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LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

November 25, 2002



By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. NOR-42076, *Albany & Eastern Railroad Company v. The Burlington Northern and Santa Fe Railway Company*

Dear Mr. Williams:

Enclosed please find an original and 2 copies of Complaint To Commence Arbitration Under 49 C.F.R. Part 1108.7(a), for filing with the Board in the above referenced matter.

Also enclosed is a check for \$75 to cover the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Thomas F. McFarland

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Defendant.

Docket No. NOR-42076

ALBANY & EASTERN RAILROAD COMPANY
MIKE ROOT, President
 1784 South Main Street
 Lebanon, OR 97355
 (541) 259-6470

Complainant

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SURFACE TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: November 26, 2002

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NOV 26 2002

**Part of
Public Record**

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Docket No. NOR-42076

-3-

The contractual interchange restriction was imposed in an agreement whereby BNSF sold to AERC 17.4 miles of rail line between Lebanon and Foster, Oregon. *See Albany & Eastern Railroad Company -- Acq. and Oper. Exempt. -- The Burlington Northern and Santa Fe Railway Company*, 1998 STB LEXIS 309 (Finance Docket No. 33567, notice served May 21, 1998). The rail traffic at issue originates on that rail line at Bauman, Oregon and at Sweet Home, Oregon.

The impetus for the complaint for arbitration is a Railroad Industry Agreement (RIA) between Large Railroads (i.e., Class 1 rail carriers, including BNSF) and Small Railroads (i.e., Class 2 and Class 3 rail carriers, including AERC in the latter category), dated September 10, 1998. A copy of the RIA is attached to this Complaint as Appendix 1. The rate aspects of the RIA were approved by the Board in *Assn. of American Railroads, et al. -- Agreement -- 49 U.S.C. 10706*, 3 STB 910 (1998). As here pertinent, Section VI of the RIA headed "Arbitration" provides as follows:

The participating Large and Small Railroads agree that if they have a dispute arising under Section () (IV)(3) - "Paper Barriers and New Routes" . . . - of this Agreement that cannot be resolved through discussion and negotiation between the parties involved, the parties will submit any unresolved issues to arbitration under the auspices of the STB (Ex Parte No. 560). Such arbitration will be based on the policies and principles of those sections of this Agreement, and to the extent applicable, the associated examples and exhibits, and will be binding on the parties.

Reference to Ex Parte No. 560 in the above provision of the RIA is to the Board's decision in that proceeding, i.e., *Arbitration of Disputes Subject to Stat. Juris. of the STB*, 2 STB 564 (1997). The Board there adopted arbitration rules codified at 49 C.F.R. Part 1108. A copy of those rules is attached to this Complaint as Appendix 2. Thus, participants in the RIA,

including BNSF and AERC, have agreed that disputes arising under the Paper Barrier provisions of the RIA are to be arbitrated pursuant to the rules contained in 49 C.F.R. Part 1108.

The dispute raised in this Complaint arises under Section IV(3) of the RIA, i.e., the Paper Barrier provisions. Specifically, the dispute falls within Example 3 of Exhibit C of the RIA, i.e.:

A legitimate paper barrier (see Section III[6]) resulting from a line sale or lease by Large Railroad "A" to Short Line "B" which restricts "B" from interchanging with Railroad "C" will be suspended to allow "B" to interchange New Traffic with "C" without penalty if, after request by "B", "A" does not establish a competitive package (rates, service and car supply) and "C" does.

In addition, the interchange with "C" must not cause a congestion problem.

For its complaint in this matter, AERC alleges as follows:

1. A paper barrier imposed in BNSF's line sale that created AERC prohibits AERC from interchanging traffic with UP.
2. Traffic originated by AERC resulting from installation of a new wood planer at Bauman, Oregon destined to locations served solely by UP is new traffic within the meaning of the RIA, i.e.:
 - A. That traffic was not moving by rail at the time of BNSF's line sale to AERC;
 - B. That traffic is not now moving via BNSF;
 - C. BNSF would not be negatively impacted unreasonably if AERC were to interchange that traffic with UP.
3. Traffic originated by AERC resulting from reactivation of a dormant sawmill at Sweet Home, Oregon destined to locations served solely by UP is new traffic within the meaning of the RIA, i.e.:

- A. That traffic was not moving by rail at the time of BNSF's line sale to AERC;
 - B. That traffic is not now moving via BNSF;
 - C. BNSF would not be negatively impacted unreasonably if AERC were to interchange that traffic with UP.
4. AERC requested BNSF to establish a competitive package of rates, service and car supply for the new traffic identified in Paragraphs 2 and 3 of this Complaint, or to waive its interchange restriction as to that traffic, but BNSF failed and refused to take either of those actions.
5. UP agreed to establish a competitive package of rates, service and car supply for the new traffic identified in Paragraphs 2 and 3 of this Complaint by means of interchange with AERC at Albany, Oregon.
6. Interchange of the new traffic identified in Paragraphs 2 and 3 of this Complaint between AERC and UP at Albany, Oregon would not cause a congestion problem on BNSF within the meaning of the RIA.
7. Pursuant to the public policy principles of the RIA, the paper barrier imposed by BNSF in its line sale to AERC should not restrict AERC's ability to develop new non-competitive traffic with UP when BNSF cannot or will not participate in the new traffic.

AERC will provide evidentiary support for those allegations and supporting argument in the arbitration proceeding to be instituted in accordance with the rules at 49 C.F.R. Part 1108.

2. Statutory Basis of STB Jurisdiction

The dispute is within the Board's jurisdiction under 49 U.S.C. § 10742, which requires rail carriers to provide reasonable, proper and equal facilities for interchange of traffic with connecting rail lines.

In addition, the Board has jurisdiction of the dispute under 49 U.S.C. § 10901(a)(4) by virtue of its continuing authority over the terms and conditions by which AERC acquired the rail line in Finance Docket No. 33567, *supra*, including authority under § 10901(c) to impose conditions on such acquisition found to be necessary in the public interest.

3. Statement Of Issues As To Which Arbitration Is Sought

Arbitration will be sought of the following issues:

- (a) whether a paper barrier from BNSF's line sale to AERC prevents AERC from interchanging traffic with UP;
- (b) whether certain traffic originating on AERC at Bauman and Sweet Home, Oregon moving to destinations served solely by UP is new traffic within the meaning of that term as defined in the RIA;
- (c) whether BNSF has failed to establish a competitive package of rates, service and car supply and to waive its paper barrier as to that new traffic in response to AERC's request;
- (d) whether UP has established a competitive package of rates, service and car supply for that new traffic;
- (e) whether there would be a congestion problem on BNSF if AERC and UP were to interchange that new traffic at Albany, Oregon; and

-
- (f) whether BNSF should be required to waive its paper barrier preventing an AERC-UP interchange in the circumstances.

4. Relief Sought

AERC will ask the Arbitrator to suspend the paper barrier from the BNSF-AERC line sale so that AERC and UP can interchange the new traffic at Albany, Oregon without penalty.

Again, AERC emphasizes that it will seek such relief only as to non-competitive traffic destined to locations served solely by UP.

5. Verification

The verification of Mike Root, President of AERC, is attached to this Complaint as Appendix 3.

6. AERC's Willingness To Arbitrate And Be Bound

AERC hereby certifies to its willingness to arbitrate the matter raised in this Complaint pursuant to the arbitration rules in 49 C.F.R. Part 1108 and to be bound by the result thereof in accordance with those rules.

7. Demand That BNSF Arbitrate And Be Bound

AERC hereby demands that in accordance with the RIA, BNSF likewise agree to arbitrate the matter raised in the Complaint and agree to be bound by the result of the arbitration. Whether or not BNSF agrees that the evidence to be presented by AERC warrants a suspension of the paper barrier, BNSF unquestionably agreed in the RIA to arbitrate issues of that nature. Therefore, it is required that BNSF agree to arbitrate and be bound.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should accept this Complaint for filing and institute an arbitration proceeding in accordance with the rules at 49 C.F.R. Part 1108.

Respectfully submitted,

ALBANY & EASTERN RAILROAD COMPANY
MIKE ROOT, President
1784 South Main Street
Lebanon, OR 97355
(541) 259-6470

Complainant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: November 26, 2002

APPENDIX 1

RAILROAD INDUSTRY AGREEMENT

I. BACKGROUND

On April 2 and 3, 1998, the Surface Transportation Board ("STB") conducted two days of informational hearings to examine issues of rail access and competition in today's railroad industry.

In Ex Parte No. 575, the STB described the areas of concern expressed by the Short Line Railroads:

"Paper Barriers"—Contractual obligations incurred when Short Line carriers acquired lines from larger, connecting carriers;

Inadequate car supply; and

Lack of alternative routings.

The STB noted that private-sector negotiations were already underway and urged the parties to resolve these issues expeditiously.

In order to promote a stronger rail industry, this Railroad Industry Agreement ("Agreement") is entered into by the Association of American Railroads ("AAR") on behalf of participating Large Railroads (Class I carriers as defined by the regulations of the STB who subscribe to this Agreement) and by the American Short Line and Regional Railroad Association ("ASLRRA") on behalf of participating Small Railroads (Class II and III rail carriers as defined by the regulations of the STB who subscribe to this Agreement).

II. DEFINITIONS AND OTHER NOTES

For purposes of this Agreement and accompanying attachments, the following apply:

"Access" means interchange, intermediate switching, or haulage (or trackage rights at grantor's option);

No new Access to industries, shippers or receivers not now served is granted or created; all Access is Railroad to Railroad;

Carrier providing interchange, switching, haulage, trackage rights, or other service will be entitled to fair compensation for use of its facilities and/or services;

"New Traffic" means traffic that (1) is not now moving by rail (except for reasons of seasonality or unusual disruptions of shipping patterns outside the control of the Large Railroad, such as plant shutdowns) and (2) does not unreasonably negatively impact the Large Railroad.

"Congestion Problem" means that Access to or through a terminal, or to or via a track segment, need not be granted because incremental traffic caused by the New Traffic cannot be handled without causing unreasonable interference with the owner's operations. If the interference can be reasonably remedied by additional facilities and/or services, the carrier seeking Access is entitled to such facilities and/or services, provided it pays fair compensation;

"Short Line" ("SL") is a Class III railroad;

"Small Railroad" ("SRR") is a Class II or III railroad;

"Large Railroad" ("LRR") is a Class I railroad;

"Non-Short Line" ("Non-SL") is a Class I or II railroad.

"Railroad" ("RR") is a Class I, II or III railroad.

III. PRINCIPLES OF RELATIONSHIP

The parties agree that this Agreement shall be guided by the following public policy principles:

General

Laws and regulations must be consistent with the fundamentals of rail economics.

That was the genius of Staggers reforms such as permitting differential pricing, authorizing contracts and allowing most rates to be set by the market led to a rail renaissance.

Private sector solutions are best. Railroads and shippers are better served with market based solutions. Parties should turn to government only when the market cannot operate effectively and then only when private negotiations fail.

U.S. freight railroads are the most efficient in the world and wholesale changes in how they are regulated should not be made in the absence of compelling evidence of significant problems. American railroads form the world's most efficient rail system and contribute to the international growth and competitiveness of U.S. industry. It is not sound public policy to mandate major changes unless there are serious problems and proven alternatives.

Large and Small Railroads are integral to the provision of rail service in the U.S. The business common to each is a collective effort for the benefit of both Large and Small Railroads and the railroad shipping public, made possible by the unique contributions of each.

Small Railroads deserve fair and workable solutions. When a Small Railroad has a legitimate grievance, the available remedy should be as fair, quick and inexpensive as possible, particularly for minor disputes. Arbitration should be available to settle most matters.

Paper Barriers

Only legitimate "paper barriers" should be enforceable. Paper barriers are restrictions on interchange imposed by contract at the time of the creation of the Short Line. Legitimate paper barriers are those that are designed as fair payment for the sale or rental value of the line that created the Short Line. Such barriers should not restrict the Short Line's ability to develop New Traffic with another carrier if the selling or leasing Large Railroad can not or will not participate in the New Traffic. Excessive per car charges or other penalties imposed if a car is interchanged to another Large Railroad (other than legitimate paper barriers) are unreasonable and should not be permitted.

Routing Alternatives and Access

Rail networks should be operated to maximize the efficiency of the network for ALL its users. A law or regulation that requires a Railroad to put the needs of the few ahead of the overall needs of the network is not sound public policy. Both Large and Small Railroads are dependent on interchanges and manifest train schedules.

A Large Railroad seller/lessor should not be able to block a Short Line's reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package. The Short Line's attempt to gain New Traffic is not reasonable, however, if (1) the incremental traffic caused by the new business cannot be handled without causing unreasonable interference with the Large Railroad's operations; or (2) the Large Railroad is not adequately compensated for use of its tracks, yards and other facilities necessary to accommodate the traffic between the Short Line and another Railroad; or (3) the traffic of the Large Railroad is negatively impacted by such action.

Rail revenues, service and routing choices are intertwined. Railroads are networks that require huge amounts of capital investment in order to function most efficiently. A law or regulation that reduces a Railroad's ability to invest in infrastructure is not sound public policy.

Car Supply

Car supply is a problem of mutual concern to Small and Large Railroads. The answer should not lie in government regulation, but in private industry negotiation.

IV. PRINCIPLES OF AGREEMENT

1. Car Supply Policy (applies to all participating Class I, II and III Railroads)

A joint committee of senior representatives of Large and Small Railroads will meet to explore opportunities where they can work together to meet customers' car supply needs for existing and new business. In general, this committee will examine a long list of potential cooperative policies and innovative programs that will enhance car supply within the bounds of sound business principles and appropriate return on investment. A detailed protocol for car supply is attached as Exhibit A.

2. Cooperative Service Actions (applies to all participating Class I, II and III Railroads)

Large and Small Railroads agree to develop and implement Interchange Service Agreements ("ISA's") with each other to include standards for service and measurements to be used to manage improvement. Regular meetings between Large and Small Railroad corporate and operating personnel will be scheduled to resolve issues and improve service to customers. A more detailed protocol governing service is attached as Exhibit B.

3. Paper Barriers and New Routes (applies to participating Class I and III Railroads)

a) **General Premise:** *If the requested Access or routing helps the connecting Short Line and does not harm the Large Railroad, then the request should be approved as it will improve shipper rail service while strengthening the rail industry.*

b) **Paper Barriers and New Routes:** The Large and Short Line Railroads agree to work cooperatively to increase rail freight business. Joint initiatives designed to increase Short Line freight business under certain circumstances include, but are not limited to, waiver of contractual interchange restrictions and Large Railroad haulage of Short Line traffic. See Exhibit C (Examples 1-7).

In other cases, Large and Short Line Railroads may voluntarily agree at any time to renegotiate the terms of sale agreements including, but not limited to, terms relating to limitations on interchange (legitimate paper barriers). The renegotiations of limitations on interchange shall include consideration of additional compensation due to the Large carrier reflecting changes to the economic and market assumptions made by the Large and Short Line carriers at the time of original sale based upon the limitations on interchange at the time of such sale as well as all other relevant factors.

4. Switching, Heavy Axle Loads, and Certain Rate Policies (applies to all participating Class I, II and III Railroads)

a) **Switch Charges:**

i) **General Premise:** *The Large and Small Railroads agree that, subject to (iii) and (iv) below, existing (or future) intermediate and reciprocal switching charges*

between Large and Small carriers shall be comparable to existing (or future) charges between Large Railroads in similar circumstances and conditions.

ii) Any intermediate (switching between carriers) or reciprocal (switching between customer and carrier) switch charges existing between Large and Small Railroads on or after the effective date of this agreement shall be comparable to existing charges between Large Railroads in similar circumstances and conditions. See Exhibit D (Examples 8 – 12).

iii) This provision will not grant reciprocal switch Access for any carrier to any industry for which Access is not otherwise provided.

iv) This provision shall not apply with respect to any switch charges that are the subject of any administrative or judicial proceeding as of the date of this Agreement.

b) **Heavy Axle Loads:** With the growth of heavy axle load rolling stock (286,000 lbs. or greater), the Large Railroads agree to proportionately increase the Small Railroad share of the increase, if any, in overall revenue for handling heavy axle loads to reflect tonnage in situations where traffic is priced on a per-car basis for the Small Railroad.**

c) Certain Rates Policies:

i) **General Premise:** *The Large and Small Railroads commit to provide market-based competitive pricing for their customers, regardless of whether located on a Class I or connecting Small Railroad, that is non-discriminatory under similar circumstances and conditions.*

ii) Recognizing that the establishment of rate and service levels are matters of individual rather than collective consideration, assessment of market conditions upon which joint line price levels are based will reflect consideration of capital and/or operating savings for the Large Railroads resulting from services provided by the Small Railroads in the route. See Exhibit E for the sole application of this subsection(c).

V. APPLICATION

All sections of this Agreement apply to Large Railroads (Class I) and Short Line Railroads (Class III) that indicate their participation by individual subscription to this Agreement. All sections of this Agreement except Section (IV)(3)—“Paper Barriers and New Routes” apply to Class II Railroads that indicate their participation by individual

** Subsection IV(4)(b), Heavy Axle Loads, shall not apply to Montana Rail Link, Inc.; provided that this carve-out is without prejudice to the rights of Burlington Northern Santa Fe or Montana Rail Link, Inc. under their existing agreement.

subscription to this Agreement. All items provided for in this Agreement shall be binding upon all participating Railroads. Any relief available to any party under this Agreement shall be prospective only. To the extent that relief is granted by an arbitrator pursuant to the terms of this Agreement, such relief shall be limited solely to the period commencing on or, at the arbitrator's discretion, after the date that the subject arbitration proceeding was initiated.

VI. ARBITRATION

The participating Large and Small Railroads agree that if they have a dispute arising under Sections (IV)(3)—“Paper Barriers and New Routes” or Section (IV)(4) —“Switching, Heavy Axle Loads, and Certain Rate Policies” of this Agreement that cannot be resolved through discussion and negotiation between the parties involved, the parties will submit any unresolved issues to arbitration under the auspices of the STB (Ex Parte No. 560). Such arbitration will be based on the policies and principles of those sections of this Agreement, and to the extent applicable, the associated examples and exhibits, and will be binding on the parties.

VII. SENIOR POLICY COMMITTEE

A joint “Senior Policy Committee” shall be created to provide oversight, review, and, if applicable, non-binding recommendations on all matters relating to the relationship between Large Railroads and Small Railroads created by this Agreement and on all policy aspects and issues relating to the application and effects of this Agreement. This Senior Policy Committee shall be comprised of six members consisting of the Chief Executive Officers of the AAR, the ASLRRRA, two Large Railroads (to be designated by the Large Railroads) and two Small Railroads (to be designated by the Small Railroads). It shall meet semi-annually and, in addition, at any time upon the request of any member of the Committee or upon notification from a participant of its intent to withdraw from this Agreement. The Senior Policy Committee shall not have authority to set rates or charges or reach any agreement respecting rate-related matters.

VIII. AMENDMENT AND TERM

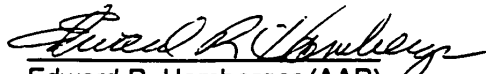
(a) The parties to this Agreement recognize that changes may occur which require modification of the terms of the Agreement. In the event of such changes, the parties agree that they will negotiate in good faith to modify appropriately the Agreement.

(b) The initial term of this Agreement shall be for a period of five years from the date hereof. The provisions of Section IV(4), including Exhibits D and E, shall not become effective until the Board has entered an order approving those provisions pursuant to 49 U.S.C. § 10706. After the initial term, this Agreement shall remain in effect for additional

successive one-year terms; provided, however, that during any such additional term, any party to this Agreement may withdraw from participation in this Agreement, only if such party has first (i) presented the reason(s) for such withdrawal to the Senior Policy Committee and (ii) provided 90 days written notice to the AAR and the ASLRRRA.

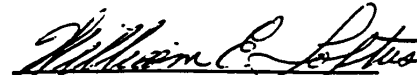
The parties agree to the policies, principles and procedures stated herein and to advise the Surface Transportation Board of this Railroad Industry Agreement. Individual Large and Small Railroads will indicate their acceptance of this Agreement by executing a separate document indicating their agreement to subscribe to and be bound by the terms and conditions of this Agreement.

For the Large Railroads:


Edward R. Hamberger (AAR)

Date: 9/14/98

For the Small Railroads:


William E. Loftus (ASLRRRA)

Date: 9/10/98

LIST OF EXHIBITS

- Exhibit A: *Car Supply Protocol* (applies to all participating Class I, II, and III Railroads)
- Exhibit B: *Service Policy Protocol* (applies to all participating Class I, II and III Railroads)
- Exhibit C: *Guidelines for Paper Barriers and New Routes* (applies to all participating Class I and III Railroads)
- Exhibit D: *Guidelines for Intermediate and Reciprocal Switching* (applies to all participating Class I, II and III Railroads)
- Exhibit E: *Guidelines for Certain Rate Policies* (applies to all participating Class I, II and III Railroads)

DEFINITIONS AND OTHER NOTES

"Access" means interchange, intermediate switching, or haulage (or trackage rights at grantor's option);

No new Access to industries, shippers or receivers not now served is granted or created; all Access is Railroad to Railroad;

Carrier providing interchange, switching, haulage, trackage rights, or other service will be entitled to fair compensation for use of its facilities and/or services;

"New Traffic" means traffic that (1) is not now moving by rail (except for reasons of seasonality or unusual disruptions of shipping patterns outside the control of the Large Railroad, such as plant shutdowns) and (2) does not unreasonably negatively impact the Large Railroad.

"Congestion Problem" means that Access to or through a terminal, or to or via a track segment, need not be granted because incremental traffic caused by the New Traffic cannot be handled without causing unreasonable interference with the owner's operations. If the interference can be reasonably remedied by additional facilities and/or services, the carrier seeking Access is entitled to such facilities and/or services, provided it pays fair compensation;

"Short Line" ("SL") is a Class III railroad;

"Small Railroad" ("SRR") is a Class II or III railroad;

"Large Railroad" ("LRR") is a Class I railroad;

"Non-Short Line" ("Non-SL") is a Class I or II railroad; and

"Railroad" ("RR") is a Class I, II or III railroad.

CAR SUPPLY

(Applies to participating Class I, II and III Railroads)

Large and Small Railroads will explore opportunities where they can work together, consistent with the antitrust laws, to meet customers' car supply needs for existing and new business.

A joint committee of senior representatives of Large and Small carriers will identify car types for which existing fleets (Railroad, shipper, etc.) are projected to be inadequate for current and future demand. Further, the joint committee will examine the ability of Small Railroads to provide freight cars for their customers for the purpose of developing cooperative policies and programs to enhance the ability of the Small Railroads to have the use of more new and used freight cars. Return on investment will be a consideration.

The joint committee will report its recommendations quarterly to the appropriate representatives of the Large and Small Railroads.

Policies and programs to be considered to determine if they are feasible and mutually beneficial include, but are not limited to:

- TTX ownership and operation of general service cars

- Regional pools for specific car types operated by interested Railroads

- Joint ownership of equipment by Large and Small carriers

- Underwriting of Small Railroad ownership by a larger carrier

- Continued review of rate arrangements

- Refurbishment of older cars

- Improvement of transit and turnaround times

- Opportunity for Small Railroads to buy surplus cars from Large Railroads on a mutually beneficial basis

- Longer term bilateral agreements to facilitate equipment financing

- Private agreement to establish car hire rates

SERVICE POLICY

(Applies to participating Class I, II and III Railroads)

Most Small Railroads are dependent upon and serve merchandise traffic that moves in non-unit manifest or local trains. Therefore, frequency and reliability of both interchange and manifest train schedules are of critical importance to the ability of Small Railroads, as well as Large Railroads, to serve their customers and to grow traffic and revenue.

To maintain a higher level of service, Large and Small Railroads agree to establish procedures for Small Railroad corporate and/or operating personnel and Large Railroad senior corporate and/or operating officers (all of whom having authority within their respective companies to effect a resolution of service issues) to meet on a regular basis in order to review, among other items, train service and interchange priorities.

Each Large Railroad and each Small Railroad connecting with a Large Railroad will develop and implement Interchange Service Agreements ('ISA's') with each other. These ISA's will include agreement on terms and standards to govern service and common procedures to measure interchange performance, manifest and/or local train performance, and car cycle time for the purpose of providing Small Railroad customers with the equivalent level of service provided to similarly situated Large Railroad customers taking into account factors such as volumes, commodities transported and locations.

**GUIDELINES FOR
PAPER BARRIERS AND NEW ROUTES**

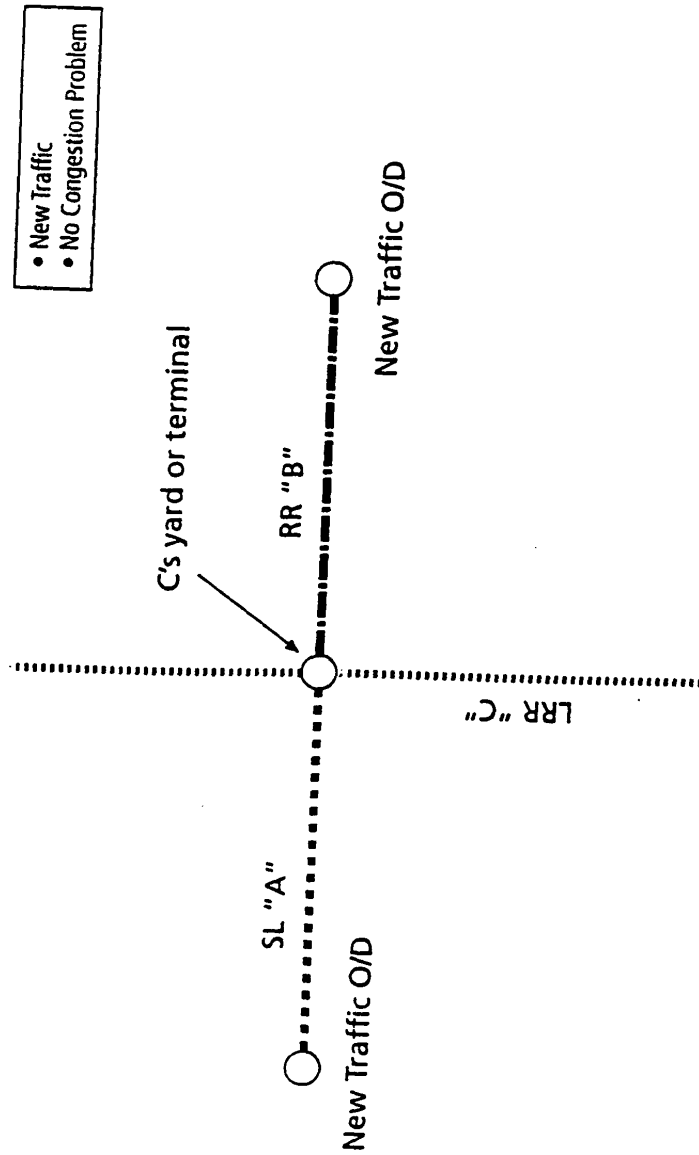
(Examples 1 – 7)

(Applies to participating Class I and III Railroads)

Paper Barriers

Short Line "A" (SL "A") and Railroad "B" (RR "B") both connect with Large Railroad "C" (LLR "C") either in a common yard or terminal area. There is an opportunity for New Traffic that would originate on "A" and terminate on "B", or vice versa. There is no Congestion Problem. "C" must grant Access by either allowing "A" and "B" to connect directly or by handling the traffic between "A" and "B" within the yard or terminal.

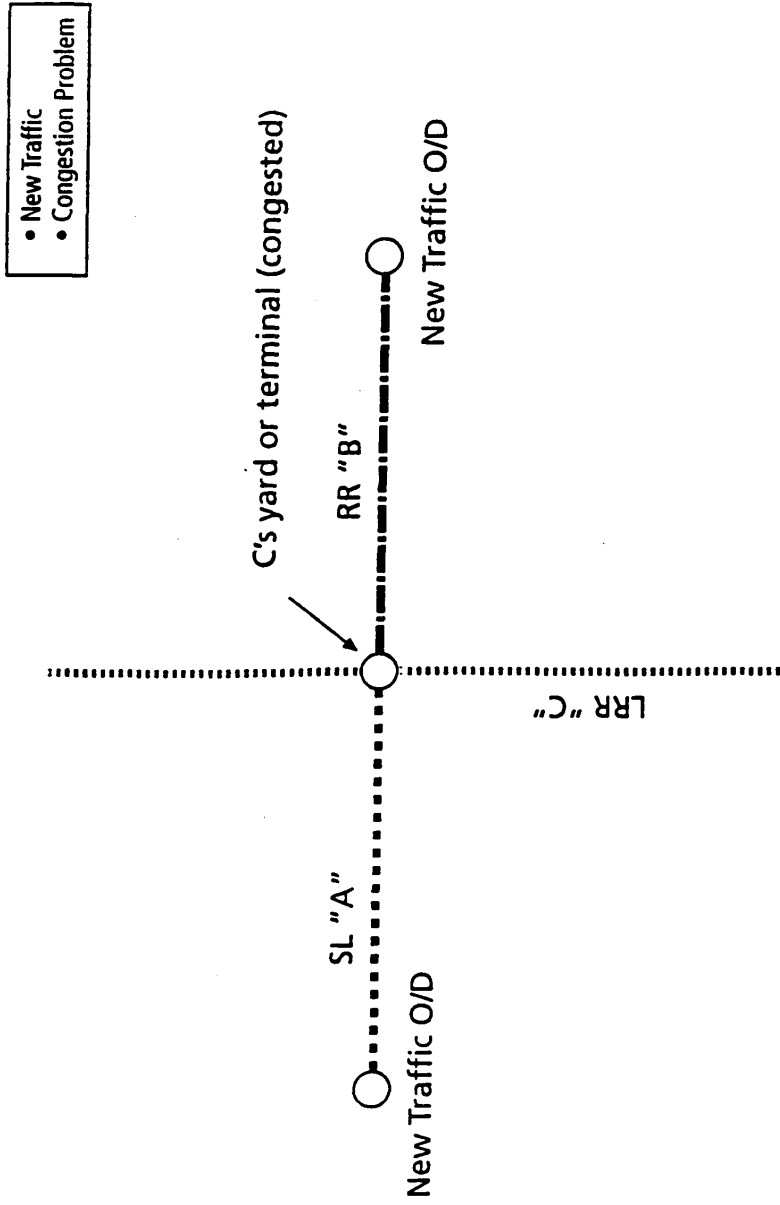
If existing movements between "A" and "B" are provided for by a reasonable intermediate switch charge published by "C", "A" and "B" are already deemed to have Access.



Example 2

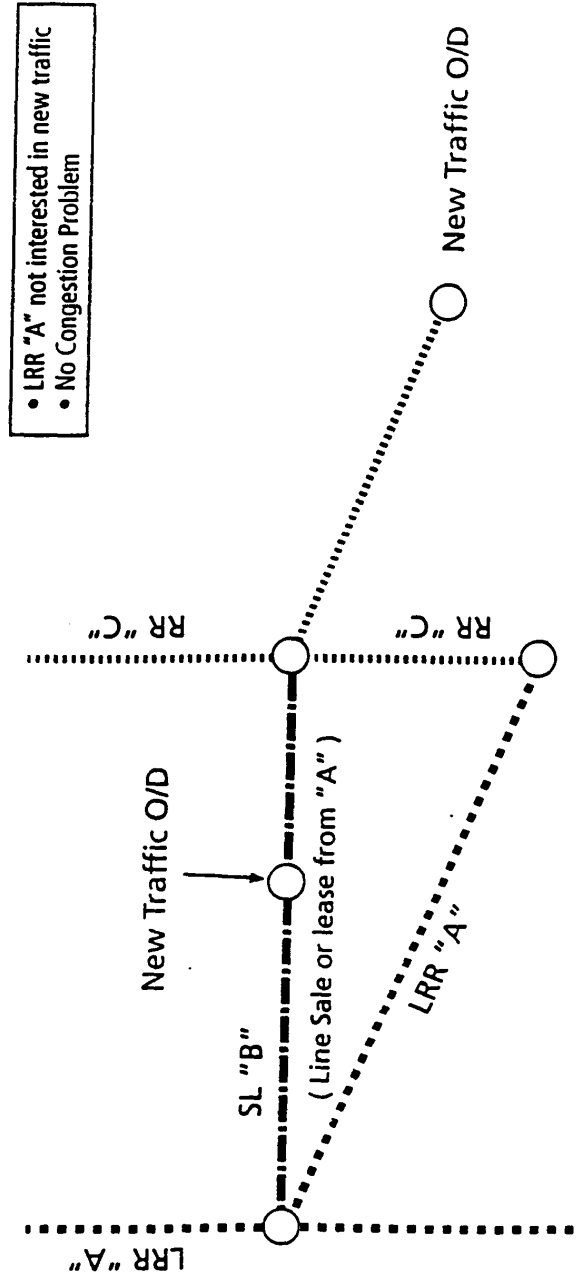
Paper Barriers

Same facts as Example 1, except there is a Congestion Problem. Large Railroad "C" may deny Access.



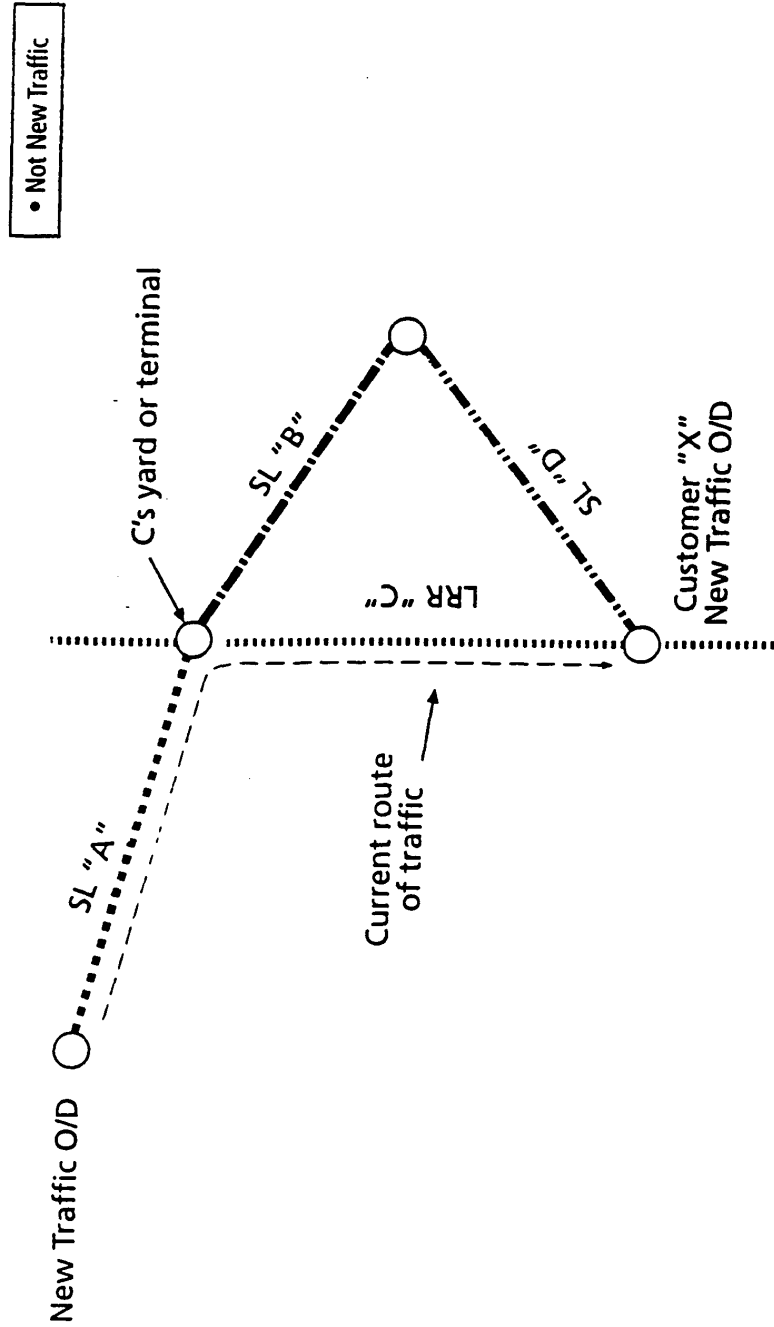
Paper Barriers

A legitimate paper barrier [see Section (III)(6)] resulting from a line sale or lease by Large Railroad "A" to Short Line "B" which restricts "B" from interchanging with Railroad "C" will be suspended to allow "B" to interchange New Traffic with "C" without penalty if, after request by "B", "A" does not establish a competitive package (rates, service and car supply) and "C" does.



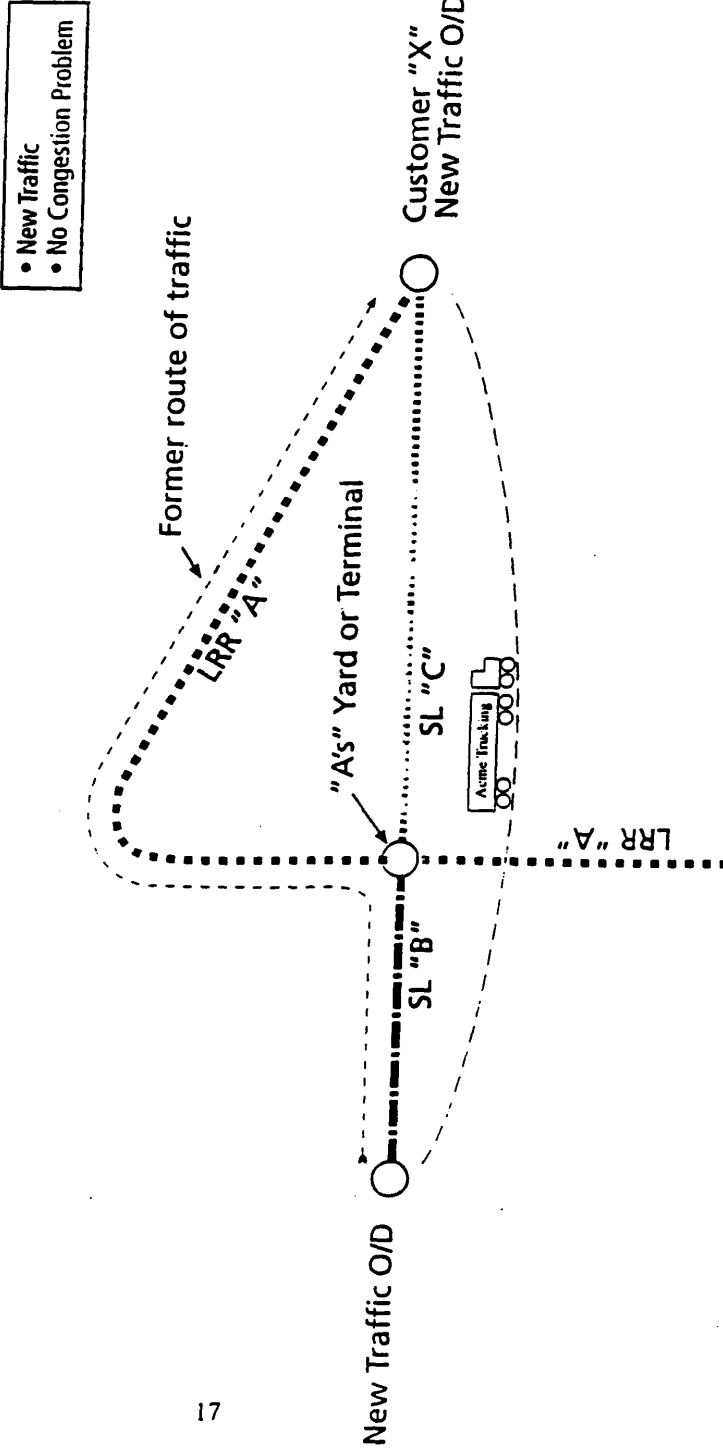
Paper Barriers

Short Line "A" can physically connect with Short Line "B" via Large Railroad "C's" yard or terminal but a paper barrier restricts "A" from interchanging with "B". "B" connects with Short Line "D" and "D" serves Customer "X" also directly served by "C". "A" and "D" wish to develop business with Customer "X" that is not New Traffic. "C" may deny Access.



Paper Barriers

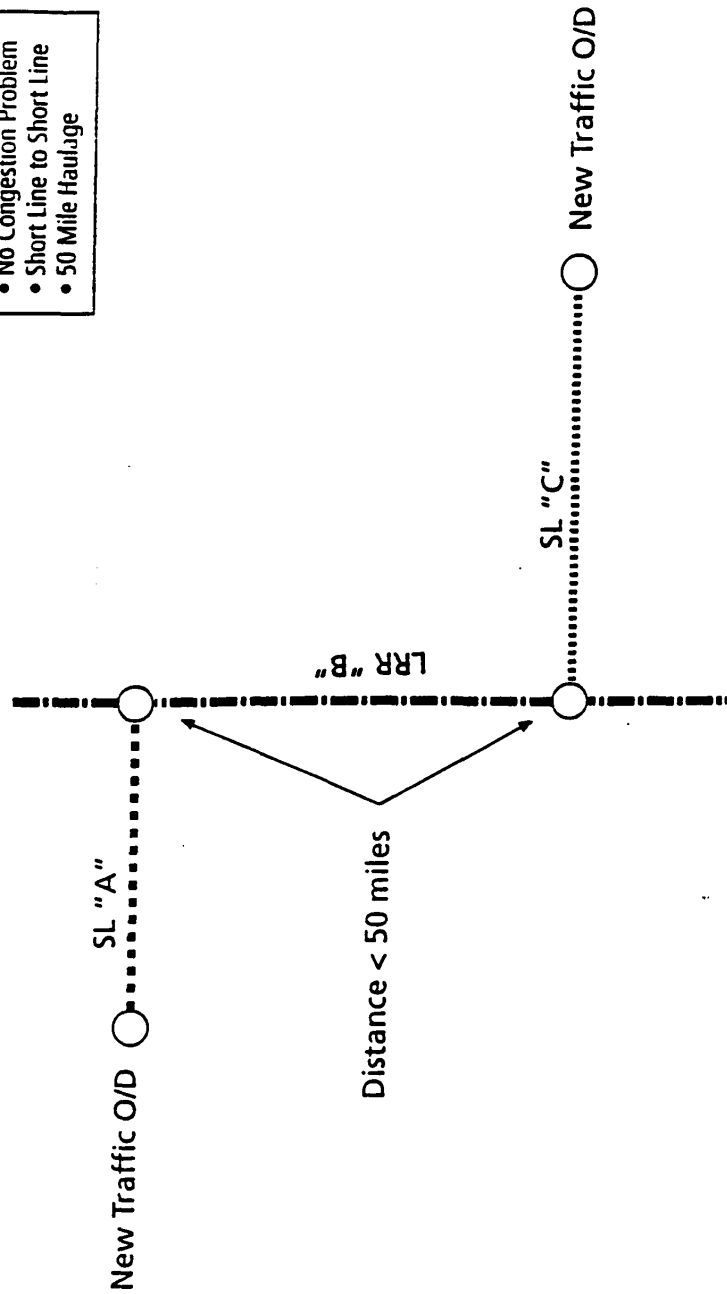
Large Railroad "A"/Short Line "B" traffic for Customer "X" has been lost to truck. "B" and "C" had no role in causing the truck diversion to happen. "A" must grant Access to "B" and Short Line "C" through "A's" terminal or yard to redirect traffic to rail from truck (New Traffic). There is no Congestion Problem.



New Routes

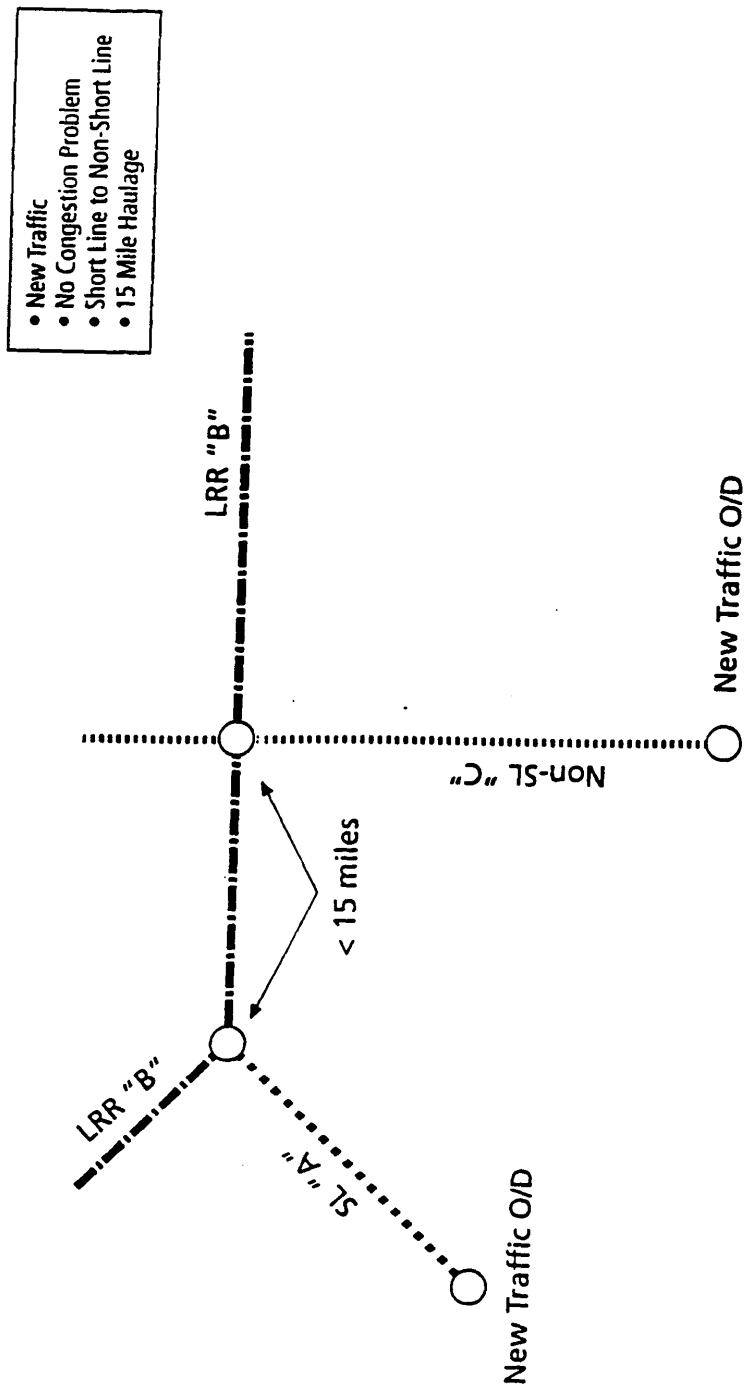
Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) for New Traffic originating on Short Line "A" and terminating on Short Line "C", or vice versa, for distances up to fifty (50) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. "B" is not obligated to provide equipment. Haulage (or trackage rights at "B's" option) may be for longer distance by mutual agreement. If "B" does provide equipment, "B" is entitled to participate as a line-haul carrier in the rate if it so chooses.

- New Traffic
- No Congestion Problem
- Short Line to Short Line
- 50 Mile Haulage



New Routes

Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) between Short Line "A" and Non-Short Line "C" to move New Traffic handled by "B" for distances up to fifteen (15) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. "B" is not obligated to provide equipment. Haulage (or trackage rights at "B's" option) may be for longer distance by mutual agreement.



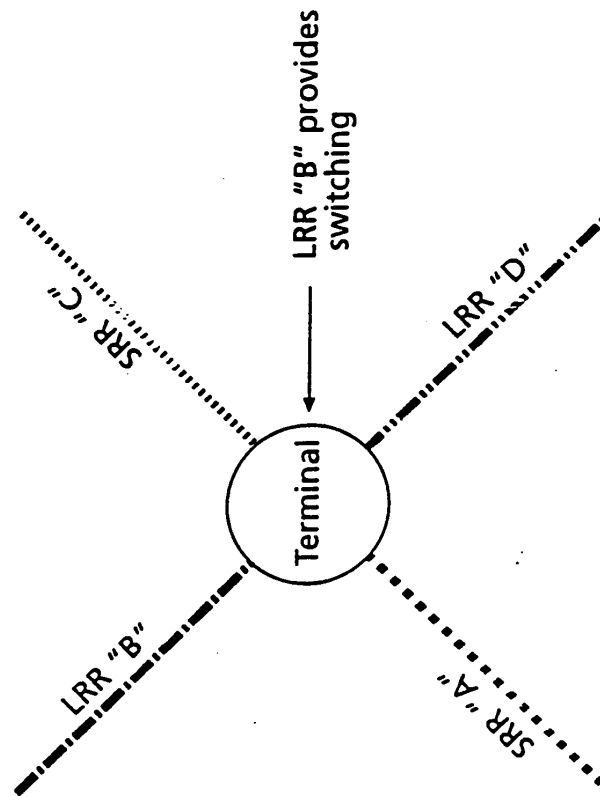
**GUIDELINES FOR
INTERMEDIATE AND RECIPROCAL SWITCHING**

(Examples 8 – 12)

(Applies to participating Class I, II and III Railroads)

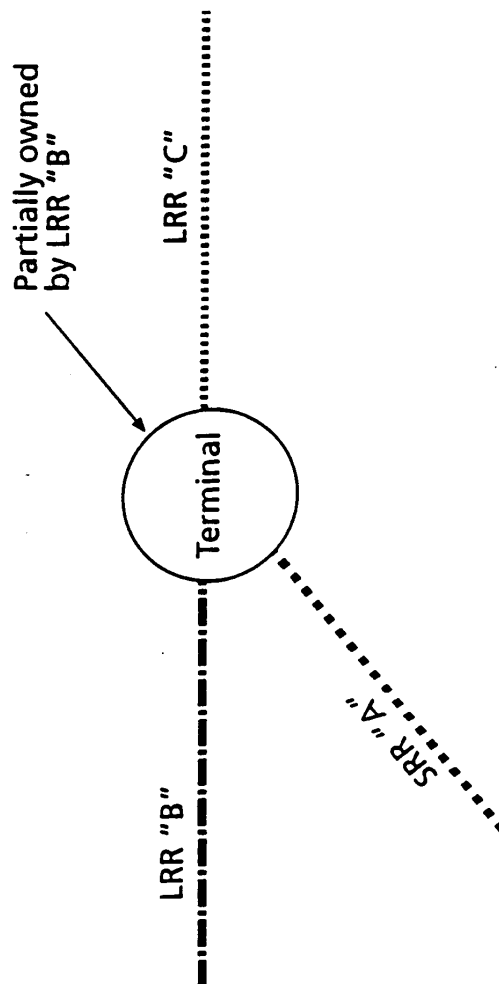
Intermediate Switching Charges

Small Railroad "A" serves a terminal where Large Railroad "B" currently provides intermediate terminal switching between a number of carriers including Small Railroad "C". Small Railroad "C" serves the same terminal as does another Large Railroad. Assuming the operating conditions are similar, "A" and "C" should pay the same or similar charges as the other Large Railroad for receipt of similar services.



Intermediate Switching Charges

Small Railroad "A" serves a terminal, as do Large Railroad "B" and Large Railroad "C". "B" owns a share of the terminal switching company and "A" and "C" own no share of the terminal switching company. "A" and "C" may pay a higher per car intermediate switch charge than "B", reflecting its ownership interest. Assuming the operating conditions are similar, "A" and "C" should pay the same or similar charges for receipt of similar services.



Reciprocal Switching Charges

Large Railroads "A" and "B" and Small Railroad "C" serve a terminal. No other Large Railroads serve the terminal. "A" and "B" charge each other \$400 per loaded car for reciprocal switching within the terminal. "A" charges "C" \$500 per loaded car, and "B" charges "C" \$600 or more per loaded car. "A" and "B" must each charge "C" \$400 per loaded car, assuming similar circumstances and conditions.

Reciprocal Switching Charges

Large Railroads "A" and "B" and Small Railroad "C" serve a terminal. No other Large Railroads serve the terminal. "A" and "B" have a system-wide reciprocal switching arrangement with each other that provides for a per-car charge less than or equal to \$250 per loaded car. The charge (assessed by "A" and/or "B" to "C") for switching in this particular terminal exceeds \$250 per loaded car. If 115% of the actual cost of performing the reciprocal switch service is greater than \$250, "A" and "B" shall each charge "C" no more than said 115% of actual cost. If 115% of actual cost is less than or equal to \$250, "A" and "B" shall not charge "C" more than \$250 per loaded car. Nothing in this example prohibits a lower switch charge to "C" if such is mutually agreed to by "A" and/or "B" and "C."

Example 12

Reciprocal Switching Charges

In terminals containing multiple Railroads (greater than three), the carrier, on which the particular customer to be Accessed by reciprocal switch is located, must not charge a Small Railroad a charge that is higher than the highest charge to a Large Railroad or \$250 per loaded car, whichever is greater. (The involved Large Railroads may be parties to one or more system-wide reciprocal switching agreements providing charges to each involved carrier of less than or equal to \$250 per loaded car.)

Note: Nothing in the provisions of Examples 10, 11 and 12 will grant reciprocal switch access for any carrier to any industry for which Access is not otherwise provided.

GUIDELINES FOR CERTAIN RATE POLICIES

(Applies to participating Class I, II and III Railroads)

In the event that a Small Railroad has only one Class I connection or a Large Railroad has rate making authority on behalf of a Small Railroad, and the Small Railroad is trying to generate New Traffic or is threatened with the loss of existing traffic, and the Small Railroad believes that the Large Railroad is not adequately reflecting the Large Railroad costs or relevant market conditions in a rate charged to a shipper of a comparable commodity located on the Large Railroad in close proximity to a similar shipper located on the Small Railroad (similar circumstances and conditions), then the Small Railroad can request the Large Railroad, within ninety (90) days, to examine its costs and relevant market conditions and meet to discuss the matter. For purposes of this Agreement, a haulage agreement between a Large Railroad and a Small Railroad does not give the Large Railroad rate making authority on behalf of the Small Railroad.

The Large Railroad shall study its costs and the relevant market conditions, on an annual actual total cost basis, from the area requested by the Small Railroad to the first crew change location common for the similar Small Railroad and Large Railroad shipments in question. This study shall include all costs relevant to this segment of the Large Railroad (including any savings attributable to the then present Small Railroad operations as well as including any applicable handling charges paid by the Large Railroad to the Small railroad as part of the costs incurred by the Large Railroad) and shall consider the volume and seasonality of the traffic in question and capability of the Large Railroad, due to economies of scale, to reallocate assets and personnel during periods of slow demand.

After the requested cost study has been completed, the Railroads shall meet to discuss the results. Terms of confidential transportation contracts to which both Railroads are not a party will not be revealed. Acting on the results of the study, the Large Railroad may choose to adjust one or more rates and/or charges or may elect to retain the status quo.

The Small Railroad, if not satisfied with the result, may invoke arbitration under Section VI of this Agreement. Both parties and the arbitrator will treat all cost information involved in the arbitration as confidential. Particular rates charged to individual shippers or receivers in transportation contracts shall not be considered in arbitration under the terms of this Agreement. The arbitrator's decision can only deal with the rate complained of, that is, the joint Large Railroad/Small Railroad rate.

If the arbitrator determines that the rate charged by the Large Railroad to the Small Railroad shipper improperly favors the shipper on the Large Railroad, then the arbitrator may order a reduction of the rate, but only to the extent needed to eliminate such favoritism. The rights provided in this Exhibit E reflect unique circumstances and create no rights for any third parties.

APPENDIX 2

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PART 1108--ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF

Sec. 1108.1 Definitions.

(a) Arbitrator means an arbitrator appointed pursuant to these provisions.

(b) ICC means the Interstate Commerce Commission.

(c) Interstate Commerce Act means the Interstate Commerce Act as amended from time to time, including the amendments made by the ICC Termination Act of 1995.

(d) RSTAC means the Rail-Shipper Transportation Advisory Council established pursuant to 49 U.S.C. 726.

(e) STB means the Surface Transportation Board.

(f) Statutory jurisdiction means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

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Sec. 1108.2 Statement of purpose, organization, and jurisdiction.

(a) These provisions are intended to provide a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the STB, either between two or more railroads subject to the jurisdiction of the STB or between any such railroad and any other person.

(b) These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling) or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability. Nor are they available for arbitration that is conducted pursuant to labor protective conditions. These procedures are intended for the resolution of specific disputes between specific parties involving the payment of money or involving rates or practices related to rail transportation or service subject to the statutory jurisdiction of the STB.

(c) The alternative means of dispute resolution provided for herein are established pursuant to the authority of the STB to take such actions as are necessary and appropriate to fulfill its jurisdictional mandate and not pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. 571 et seq.

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(d) On January 1, 1996, the STB replaced the ICC. For purposes of these procedures, it is immaterial whether an exemption from regulation was granted by the ICC or the STB.

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Sec. 1108.3 Matters subject to arbitration.

(a) Any controversy between two or more parties, subject to resolution by the STB, and subject to the limitations in Sec. 1108.2 hereof, may be processed pursuant to the provisions of this part 1108, if all necessary parties voluntarily subject themselves to arbitration under these provisions after notice as provided herein.

(b) Arbitration under these provisions is limited to matters over which the STB has statutory jurisdiction and may include disputes arising in connection with jurisdictional transportation, including service being conducted pursuant to an exemption. An Arbitrator should decline to accept, or to render a decision regarding, any dispute that exceeds the STB's statutory jurisdiction. Such Arbitrator may resolve any dispute properly before him/her in the manner and to the extent provided herein, but only to the extent of and within the limits of the STB's statutory jurisdiction. In so resolving any such dispute, the Arbitrator will not be bound by any procedural rules or regulations adopted by the STB for the resolution of similar disputes, except as specifically provided in this part 1108; provided, however, that the Arbitrator will be guided by the Interstate Commerce Act and by STB and ICC precedent.

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Sec. 1108.4 Relief.

(a) Subject to specification in the complaint, as provided in Sec. 1108.7 herein, an Arbitrator may grant the following types of relief:

(1) Monetary damages, to the extent available under the Interstate Commerce Act, with interest at a reasonable rate to be specified by the Arbitrator.

(2) Specific performance of statutory obligations (including the prescription of reasonable rates), but for a period not to exceed 3 years from the effective date of the Arbitrator's award.

(b) A party may petition an Arbitrator to modify or vacate an arbitral award in effect that directs future specific performance, based on materially changed circumstances or the criteria for vacation of an award contained in 9 U.S.C. 10.

(1) A petition to modify or vacate an award in effect should be filed with the STB. The petition will be assigned to the Arbitrator that rendered the award unless that Arbitrator is unavailable, in which event the matter will be assigned to another Arbitrator.

(2) Any such award shall continue in effect pending disposition of the request to modify or vacate. Any such request shall be handled as expeditiously as practicable with due regard to providing an opportunity for the presentation of the parties' views.

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Sec. 1108.5 Fees and costs.

(a) Fees will be utilized to defray the costs of the STB in administering this alternate dispute resolution program in accordance with 31 U.S.C. 9701. The fees for filing a complaint, ~~answer, third party complaint, third party answer, appeals of arbitration decisions, and petitions to modify or vacate an arbitration award~~ will be as set forth in 49 CFR 1002.2(f)(87). ~~All fees are non-refundable except as specifically provided and are due with the paying party's first filing in any proceeding.~~

*\$ 75 for
complaint*

~~(b) The parties may agree among themselves who will bear the expenses of arbitration, including compensation of the arbitrator. Absent an agreement, each party will bear its own expenses, including, without limitation, fees of experts or counsel. Absent an agreement, the fees of the Arbitrator will be paid by the party or parties losing an arbitration entirely. If no party loses an arbitration entirely (as determined by the Arbitrator), the parties shall share equally (or pro rata if more than two parties) the fees and expenses, if any, of the Arbitrator, absent an agreement otherwise.~~

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Sec. 1108.6 Arbitrators.

(a) Arbitration shall be conducted by an arbitrator (or panel of arbitrators) selected, as provided herein, from a roster of persons (other than active government officials) experienced in rail transportation or economic issues

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similar to those capable of arising before the STB. The initial roster of arbitrators shall be established by the RSTAC in consultation with the Chairman of the STB, and shall contain not fewer than 21 names. The roster shall thereafter be maintained by the Chairman of the STB, who may augment the roster at any time to include other eligible arbitrators and may remove from the roster any arbitrators who are no longer available. The initial roster shall be published; thereafter the roster shall be available to the public, upon request, at all times. For each arbitrator on the roster, the roster shall disclose the level of the fee (or fee range) charged by that arbitrator.

(b) The parties to a dispute may select an arbitrator (or panel of arbitrators) and submit the name(s) (and, if not already on the roster of arbitrators, the qualifications) of the agreed-upon person(s) in writing to the Chairman of the STB. Any person(s) so designated who is not already on the roster, if found to be qualified, will be added to the roster and may be used as the arbitrator(s) for that dispute.

(c) If the parties cannot agree upon an arbitrator (or panel of arbitrators), then each party shall, using the roster of arbitrators, strike through the names of any arbitrators to whom they object, number the remaining arbitrators on the list in order of preference, and submit its marked roster to the Chairman of the STB. The Chairman will then designate the arbitrator (or panel of arbitrators, if mutually preferred by the parties) in order of the highest combined ranking of all of the parties to the arbitration.

(d) The process of selecting an Arbitrator pursuant to this section shall be conducted confidentially following the completion of the Arbitration Commencement Procedures set forth in Sec. 1108.7 hereof.

(e) If, at any time during the arbitration process, a selected Arbitrator becomes incapacitated, unwilling or unable to fulfill his/her duties, or if both parties agree that the arbitrator should be replaced, a replacement Arbitrator will be promptly selected under the process set forth in paragraphs (b) and (c) of this section.

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Sec. 1108.7 Arbitration commencement procedures.

(a) Each demand for arbitration shall be commenced with a written complaint. Because arbitration under these procedures is both voluntary and binding, the complaint must set forth in detail: the nature of the dispute; the statutory basis of STB jurisdiction; a clear, separate statement of each issue as to which arbitration is sought; and the specific relief sought. Each complaint shall contain a sworn, notarized verification, by a responsible official of the complaining party, that the factual allegations contained in the complaint are true and accurate. Each complaint must contain a statement that the complainant is willing to arbitrate pursuant to these arbitration rules and be bound by the result thereof in accordance with those rules, and must contain a demand that the defendants likewise agree to arbitrate and be so bound.

(b) The complaining party shall serve, by overnight mail or hand delivery, a signed and dated original of the complaint on each defendant (on a responsible official at his or her usual place of business), and an original and two copies on the STB, accompanied by the filing fee prescribed under Sec. 1108.5(a) and set forth in 49 CFR 1002.2(f)(87). Each complaint served on a defendant shall be accompanied by a copy of this part 1108.

(c) Any defendant willing to enter into arbitration under these rules must, within 30 days of the date of a complaint, answer the complaint in writing. The answer must contain a statement that the defendant is willing to arbitrate each arbitration issue set forth in the complaint or specify which such issues the defendant is willing to arbitrate. If the answer contains an agreement to arbitrate some but not all of the arbitration issues in the complaint, the complainant will have 10 days from the date of the answer to advise the defendant and the STB in writing whether the complainant is willing to arbitrate on that basis. Upon the agreement of the parties to arbitrate, these rules will be deemed incorporated by reference into the arbitration agreement.

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(d) The answer of a party willing to arbitrate shall also contain that party's specific admissions or denials of each factual allegation contained in the complaint, affirmative defenses, and any counterclaims or set-offs which the defendant wishes to assert against the complainant. The right of a defendant to advance any counterclaims or set-offs, and the capacity of an Arbitrator to entertain and render an award with respect thereto, is subject to the same jurisdictional limits as govern the complaint.

(e) A defendant's answer must be served on the complainant, other parties, and the STB in the same manner as the complaint.

(f) A defendant willing to enter into arbitration under these procedures only if it is able to obtain cross-relief against another defendant or a non-party may serve an answer containing an agreement to arbitrate that is conditioned upon the willingness of any such third party to enter into arbitration as a third party defendant. Simultaneously with the service of any such conditional answer, the defendant making such answer shall serve a complaint and demand for arbitration on the party whose presence that defendant deems to be essential, such complaint and demand to be drawn and served in the same manner as provided in paragraphs (a) and (b) of this section. A defendant receiving such a complaint and demand for arbitration and that is willing to so arbitrate shall respond in the same manner as provided in paragraphs (c), (d), and (e) of this section.

(g) Upon receipt of a complaint and demand for arbitration served by a complainant on a defendant, or by a defendant on a third-party defendant, the STB promptly will notify the parties serving and receiving such documents of any patent deficiencies, jurisdictional or otherwise, which the STB deems fatal to the processing of the complaint, and will suspend the timetable for processing the arbitration until further notice. If the complainant is unwilling or unable to remedy such deficiencies to the satisfaction of the STB within such time as the STB may specify, the complaint shall be deemed to be withdrawn without prejudice. Upon satisfaction that two or more parties have unconditionally agreed to arbitrate under these procedures, the STB will so notify the parties and commence procedures for the selection of an Arbitrator.

(h) An agreement to arbitrate pursuant to these rules will be deemed a contract to arbitrate, subject to limited review by the STB pursuant to Sec. 1108.11(c), for the purpose of subjecting the arbitration award to the provisions of 9 U.S.C. 9 (court enforcement of an arbitration award), and 9 U.S.C. 10 (vacation of an arbitration award by a court on certain limited grounds).

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Sec. 1108.8 Arbitration procedures.

(a) The Arbitrator will establish rules, including timetables, for each arbitration proceeding.

(1) The evidentiary process will be completed within 90 days from the start date established by the arbitrator, and the arbitrator's decision will be issued within 30 days from the close of the record. The parties may agree to vary these timetables, however, subject to the approval of the arbitrator. Matters handled through arbitration under these rules are exempted from any applicable statutory time limits, pursuant to 49 U.S.C. 10502.

(2) Discovery will be available only upon the agreement of the parties.

(b) Evidence will be submitted under oath. Evidence may be submitted in writing or orally, at the direction of the Arbitrator. Hearings for the purpose of cross-examining witnesses will be permitted at the sound discretion of the Arbitrator. The Arbitrator, at his/her discretion, may require additional evidence.

(c) Subject to alteration by the Arbitrator or by agreement of the parties in individual proceedings, as a general rule, where evidence is submitted in written form, the complaining party will proceed first, and the defendant will proceed next. The complainant will then be given an opportunity to submit a reply. At the discretion of the Arbitrator, argument may be submitted with each evidentiary filing or in the form of a brief after the submission of all evidence. Page limits will be set by each Arbitrator for all written

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submissions of other than an evidentiary nature.

(d) Any written document, such as a common carrier rate schedule, upon which a party relies should be submitted as part of that party's proof, in whole or in relevant part. The Arbitrator will not be bound by formal rules of evidence, but will avoid basing a decision entirely or largely on unreliable proof.

(e) Where proof submitted to an Arbitrator addresses railroad costs, such proof should be prepared in accordance with the standards employed by the STB in ascertaining the costs at issue. Discovery should be sufficient to enable parties to meet these standards.

(f) Where the Arbitrator is advised that any party to an arbitration proceeding wishes to keep matters relating to the arbitration confidential, the Arbitrator shall take such measures as are reasonably necessary to ensure that such matters are treated confidentially by the parties or their representatives and are not disclosed by the Arbitrator to non-authorized persons. If the Arbitrator regards any confidential

submission as being essential to his/her written decision, such information may be considered in the decision, but the Arbitrator will make every effort to omit confidential information from his/her written decision.

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Sec. 1108.9 Decisions.

(a) Decisions of the Arbitrator shall be in writing and shall contain findings of fact and conclusions. All such decisions shall be served by the Arbitrator by hand delivery or overnight mail on the parties. At the same time, the arbitrator shall notify the STB, in writing, that a decision has been rendered.

(b) By agreeing to arbitrate pursuant to these procedures, each party agrees that the decision and award of the Arbitrator shall be binding and judicially enforceable in law and equity in any court of appropriate jurisdiction, subject to a limited right of appeal to the STB as provided below.

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Sec. 1108.10 Precedent.

Decisions rendered by arbitrators pursuant to these procedures shall have no precedential value.

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Sec. 1108.11 Enforcement and appeals.

(a) An arbitration decision rendered pursuant to these procedures may be appealed to the STB within 20 days of service of such decision. Any such appeal shall be served by hand delivery or overnight mail on the parties and on the STB, together with a copy of the arbitration decision. Replies to such appeals may be filed within 20 days of the filing of the appeal with the Board. An appeal or a reply under this paragraph shall not exceed 20 pages in length. The parties shall furnish to the STB an original and 10 copies of appeals and replies filed pursuant to this section. The filing fee for an appeal will be as set forth in 49 CFR 1002.2(f)(87).

(b) The filing of an appeal, as allowed in paragraph (a) of this Sec. 1108.11, automatically will stay an arbitration decision pending disposition of the appeal. The STB will decide any such appeal within 50 days after the appeal is filed. Such decision by the STB shall be served in accordance with normal STB service procedures.

(c) The STB will review, and may vacate or amend, an arbitration award, in whole or in part, only on the grounds that such award

(1) Exceeds the STB's statutory jurisdiction; or

(2) Does not take its essence from the Interstate Commerce Act.

(d) Effective arbitration decisions rendered pursuant to these procedures, whether or not appealed to the STB, may only be enforced in accordance with 9 U.S.C. 9 and vacated by a court in accordance with 9 U.S.C. 10, except that an STB decision vacating an arbitration award is reviewable under the Hobbs Act, 28 U.S.C. 2321, 2342.

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Sec. 1108.12 Additional matters.

Where an arbitration demand is filed by one or more complainants against one or more defendants, the complainants as a group and the defendants as a group shall be entitled to exercise those rights, with respect to the selection of arbitrators, as are conferred on individual arbitration parties.

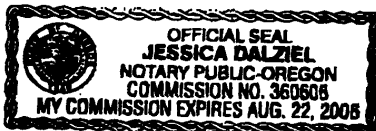
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Appendix 3

VERIFICATION

STATE OF OREGON)
) SS:
COUNTY OF LINN)

MIKE ROOT, being duly sworn on oath, deposes and states that he has read the foregoing responses, that he knows the contents thereof, and that the facts therein stated are true and correct.



Mike Root

MIKE ROOT

SUBSCRIBED AND SWORN to
before me this 25 day
of November, 2002.

Jessica Dalziel
Notary Public

My Commission Expires: August 22, 2006

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1108.7(b), AERC hereby certifies that it served this Complaint on November 25, 2002, by overnight mail on Gary L. Crosby, Vice President-Law and General Counsel, The Burlington Northern and Santa Fe Railway Company, 2650 Lou Menk Drive, 2nd floor, P.O. Box 96157, Fort Worth, TX 76161-0057.

Thomas F. McFarland

Thomas F. McFarland
Attorney for Albany & Eastern Railroad Company