.18</u>
Other Expense	
450 · Petty Cash	1,369.00
Total Other Expense	<u>1,369.00</u>
Net Other Income	<u>294,473.18</u>
Net Income	<u><u>-26,361.84</u></u>

Blacklands Railroad Inc.
Profit & Loss
January through December 2016
Jan - Dec 16

Ordinary Income/Expense

Income

400 · Construction.	84,423.52
401 · Freight Revenue Car Contract	1,012,178.03
410 · Demurrage.	25,191.85
429 · Rail Lease	4,750.00
431 · Annual RR Xng Program	9,914.00
432 · Excursions - Rail	221.90
433 · Storage Fees	471,002.10
436 · Switching Charges	132,300.00
442 · Other Income	217,262.50

Total Income

1,957,243.90

Gross Profit

1,957,243.90

Expense

Freight Operations	12,623.27
500 · Wages - RR Retirement	159,891.15
505 · Wages - Other	434,151.77
575 · Payroll Taxes	13,911.21
585 · Medical Exam	7,560.06
601 · Quarterly Lease - Rail Line	84,704.84
610 · Insurance	217,828.32
630 · Real Estate Taxes	9,807.13
631 · Texas State Franchise Tax	1,214.29
633 · License & Permits	321.31
635 · Losses, Claims - Other	127,981.19
649 · Fuel	142,290.52
662 · Locomotive Lease	136,880.00
665 · Locomotive Repair & Maintenance	88,427.88
669 · Car Repairs	448.06
66900 · Reconciliation Discrepancies	254.09
670 · Locomotive Inspection	12,368.30
671 · Contract Labor - Freight	-3,583.00
675 · Radio Parts/Repair	241.29
685 · Supplies	47,173.23
700 · Equipment Lease/Rentals	14,267.99
705 · Equipment Repairs	1,232.85
710 · Vehicle Repair & Maintenance	26,015.90
715 · Car Hire Expense	48,148.55
720 · Signal Utilities	17,079.24
725 · Signal Maintenance	27,737.79
730 · Track Maintenance	531,190.61
745 · Depreciation Expense.	55,900.92
750 · Job Training	2,313.17
752 · Office Equip Repair/Maint	4,520.97
753 · Postage	1,184.52

Blacklands Railroad Inc.
Profit & Loss
January through December 2016

	<u>Jan - Dec 16</u>
755 · Office Supplies	1,530.44
757 · Bank Service Charges	212.31
760 · Rent - Other	21,000.00
765 · Accounting Fees	19,708.00
767 · Commissions	30,759.55
770 · Telephone, Computer Expense	14,516.88
771 · Utilities - 641 Church St.	5,836.62
772 · Utilities - Transload Site(s)	421.18
775 · Legal Fees	2,420.00
780 · Travel	8,036.18
786 · Meals	1,493.77
790 · Advertising	5,658.78
795 · Dues & Subscriptions	3,568.69
815 · Interest Expense	30,394.18
820 · Contributions	1,737.28
830 · Amortization Expense.	80.25
840 · Freight/Delivery Expense	20,697.44
890 · Miscellaneous Expenses	35,921.08
Total Expense	<u>2,428,080.05</u>
Net Ordinary Income	-470,836.15
Other Income/Expense	
Other Income	
440 · Reimbursement	-89,856.62
445 · Clearing Accounts	-7,435.20
Total Other Income	<u>-97,291.82</u>
Other Expense	
450 · Petty Cash	921.00
Total Other Expense	<u>921.00</u>
Net Other Income	<u>-98,212.82</u>
Net Income	<u><u>-569,048.97</u></u>

Jan - Dec 17

Ordinary Income/Expense

Income

400 · Construction.	10,685.28
401 · Freight Revenue Car Contract	774,903.81
410 · Demurrage.	10,522.50
429 · Rail Lease	1,750.00
431 · Annual RR Xng Program	9,496.21
432 · Excursions - Rail	252.86
433 · Storage Fees	602,970.55
436 · Switching Charges	49,670.00
439 · Insurance Claims	68,366.39
443 · Car repair billing	75,932.69

Total Income	1,604,550.29
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Gross Profit	1,604,550.29
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Expense

Freight Operations	16,301.46
500 · Wages - RR Retirement	190,680.76
505 · Wages - Other	431,561.61
575 · Payroll Taxes	17,645.22
585 · Medical Exam	9,317.50
601 · Quarterly Lease - Rail Line	77,097.65
610 · Insurance	165,896.98
630 · Real Estate Taxes	11,834.22
631 · Texas State Franchise Tax	2,152.66
633 · License & Permits	379.88
635 · Losses, Claims - Other	226,322.87
649 · Fuel	132,310.51
662 · Locomotive Lease	106,080.00
665 · Locomotive Repair & Maintenance	52,020.31
66900 · Reconciliation Discrepancies	-2,463.14
670 · Locomotive Inspection	1,554.97
675 · Radio Parts/Repair	1,178.32
685 · Supplies	85,194.86
700 · Equipment Lease/Rentals	29,761.72
705 · Equipment Repairs	757.75
710 · Vehicle Repair & Maintenance	46,465.61
715 · Car Hire Expense	33,119.75
720 · Signal Utilities	17,607.02
725 · Signal Maintenance	61,254.90
730 · Track Maintenance	534,372.01
745 · Depreciation Expense.	55,900.92
750 · Job Training	1,974.40
753 · Postage	1,207.27
755 · Office Supplies	1,340.71
757 · Bank Service Charges	1,661.10

760 · Rent - Other	21,000.00
765 · Accounting Fees	3,560.00
767 · Commissions	8,540.00
770 · Telephone, Computer Expense	14,610.13
771 · Utilities - 641 Church St.	6,088.77
772 · Utilities - Transload Site(s)	778.26
780 · Travel	27,305.38
781 · Petty Cash.	700.00
786 · Meals	4,063.20
790 · Advertising	2,041.01
795 · Dues & Subscriptions	10,795.44
815 · Interest Expense	25,424.99
820 · Contributions	2,339.94
840 · Freight/Delivery Expense	5,384.90
890 · Miscellaneous Expenses	22,968.63
Total Expense	<u>2,466,090.45</u>
Net Ordinary Income	-861,540.16
Other Income/Expense	
Other Income	
440 · Reimbursement	-3,704.62
445 · Clearing Accounts	5,735.46
Total Other Income	<u>2,030.84</u>
Other Expense	
450 · Petty Cash	-20.31
Total Other Expense	<u>-20.31</u>
Net Other Income	<u>2,051.15</u>
Net Income	<u><u>-859,489.01</u></u>

Jan - Dec 18

Ordinary Income/Expense

Income

400 · Construction.	23,872.49
401 · Freight Revenue Car Contract	798,043.98
410 · Demurrage.	20,570.00
415 · 45G Tax Credit	297,462.50
429 · Rail Lease	4,000.00
431 · Annual RR Xng Program	9,914.00
433 · Storage Fees	344,113.80
436 · Switching Charges	288,720.00
442 · Other Income	11,921.70
443 · Car repair billing	6,833.86
49900 · Uncategorized Income	25.00

Total Income

1,805,477.33

Gross Profit

1,805,477.33

Expense

Freight Operations	7,029.81
500 · Wages - RR Retirement	250,957.46
505 · Wages - Other	720,511.03
575 · Payroll Taxes	17,918.02
585 · Medical Exam	9,772.76
601 · Quarterly Lease - Rail Line	47,709.15
602 · Lease Storage	0.00
610 · Insurance	245,425.08
630 · Real Estate Taxes	14,948.51
631 · Texas State Franchise Tax	5,130.01
633 · License & Permits	390.33
635 · Losses, Claims - Other	75,820.37
649 · Fuel	178,843.05
662 · Locomotive Lease	96,270.00
665 · Locomotive Repair & Maintenance	57,506.93
669 · Car Repairs	618.59
66900 · Reconciliation Discrepancies	-1,689.15
670 · Locomotive Inspection	1,651.11
675 · Radio Parts/Repair	1,080.93
685 · Supplies	80,134.52
700 · Equipment Lease/Rentals	8,993.64
710 · Vehicle Repair & Maintenance	19,839.36
715 · Car Hire Expense	41,416.03
720 · Signal Utilities	17,849.91
725 · Signal Maintenance	54,662.20
730 · Track Maintenance	473,061.87
745 · Depreciation Expense.	55,900.92
750 · Job Training	1,708.00
753 · Postage	1,385.64

755 · Office Supplies	2,559.44
757 · Bank Service Charges	1,365.34
760 · Rent - Other	19,250.00
765 · Accounting Fees	12,645.00
767 · Commissions	42,364.88
770 · Telephone, Computer Expense	12,534.32
771 · Utilities - 641 Church St.	7,968.19
772 · Utilities - Transload Site(s)	509.26
775 · Legal Fees	29,766.27
780 · Travel	41,689.35
786 · Meals	5,630.97
790 · Advertising	4,861.72
795 · Dues & Subscriptions	10,566.16
815 · Interest Expense	22,163.04
820 · Contributions	1,504.72
840 · Freight/Delivery Expense	5,312.81
890 · Miscellaneous Expenses	16,365.73
900 · Construction Expenses, Other	4,625.00
Total Expense	<u>2,726,528.28</u>
Net Ordinary Income	-921,050.95
Other Income/Expense	
Other Income	
440 · Reimbursement	-1,685.81
445 · Clearing Accounts	-11,107.60
Total Other Income	<u>-12,793.41</u>
Other Expense	
450 · Petty Cash	-265.56
Total Other Expense	<u>-265.56</u>
Net Other Income	<u>-12,527.85</u>
Net Income	<u><u>-933,578.80</u></u>

Blacklands Railroad Inc.
Custom Summary Report
January through August 2019
Jan - Aug 19

Ordinary Income/Expense

Income

400 • Construction.	6,881.56
401 • Freight Revenue Car Contract	367,202.32
410 • Demurrage.	12,730.94
433 • Storage Fees	39,815.00
434 • Unloading Fees	19,500.00
436 • Switching Charges	74,790.00
443 • Car repair billing	17,376.86

Total Income 538,296.68

Expense

Freight Operations	4,002.02
448 • ODESSA Clearing Accounts	0.00
500 • Wages - RR Retirement	86,819.11
505 • Wages - Other	405,243.00
528 • Parts & Materials	563.75
575 • Payroll Taxes	7,409.32
585 • Medical Exam	1,580.50
601 • Quarterly Lease - Rail Line	28,022.53
610 • Insurance	134,288.06
630 • Real Estate Taxes	56.38
631 • Texas State Franchise Tax	1,929.47
633 • License & Permits	97.25
634 • Taxes - Other	1,085.20
635 • Losses, Claims - Other	28,676.35
649 • Fuel	93,196.20
662 • Locomotive Lease	50,036.00
665 • Locomotive Repair & Maintenance	38,807.49
675 • Radio Parts/Repair	15.36
685 • Supplies	30,627.50
700 • Equipment Lease/Rentals	237.07
705 • Equipment Repairs	135.00
710 • Vehicle Repair & Maintenance	15,917.52
715 • Car Hire Expense	30,246.01
720 • Signal Utilities	2,794.86
725 • Signal Maintenance	33,714.37
730 • Track Maintenance	217,160.32
745 • Depreciation Expense.	64,351.36
750 • Job Training	400.00
753 • Postage	2,821.95
755 • Office Supplies	4,405.27
757 • Bank Service Charges	997.88
760 • Rent - Other	15,750.00
765 • Accounting Fees	11,895.74
770 • Telephone, Computer Expense	8,063.19

Blacklands Railroad Inc.
Custom Summary Report
January through August 2019

	<u>Jan - Aug 19</u>
771 - Utilities - 641 Church St.	4,731.72
772 - Utilities - Transload Site(s)	615.06
775 - Legal Fees	8,736.00
780 - Travel	3,769.21
786 - Meals	5,583.40
790 - Advertising	1,590.23
795 - Dues & Subscriptions	2,749.43
815 - Interest Expense	24,746.78
820 - Contributions	422.00
840 - Freight/Delivery Expense	763.68
890 - Miscellaneous Expenses	26,144.98
891 - Misc. Clearing Account	-1,358.00
Total Expense	<u>1,399,840.52</u>
Net Ordinary Income	<u>-861,543.84</u>
Other Income/Expense	
Other Income	
445 - Clearing Accounts	-351.94
Total Other Income	<u>-351.94</u>
Other Expense	
450 - Petty Cash	1,110.00
Total Other Expense	<u>1,110.00</u>
Net Other Income	<u>-1,461.94</u>
Net Income	<u><u>-863,005.78</u></u>

EXHIBIT F

PROJECTED EXPENSES FOR 2020
OPERATION OF LEASED SEGMENT

Jan - Dec 2020

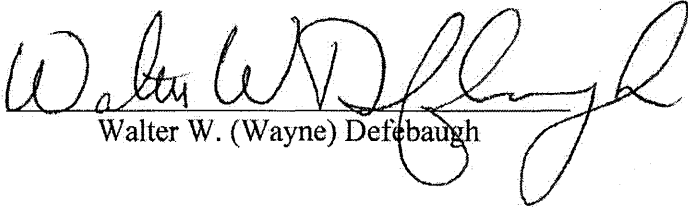
**Projected Expenses after
Discontinuance**

Freight Operations	1,082.65
500 · Wages - RR Retirement	16,637.20
505 · Wages - Other	51,708.94
575 · Payroll Taxes	2,477.81
585 · Medical Exam	923.87
601 · Quarterly Lease - Rail Line	7,173.30
610 · Insurance	19,347.52
630 · Real Estate Taxes	495.92
631 · Texas State Franchise Tax	250.46
633 · License & Permits	32.44
635 · Losses, Claims - Other	16,562.01
649 · Fuel	16,111.18
662 · Locomotive Lease	11,553.78
665 · Locomotive Repair & Maintenance	6,619.19
669 · Car Repairs	82.38
66900 · Reconciliation Discrepancies	299.19
670 · Locomotive Inspection	926.85
675 · Radio Parts/Repair	83.35
685 · Supplies	6,473.00
700 · Equipment Lease/Rentals	2,264.88
710 · Vehicle Repair & Maintenance	2,895.05
715 · Car Hire Expense	5,102.84
720 · Signal Utilities	1,904.53
725 · Signal Maintenance	4,966.83
730 · Track Maintenance	56,481.30
745 · Depreciation Expense.	5,625.87
750 · Job Training	245.81
753 · Postage	244.79
755 · Office Supplies	201.88
757 · Bank Service Charges	132.79
760 · Rent - Other	2,100.00
765 · Accounting Fees	1,572.36
767 · Commissions	2,519.06
770 · Telephone, Computer Expense	1,324.47
771 · Utilities - 641 Church St.	639.97
772 · Utilities - Transload Site(s)	52.39
775 · Legal Fees	1,174.41
780 · Travel	2,237.17
786 · Meals	334.05
790 · Advertising	438.87
795 · Dues & Subscriptions	991.47
815 · Interest Expense	2,796.15
820 · Contributions	199.84

	840 · Freight/Delivery Expense	1,271.58
	890 · Miscellaneous Expenses	1,765.86
	900 · Construction Expenses, Other	642.15
Total Expense		<u>258,967.41</u>

VERIFICATION

I, Wayne Defebaugh, verify under penalty of perjury that I am President of The Blacklands Railroad, that I have read the foregoing Petition for Exemption and know the facts asserted therein with respect to The Blacklands Railroad, and that the same are true as stated.


Walter W. (Wayne) Defebaugh

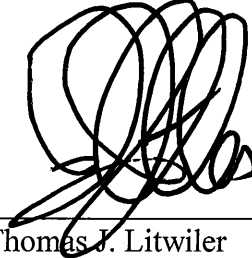
Dated: October 24, 2019

CERTIFICATE OF PUBLICATION

I hereby certify that my staff contacted the following newspapers of general circulation for the counties in which the NETEX Line identified in this docket is located, and arranged for the publication of the Notice of Intent to Discontinue Service, in the form attached hereto, pursuant to 49 C.F.R. § 1105.12, on the following publication dates:

Hunt County, TX
Hopkins County, TX
Delta County, TX
Franklin County, TX
Titus County, TX

- Greenville Herald-Banner, published September 17, 2019
- Sulphur Springs News-Telegram, published September 19, 2019
- Cooper Review, published September 19, 2019
- Mt. Vernon Optic-Herald, published September 19, 2019
- Mt. Pleasant Tribune, September 18, 2019

A handwritten signature in black ink, appearing to read 'Thomas J. Litwiler', is written over a horizontal line.

Thomas J. Litwiler

Dated: October 25, 2019

**Notice of Intent to Discontinue Rail Service --
The Blacklands Railroad**

The Blacklands Railroad (BLR) gives notice that on or about September 16, 2019, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S. 10903, *et seq.* permitting the discontinuance of BLR's operating rights over a line of railroad owned by Northeast Texas Rural Rail Transportation District ("NETEX") extending from Greenville (Simtrott) Texas, at or near milepost 555.0 to Winfield, Texas at or near milepost 489.41, along with overhead trackage rights over Union Pacific Railroad Company ("UP") between Winfield at or near milepost 489.41 to a UP interchange at Mount Pleasant, Texas at or near milepost 479.0, a total distance of approximately 76.0 route miles (the "NETEX Line"), traversing United States Postal Service ZIP Codes 75455, 75493, 75457, 75478, 75482, 75433, 75428, 75401, and 75402 in Hunt, Delta, Hopkins, Franklin and Titus Counties, Texas. NETEX is a common carrier by rail over the entirety of the NETEX Line and retains the residual common carrier obligation to provide rail service to customers after BLR's discontinuance of service. Separately, BLR leases directly from UP a portion of the NETEX Line between approximately milepost 489.40 and milepost 481.5. Those operations are not involved in this docket, and will be unaffected by the discontinuance. The proceeding will be docketed as AB-1108 (Sub-No. 1X).

The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements. 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Office of Environmental Analysis, Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0291.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 C.F.R. 1104.1(a) and 1104.3(a)], and one copy must be served on BLR's representative [see 49 C.F.R. 1104.12(a)]. Questions regarding offers of financial assistance or the Board's discontinuance procedures may be directed to the Board's Office of Public Assistance, Governmental Affairs & Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on BLR's representative at the following address:

Thomas J. Litwiler, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, a copy of the foregoing **Petition for Exemption of The Blacklands Railroad** was served by first class mail, postage prepaid, upon the agencies specified in 49 C.F.R. § 1152.50(d)(1) and all known customers on the line to be abandoned, as follows:

Mr. Peter Espy
Director, Rail Division
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701-2483

Ms. Vicki Christiansen
Chief, Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-1111

National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, D.C. 20013-7127

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

and all known customers on the NETEX Line to be discontinued, as follows:

Aaron Ranch
5983 County Road 4400
Commerce, TX 75428

Legacy Housing
4801 Mark IV Parkway
Ft. Worth, TX 76106

Northeast Texas Farmers Coop (formerly Greenville CoOp)
3000 Bois' D Arc
Greenville, TX 75401

Cellocore
165 CMH Rd.
Sulphur Springs, TX 75482

Custom Commodities
P.O. Box 190
Gilmer, TX 75644

Feeders Supply
P.O. Box 792
Sulphur Springs, TX 75483

Martinek Grain
3001 Boise D' Arc
Greenville, TX 75401

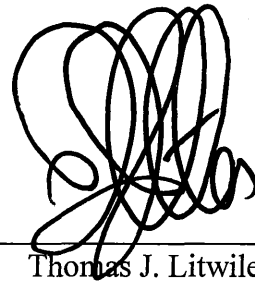
Sulphur Springs CoOp
P.O. Box 489
Sulphur Springs, TX 75483

AB Mauri North America (formerly Fleischmann's)
6311 Industrial Blvd.
Greenville, TX 75402

FSTI
6300 Bridge Point Parkway
STE #1 – 200
Austin, TX 78730

Royal Oak (formerly Pine Mtn)
7000 Industrial Blvd.
Greenville, TX 75402

New Phoenix Metals
6400 Industrial Drive
Greeneville, TX 75402



Thomas J. Litwiler