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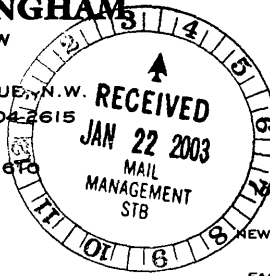
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January 22, 2003

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 22 2003

Part of
Public Record

**Re: Petition of Sunflower Rail Company, LLC For Crossing Authority
Under 49 U.S.C. § 10901(d) (STB Finance Docket No. 34210)**

Dear Mr. Williams:

Enclosed for filing in the above-referenced docket please find an original and 10 copies of the Petition for Exemption of Sunflower Rail Company, LLC. **This filing contains color and oversized attachments.** As provided in 49 C.F.R. § 1104.2(c), we are submitting standard-sized representations of these attachments for the Board's convenience immediately behind the oversized versions.

Also enclosed is a check for the filing fee in the amount of \$55,000, as required by 49 C.F.R. § 1002.2(f)(12)(iii). I have also included a diskette containing the text of this pleading in WordPerfect 9.0 format, as required by 49 C.F.R. § 1104.3(b).

Very truly yours,

David A. Hirsh

FILED

JAN 22 2003

Enclosures

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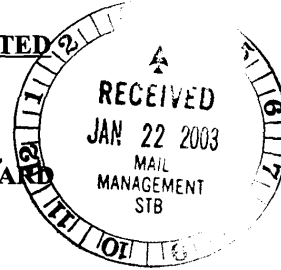
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**SURFACE
TRANSPORTATION BOARD**

207097

EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Finance Docket No. 34210

**SUNFLOWER RAIL COMPANY, LLC
- CONSTRUCTION AND OPERATION EXEMPTION -
FINNEY COUNTY, KANSAS**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, Sunflower Rail Company, LLC ("SRC") hereby petitions the Surface Transportation Board ("Board") for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately 4.7 miles of new rail line in the vicinity of Garden City in Finney County, Kansas. The purpose of the proposed construction project is to enable Sunflower Electric Power Corporation ("Sunflower"), the parent of SRC, to obtain a second direct rail option for delivery of coal from Powder River Basin ("PRB") mines to its coal-fired electric generating plant near Holcomb, Kansas. In addition, SRC (or its designee) would hold itself out as available to provide common carriage by rail over the proposed line to any other shippers that could be served by it.

SRC's proposed construction is subject to environmental review by the Board's Section of Environmental Analysis ("SEA"). SRC requests that the Board, consistent with its established practice, conditionally grant the requested exemption subject to the issuance of a final decision following

completion of the environmental review. For the reasons discussed below, SRC also requests that its petition for exemption be given expedited handling.

This petition is supported by the verified statements of Carroll L. Waggoner ("Waggoner V.S.") (attached as Exhibit A) and Timothy R. Bennett ("Bennett V.S.") (attached as Exhibit B). Mr. Waggoner is Director – Coal Transportation, of SRC, and Senior Manager, Transmission Policy, for Sunflower. Mr. Bennett is Railroad Design Manager – Track and Facilities, of HDR Engineering, Inc.

BACKGROUND

Sunflower is a nonprofit, non-stock, independent electric power generation and transmission cooperative. It is owned and operated by a federation of six rural Kansas electric distribution cooperatives and serves people and industries in 34 western Kansas counties. Among the facilities operated by Sunflower is a 360mW coal-fired electric generating plant ("Holcomb Plant") at a location generally known as "Holcomb Station," near Holcomb, Kansas (southwest of Garden City). Holcomb Plant currently uses approximately 1.5 million tons of coal annually. It is anticipated that over the next several years these volumes may rise to approximately 1.7 million tons of coal annually. Sunflower presently purchases coal for Holcomb Plant from a PRB mine. The mine, which is in the general vicinity of Gillette, Wyoming, is served by The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP"). Currently, however, BNSF is the only railroad capable of originating this coal traffic and delivering it directly to Holcomb Station. BNSF delivers this coal traffic to Holcomb Station via its La Junta Subdivision and an approximately 3.4-mile spur track owned

by Sunflower ("Holcomb Station Spur"), which leads from the BNSF line (at approximately BNSF milepost 407.4) to Holcomb Plant. *See Bennett V.S. at Attachment 1 (map).*

Sunflower has concluded that it and its customers would benefit from Holcomb Plant gaining access to UP as an independent competitive alternative to BNSF for PRB coal transportation. The benefits of direct rail competition are expected to come in the form of reduced rail rates and improved service and reliability. These are important benefits for Sunflower and its customers. The cost of rail transportation for PRB coal is a significant factor in the total cost of producing electricity at Holcomb Station. By reducing its rail rates through the discipline of competition, Sunflower would be able to generate electricity at lower cost, making its power sales and its customers more competitive. Adding an independent rail transportation option would also provide greater operational flexibility in the event of a future emergency, disaster, or service breakdown affecting either carrier. *See Waggoner V.S. at 3.*

UP can originate coal traffic from numerous PRB mines, but in the absence of the proposed rail line construction, it would have to interchange that traffic with BNSF for final delivery to Holcomb Station. A route independent of BNSF for UP-origin PRB coal shipments is necessary to create a competitive UP rail service option for Holcomb Plant. Sunflower wishes to create such a route by having its subsidiary, SRC, construct and operate a rail line connecting Sunflower's Holcomb Station Spur to the nearby Lowe Spur of The Garden City Western Railway, Inc. ("GCW"), and by connecting GCW's Lowe Spur to GCW's north-south line running between Garden City and Shallow Water, Kansas. *See Bennett V.S. at Attachment 1 (map).*

The proposed new line might also be used for coal delivery to a new 600mW capacity coal-fired plant currently being planned for construction immediately adjacent to Holcomb Plant at Holcomb Station ("Sand Sage Plant"). Sunflower is expected to operate the Sand Sage Plant when it is completed. The Sand Sage Plant is expected to require approximately 2.7 million tons of coal annually from PRB sources once it is fully operational.¹ Like Holcomb Plant, the Sand Sage Plant would be served via the existing Holcomb Station Spur. Thus, it too could benefit from the added competition and operational flexibility that would be created with the construction of the proposed new SRC rail line.

DISCUSSION

I. DESCRIPTION OF THE PROJECT AND PLANNED OPERATIONS

The rail line proposed to be constructed pursuant to this Petition is shown on the map provided as Attachment 1 to Mr. Bennett's verified statement. The new line, which would consist of two line segments connected in the middle by a line of railroad owned by GCW, would be approximately 4.7 miles long, and would traverse a sparsely populated, rural area north of Garden City. The first segment of new line would begin at Build Out milepost 0.0 at a connection with Sunflower's existing spur track at a point approximately 0.8 miles southeast of the BNSF main line connection with Holcomb Station Spur. This new line would proceed from the spur track switch in a northeasterly direction, cross over BNSF's tracks at approximately BNSF milepost 406.9 (Build Out milepost 0.6) through use of an

¹ To transport this volume of coal, Sand Sage is expected to receive between 172 and 186 unit coal trains per year (120-130 cars per train with a per-car capacity of 120 tons), or between 1.02 and 0.94 unit trains per day (counting both loads and empties).

overpass structure, and then proceed eastward until it reaches a connection with GCW's Lowe Spur (the "South-End Lowe Spur Connection") at about GCW milepost 2.7 (Build Out milepost 2.2). The second segment of the new line construction would begin from a switch from GCW's Lowe Spur just north of U.S. Highway 50 (the "North-End Lowe Spur Connection") at roughly GCW milepost 3.9 (Build Out milepost 3.4)² and proceed to the east until it reaches a connection with GCW's Shallow Water-Garden City line at approximately GCW milepost 153.0 (Build Out milepost 5.9), which is approximately 1.8 miles north of Garden City.

As part of the construction project, and with the agreement and cooperation of GCW and Kansas & Oklahoma Railroad, Inc. ("K&O"), SRC plans to arrange for the rehabilitation of: (a) approximately 1.2 miles of GCW's Lowe Spur between the South-End and North-End Lowe Spur Connections, (b) approximately 28 miles of GCW-owned trackage between the point of connection with the line SRC proposes to construct and Shallow Water, and (c) approximately 5 miles of track owned by K&O between Shallow Water and Scott City, KS. *See* Bennett V.S. at 4 and Attachments 1 and 2.³ The planned rehabilitation is necessary for the lines to handle coal cars with 286,000-pound capacity.

SRC seeks to construct and operate the new line as a jurisdictional line of rail available to provide common carriage to any other shipper that might choose to use it, and SRC acknowledges that

² Build Out mileposts reflect the approximately 1.2 miles of GCW-owned track between the South-End and North-End Lowe Spur Connections.

³ The lines to be rehabilitated would form part of the overall route from UP-origin mines in the PRB to Holcomb Station. The route is described more particularly in the Waggoner V.S. *See* Waggoner V.S. at 4-5.

it would become a rail carrier upon completion of the project. SRC expects, however, that the actual rail common carrier service over the line will be provided by GCW (and by UP for Holcomb Station coal traffic), and SRC expects to hire a third party to maintain it.⁴ SRC expects GCW (and any other third party that would provide common carrier service over SRC's proposed line) to seek authority from the Board as necessary to engage in such operations. Likewise, if SRC should find it necessary or efficient to operate over the lines of other carriers (in addition to its own lines), it would seek appropriate authority from the railroads involved and from the Board as necessary in order for it to do so.

Once the new line is in place, coal traffic levels on the line to be built could vary, depending upon a variety of factors, including coal demand and the allocation of future coal transport to Holcomb Station as between the BNSF and UP routes. At such time as the proposed Sand Sage plant becomes operational, total coal traffic volumes on the new line could be as much as approximately 4.4 million tons per year,⁵ handled by an average of as many as 1.7 trains per day (including both loads and empties) in addition to modest amounts of other traffic that might be handled by GCW, should it operate over the line.⁶ While Sunflower is expected to be the only shipper to be served by the line at

⁴ SRC expects to grant non-exclusive trackage rights to GCW over the lines to be constructed, and GCW is expected to assume day-to-day operational responsibilities over the new line once it is completed. *See Waggoner V.S. at 5.* SRC may also grant trackage rights over the new lines to UP to allow it to carry coal destined for Holcomb Station. *Id.*

⁵ This amount includes 1.7 million tons to the Holcomb Plant and 2.7 million tons to the Sand Sage plant. *See Waggoner V.S. at 3.*

⁶The estimate of 1.7 trains per day takes into account the fact that the Sand Sage Plant is not scheduled to be operational until 2007, and that by 2007 it is expected that Holcomb Station will be served exclusively by 120-ton capacity rail cars.

the commencement of operations, it is possible that other shippers will locate along it. As noted above, SRC anticipates that GCW will assume common carrier rail operations over the line and would hold itself out as available to serve any additional shippers that may wish to locate along the line, while SRC would own the track, contract with a third party for its maintenance, and retain a residual common carrier obligation.

II. SRC'S PROPOSED RAIL LINE CONSTRUCTION PROJECT SATISFIES THE STANDARDS FOR EXEMPTION UNDER 49 U.S.C. § 10502

The construction of new common carrier railroad lines generally requires prior Board approval under 49 U.S.C. § 10901. Subsection 10901(c) directs the Board to authorize a rail line construction project “unless the Board finds that such activities are inconsistent with the public convenience and necessity.”⁷ As the Board has observed, “[t]his permissive licensing policy, introduced in the ICC Termination Act of 1995 . . . , establishes a clear presumption in favor of rail construction proposals, and conforms to the broader Congressional policies to promote ‘effective competition among rail carriers’ and to ‘reduce barriers to entry into . . . the industry.’ 49 U.S.C. [§] 10101(4), (7).”

Midwest Generation, LLC – Exemption From 49 U.S.C. 10901 – For Construction in Will County, IL, STB Finance Docket No. 34060, slip op. at 7-8 (STB served Mar. 21, 2002) (“*Midwest Generation I*”) (footnotes omitted).

⁷ Prior to the ICC Termination Act of 1995 (“ICCTA”), the statute provided that construction proposals would be approved only if the ICC found that the public convenience and necessity “require or permit” the proposed construction. Former 49 U.S.C. § 10901(a) (1995).

Under 49 U.S.C. § 10502, the Board must exempt the proposed rail line construction from the detailed application procedures of 49 U.S.C. § 10901 when it finds that: (1) those procedures are not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101 (“RTP”); and (2) either (a) the proposal is of limited scope, or (b) the full application procedures of § 10901 are not necessary to protect shippers from the abuse of market power. The Board is to apply the exemption provision broadly.⁸ Congress has charged the Board with eliminating “as many as possible of the [Board’s] restrictions” on actions such as rail line construction.⁹ Under the statutory standards, a petitioner need not establish a public need for the Board to grant the construction petition.¹⁰

As discussed below, SRC’s proposed rail line construction project, which is intended to enhance competition between railroads, meets the statutory requirements for exemption. The proposal falls squarely within the Board’s precedent for granting exemptions under § 10502.¹¹

⁸ See *American Trucking Ass’n v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 1981) (the exemption is an “important cornerstone” of the Staggers Rail Act, and the ICC should actively pursue exemptions that meet the standards of § 10502).

⁹ H.R. Rep. No. 96-1430, at 105 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4110, 4137.

¹⁰ See *Illinois Cent. R.R. Co. – Construction & Operation Exemption – In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877, slip op. at 2 (STB served May 25, 2001) (“*IC-East Baton Rouge*”) (“[n]either under the exemption criteria of section 10502 nor under the prior approval requirements of section 10901 is there a requirement of a showing of public need for the facilities proposed to be constructed”); *Kansas City S. R.R. – Construction & Operation Exemption – Geismar Indus. Area near Gonzales & Sorrento, LA*, Finance Docket No. 32530, slip op. at 5-6 (ICC served June 30, 1995); see also *Midwest Generation I*, slip op. at 9 (“[a] showing that the incumbent railroad’s service is inadequate is simply not necessary to obtain authority for construction of a competing line” (footnote omitted)).

¹¹ Among the more recent “build-out” and “build-in” petitions granted pursuant to § 10502 are the following: *Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL*, STB Finance Docket No. 34060 (STB served Oct. 4, 2002) (“*Midwest*

A. Imposition of the Requirements of 49 U.S.C. § 10901 is Unnecessary to Carry Out the Rail Transportation Policy of 49 U.S.C. § 10101

Detailed scrutiny of the proposed rail construction and operation is not necessary to carry out the RTP. SRC's proposal is not only consistent with that policy, but, as the Board has recently observed, rail line construction proposals such as SRC's actually promote it. *See, e.g., Midwest Generation I* at 7-8 (rail line construction proposals promote, among others, the RTP goals of § 10101(4) and (7) – cultivating effective competition among rail carriers, and reducing barriers to entry into the industry).

SRC's proposal would permit Sunflower to gain effective competitive access to UP, BNSF's direct competitor for originations of PRB coal, and would thus create direct rail competition for Sunflower's transportation needs where none had previously existed. It would thus promote the use of "competition and the demand for services to establish reasonable rates" (§ 10101(1)), and "the

Generation II") (construction of 4,007-foot line from Midwest Generation's plant to connection with UP); *Alamo N. Tex. R.R. – Construction & Operation – Wise County, TX*, STB Finance Docket No. 34002 (STB served Sept. 3, 2002) (construction of 2.25-mile line from quarry operated by Alamo North's parent to connection with UP); *IC-East Baton Rouge* (construction of 3.2 miles of new rail line to serve an ExxonMobil chemical plant); *Entergy Ark. & Entergy Rail – Construction & Operation Exemption – White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782 (STB served May 4, 2000) ("*Entergy Ark.*") (construction of an 8.6-mile line from Entergy Arkansas' White Bluff generating plant to a connection with BNSF); *Omaha Pub. Power Dist. – Construction Exemption – In Otoe County, NE*, Finance Docket No. 32630 (ICC served May 2, 1995) ("*Omaha Pub. Power*") (construction of approximately 5-mile line, including crossing of BNSF right-of-way, to connect its Nebraska City Power Station with a line of UP); and *WFEC R.R. – Construction & Operation Exemption – Choctaw & McCurtain Counties, OK*, Finance Docket No. 32607 (ICC served Feb. 23, 1996) ("*WFEC*") (construction of a 14-mile line from Western Farmers Electric Cooperative's coal-fired Hugo Station to a connection with the Texas, Oklahoma & Eastern Railroad, including a crossing of the Kiamichi Railroad Company). In each of the cases listed immediately above, the Board used its exemption authority in connection with a rail line construction that would increase competition between rail carriers.

development and continuation of a sound rail transportation system with effective competition” (§ 10101(4)). Permitting the use of the exemption procedures is also in keeping with 49 U.S.C. §§ 10101(2) and (7), by minimizing the need for federal regulatory control over the rail transportation system and by reducing regulatory barriers to entry. The proposed new rail line construction and rehabilitation of existing lines would also foster sound economic conditions in transportation and help ensure effective competition between modes (§ 10101(5)), promote the public health and safety through improvements to the existing lines of K&O and GCW (§ 10101(8)), encourage honest and efficient management through the discipline of direct competition (§ 10101(9)), and help avoid an undue concentration of market power (§ 10101(12)).

Many of the goals of the RTP overlap the goals of the National Energy Policy, which the proposed project would also further. The Bush Administration has observed in its National Energy Policy that “[c]oal . . . is the most important single commodity carried by rail.” “Reliable, Affordable and Environmentally Sound Energy for America’s Future,” Report of the National Energy Policy Development Group at 7-16 (May 2001). Sunflower, like many other electric generating enterprises, depends upon steady and economical access to high-quality, low-sulfur coal from the PRB, not only to meet growing regional demand, but also to meet the requirements of the Clean Air Act Amendments of 1990 and the Energy Policy Act of 1992. Moreover, SRC’s rail line would further the objectives of the National Energy Policy because the project would “eliminate bottlenecks in the coal transportation system” by increasing needed rail infrastructure and reducing barriers to development. *See id.*

SRC’s rail line construction fits within a large category of construction projects involving efforts by electric utilities to gain direct access to multiple rail carriers for service to their coal-fired electric

generating stations. The Board and the ICC have recognized consistently that such construction projects fall within the Board's exemption authority.¹² As in those comparable rail line construction cases, SRC's proposed rail line construction and operation would promote the objectives of the RTP.

B. Shippers Would Not Be Subjected to an Abuse of Market Power

The petition satisfies the standard of § 10502(a)(2) because regulation of the proposed construction and operation is not necessary to protect shippers from an abuse of market power. The proposal would provide Sunflower, and any other shippers that chose to locate on the line, with an additional rail transportation option. It would enable shippers to realize the benefits of increased railroad competition, thereby diluting any existing market power with respect to their transportation options and making them *less* vulnerable to the exercise of market power.

C. The Proposed Construction Project Is Limited in Scope

Because regulation of SRC's proposal is not necessary to protect shippers from an abuse of market power, the Board need not determine whether the transaction is of limited scope. Nonetheless, the proposed project satisfies the limited scope test of § 10502(a)(2)(A). The entire rail line SRC would construct would be approximately 4.7 miles in length, and would be undertaken within a limited geographic region of a single county in Kansas. *See Bennett V.S.* at 4 (describing project scope in detail). A finding that the proposed construction is limited in scope would be consistent with both ICC and Board precedent applying § 10502(a)(2) to rail line construction cases. *See, e.g., Entergy Ark.*

¹² *See, e.g., Entergy Ark.; Omaha Pub. Power.*

(8.6 miles); *WFEC R.R.* (14 miles); *Burlington N. R.R. – Construction & Operation Exemption – Macon & Randolph Counties, MO*, 9 I.C.C. 2d 1161 (1993) (17 miles), *aff’d sub nom. Missouri Mining, Inc. v. ICC*, 33 F.3d 980 (8th Cir. 1994).

III. REQUEST FOR INITIAL CONDITIONAL GRANT OF EXEMPTION AND FOR EXPEDITED HANDLING

Consistent with the Board’s usual practice in construction cases,¹³ SRC requests that the Board issue a preliminary decision addressing the transportation-related issues prior to completion of the environmental review process. By removing any uncertainty concerning the transportation merits of the proposal, a preliminary decision would significantly aid SRC in moving ahead with the project successfully and expeditiously. Conditional exemption of SRC’s construction and operation proposal would facilitate SRC’s efforts to marshal the resources necessary to complete the project. It would also assist Sunflower in its efforts to obtain the best possible long-term contracts with potential energy purchasers, and in its efforts to negotiate with its rail service providers. Further, it would enable SRC to focus its efforts exclusively upon the SEA’s environmental review process in an effort to expedite the

¹³ See *San Jacinto Rail Ltd. Construction Exemption – Build-Out to the Bayport Loop near Houston, Harris County, TX*, STB Finance Docket No. 34079, slip op. at 7 (STB served Aug. 28, 2002) (Board follows its “usual approach of issuing a preliminary decision addressing the transportation aspects of the proposed construction prior to completion of our environmental review”); *Midwest Generation I* at 10 (preliminary issuance of a “decision addressing the transportation-related issues prior to completion of” the Board’s environmental review is “consistent with [the Board’s] usual practice in rail construction cases”); *Burlington N. & S.F. – Construction & Operation Exemption – Seadrift & Kamey, TX*, STB Finance Docket No. 34003, slip op. at 3 (STB served June 19, 2001) (the Board “consistently handle[s] rail construction applications or exemption requests by first considering the transportation issues and later addressing the environmental issues”).

overall handling of its construction petition. SRC recognizes that conditionally exempting its proposal would not in any way pre-judge the Board's ultimate decision, and that construction could not begin until after the Board has completed its environmental review and has issued a further decision addressing environmental issues and making the exemption effective at that time (if appropriate), subject to mitigation conditions (if necessary).

SRC also respectfully requests that the Board expedite its handling of this petition. Completion of the proposed construction project is expected to bring real benefits to Sunflower and its customers in the form, among other things, of reduced transportation rates. As a cooperative, Sunflower would pass on the benefits of lower transportation rates for coal directly to its customers. The sooner the Board gives final approval to the proposed project, the sooner Sunflower and its customers can begin to realize the benefits of added competition.¹⁴

In addition, as noted above, with lower production costs due to reduced rail rates, Sunflower should be in a position to negotiate long-term supply agreements with energy purchasers for a greater proportion of its capacity. Such agreements should provide Sunflower with a greater return on its assets than short-term sales, allowing it to further reduce prices to the members of the cooperative. *See Waggoner V.S.* at 6-7. Much of Sunflower's existing long-term contractual supply commitment will expire over the next several years, creating a limited window of opportunity for Sunflower to negotiate

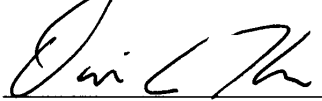
¹⁴ For similar reasons, expedited handling would benefit the Sand Sage Plant and its customers. Although that plant is not scheduled to be operational until 2007, negotiations concerning financing and future power sales are already underway. The sooner the Board approves SRC's petitions, the sooner and more fully the anticipated benefits of direct rail competition may be reflected in commercial agreements for the Sand Sage Plant and realized by the plant's owners and customers.

replacement agreements. However, in order for Sunflower to be in a position to offer reduced energy prices and guarantee delivery dates to the satisfaction of potential purchasers, SRC must have obtained the Board's final approval allowing it to begin construction. *See id.* at 7-8.

CONCLUSION

For the foregoing reasons, SRC respectfully requests that the Board expeditiously issue an order granting SRC's petition for exemption from the requirements of 49 U.S.C. § 10901 to construct and operate the approximately 4.7-mile rail line discussed herein in order that Sunflower and other shippers which might locate on the line may enjoy competitive rail service. SRC also requests that this petition be conditionally granted subject to the completion of the environmental review process.

Respectfully submitted,



David A. Hirsh
HARKINS CUNNINGHAM
801 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004
(202) 973-7600

Attorney for Sunflower Rail Company, LLC

January 22, 2003

Exhibit A

**VERIFIED STATEMENT
OF
CARROLL L. WAGGONER**

My name is Carroll L. Waggoner. I am Director of Coal Transportation for Sunflower Rail Company, LLC ("SRC"), and Senior Manager, Transmission Policy, for SRC's parent, Sunflower Electric Power Corporation ("Sunflower"). My business address is 301 West 13th Street, Hays, Kansas 67601.

I earned a Bachelors Degree in Business Administration from the College of Santa Fe in 1973, and received a Masters in Business Administration from New Mexico Highlands University in 1980. My work experience includes employment with the New Mexico Public Utilities Commission (1974-76), the Public Service Company of New Mexico (1976-80), and Plains Electric Generation and Transmission Cooperative, Inc. (1980-81). From 1981 to 1983, I held the position of Supervisor, Cost and Rate Research for Pacific Power & Light Company, and from 1983 to 1986, I served as Director, Rate Research for Gulf States Utilities.

I was employed by Sunflower in 1986. In my current position with Sunflower, I am responsible for the acquisition of coal, coal transportation and related services, administration of coal supply, coal transportation contracts, and the rail car fleet. I am also responsible for planning the development of new electric generating capacity, and negotiating with purchasers of Sunflower's current and future output.

Recently, as part of Sunflower's efforts to create a second direct rail transportation option for coal delivery to its 360mW electric generating plant at Holcomb Station, which is located near Holcomb, Kansas (southwest of Garden City) ("Holcomb Plant"), I was appointed Director of Coal Transportation of SRC, a wholly-owned subsidiary of Sunflower created for the purpose of constructing, owning, and assuming responsibility for maintaining and operating the proposed new rail line.

My verified statement will first provide some background about Sunflower, its Holcomb Plant, and Sunflower's general objective to obtain competitive rail service for that plant. I will then discuss how a new electric generating plant, the Sand Sage Plant, which may be constructed immediately adjacent to the Holcomb Plant, could also benefit from competitive rail service. Finally, I will describe aspects of the planned rail line construction that would provide such competitive service. The planned rail line is the subject of SRC's petition for exemption before the Surface Transportation Board ("STB" or "Board") in Finance Docket No. 34210 ("Construction Petition") and SRC's rail line crossing petition filed in STB Finance Docket No. 34210 (Sub-No. 1) ("Crossing Petition"). I am submitting this statement in support of both petitions.

Sunflower is an independent, nonprofit and non-stock electric power generation and transmission cooperative owned and operated by a federation of six rural Kansas electric distribution cooperatives. It serves people and industries in 34 western Kansas counties. Sunflower also sells power at wholesale to customers in the Southwest Power Pool and Mid-Continent Area Power Pool market areas. In addition to the Holcomb Plant, it owns and operates natural gas-fired peaking plants and a transmission system.

Sunflower purchases and ships approximately 1.5 million tons of coal annually to its Holcomb Plant. Over the next several years, it is anticipated that these coal shipments may rise to approximately 1.7 million tons annually. The coal used at the Holcomb Plant originates in the Powder River Basin ("PRB") of northeast Wyoming. The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") both serve that coal-producing region. Currently, however, BNSF is the only rail carrier capable of delivering this coal traffic directly to Holcomb Station.

Sunflower is constantly looking for ways to reduce its costs and improve service for its customers. As part of those efforts, Sunflower has determined that it and its customers would benefit from a direct competitive rail alternative to BNSF's rail service to the Holcomb Plant. We believe that such an alternative will result in lower coal transportation rates than Sunflower is able to negotiate under current circumstances with BNSF. Rail rates are a substantial cost component in our total cost of producing electricity. Reduced rail rates will make the Holcomb Plant more competitive through lower delivered fuel costs, and will make Sunflower's customers more competitive through lower rates for electricity. Two direct rail options for PRB coal will also provide the Holcomb Plant with an added measure of rail service reliability in the event of any future disaster, emergency, or service outage affecting either carrier.

The proposed new line might also be used for coal delivery to a possible new plant, known as the Sand Sage Plant, a 600mW coal-fired plant currently being planned for construction on the Holcomb Plant site. When fully operational, the Sand Sage Plant, which Sunflower expects to operate, is expected to require approximately 2.681 million

tons of coal annually from PRB sources. Although the Sand Sage project is not dependent upon SRC's proposed construction project, as discussed below, the Sand Sage Plant would receive coal over the same spur as the Holcomb Station and would thus be in a position to benefit from the added competition that would be brought by the proposed new rail line.

With the assistance of HDR Engineering, Inc. ("HDR"), and after discussions with UP, The Garden City Western Railway, Inc. ("GCW"), and the Kansas & Oklahoma Railroad, Inc. ("K&O"), we have identified a rail route that will provide the Holcomb Plant (and the Sand Sage Plant, if built) with access to UP that is independent of BNSF, UP's direct competitor for the movement of PRB-originated coal. This rail route will require the construction of 4.7 miles of new rail line (the "SRC Line") that is the subject of SRC's Construction Petition. The proposed route for UP-originated PRB coal to Holcomb Station (the "UP Route") would run from the PRB in Wyoming over UP through Pueblo, Colorado, to NA Junction, Colorado (east of Pueblo). From NA Junction eastward to the Colorado-Kansas state line, the proposed route would use the line of the Colorado, Kansas & Pacific Railway Company. From the Colorado-Kansas border east to Scott City, Kansas, and from Scott City south to Shallow Water, Kansas, the UP Route would use the lines operated by K&O. From Shallow Water, the proposed route would continue southward toward Garden City over a line owned and operated by GCW. Beginning at a point approximately 1.8 miles north of Garden City, UP-originated coal trains would traverse the SRC Line and a rehabilitated portion of GCW's Lowe Spur, which would connect the rest of the UP Route to the Sunflower-owned spur track serving

Holcomb Station.¹ The UP Route (including the new line construction) can be seen on the map included as Attachment 1 to my statement.

Sunflower expects to secure the funding for SRC to construct the planned new rail line. Although SRC is seeking authority not only to construct, but also to operate the new line, and acknowledges that it will become a rail carrier subject to Board jurisdiction upon completion of the project, it expects to provide rail common carrier service over the line through one or more third parties.² GCW is expected to assume responsibility for signaling, dispatching, and operating trains over the new line once it is completed.³ SRC expects to grant trackage rights over the new lines to GCW for this purpose, and also expects to grant trackage rights to UP over the new line to allow UP to move coal over the line to the Holcomb Plant site. SRC expects to contract with a separate third party for line maintenance.

Sunflower has its own fleet of 100-ton capacity open-top coal hopper cars, which cycle between PRB coal mines and the Holcomb Plant. The current fleet is generally

¹ For a detailed description and map of the line SRC proposes to construct, see the Verified Statement of Timothy R. Bennett ("Bennett V.S."), attached as Exhibit B to both the Construction Petition and the Crossing Petition.

² Although SRC expects to use a third party or parties to provide common carrier service for it over the proposed line, we understand that SRC would retain a residual common carrier obligation over the line.

³ GCW has expressed an interest in operating some of its own local traffic over portions of the SRC Line. In addition, although the new line is intended primarily to serve the Holcomb Plant (and possibly a new Sand Sage Plant), it is possible that other new shippers may locate along the line. If so, it is expected that service would be provided to such shippers by GCW.

assembled into 115-car train sets. We anticipate that we may replace this fleet with higher (120-ton) capacity hopper cars assembled into trainsets of up to 130 cars, which would enable Sunflower to meet the Holcomb Plant's annual fuel needs more economically with fewer total train movements to and from the plant. We expect that, if Sand Sage is constructed, it will be served by 130-car train sets of 120-ton capacity cars.

The proposed SRC Line would cross a BNSF rail line (the La Junta Subdivision) in the vicinity of BNSF MP 406.9, which is north of Holcomb Station. *See Bennett V.S. at 5, Attachment 1.* SRC intends to construct an overpass structure, as discussed by Mr. Bennett of HDR in his verified statement, in order to grade separate the crossing. I understand from HDR that we should be able to coordinate with BNSF a phasing approach to the construction of our grade separated crossing in order to avoid interference with operations on the BNSF line. I have contacted BNSF to discuss crossing issues, but we have not reached any final understandings. SRC intends to pursue discussions with BNSF so that it can use such a phasing approach to construction and avoid interference. In addition, we recognize that SRC must compensate BNSF for the crossing of its line, and are hopeful that SRC can reach an agreement with BNSF on this matter as well. If an agreement cannot be reached, SRC reserves the right to have the Board resolve any compensation dispute under 49 U.S.C. § 10901(d)(2).

SRC is seeking expedited handling of its petitions filed with the Board. Granting the Construction Petition at the earliest possible date will make it possible for Sunflower to better meet present and future customer needs. The sooner the Board authorizes SRC to begin construction of its new line, the sooner that line will be completed and

Sunflower and its customers can begin to reap the benefits of direct rail competition.⁴ As a cooperative, Sunflower would pass any benefits it realizes from that competition on to its customers.

Expedited approval will also assist Sunflower in its efforts to negotiate long-term power agreements with large potential customers. Because Sunflower's costs have been higher than those of competing producers, due largely to high rail transportation costs, it has been unable to negotiate long-term power agreements covering an optimal portion of its Holcomb Plant's production capacity. Instead, Sunflower has been forced to sell a significant portion of the Holcomb Plant's energy production through short-term agreements at a lower net return. With the anticipated reduction in rail rates that should result from the planned project, Sunflower should be in a position to strike long-term power supply agreements for a greater portion of its output.

Expedited handling of SRC's two petitions is important to Sunflower's negotiation efforts, because with the approaching expiration of one of Sunflower's largest long-term power supply agreements, it is now beginning active negotiations. Potential purchasers of such long-term capacity commitments typically plan their acquisitions with very long lead times, and are sensitive both to reliability and price. In order to reach timely agreements, Sunflower must be in a position to offer reduced electricity rates

⁴ An expedited decision would similarly benefit the Sand Sage Plant and its future customers. Although that plant is not scheduled to be operational until 2006, negotiations concerning financing and future power sales are already underway. The sooner the Board approves SRC's petitions, the sooner and more fully the anticipated benefits of direct rail competition may be reflected in commercial agreements for the Sand Sage Plant and realized by the plant's owners and customers.

within a time frame requiring completion of the proposed rail line by third quarter 2004.

In order to meet that deadline, given construction lead times, final approval of SRC's

Construction Petition would be required on or about the third quarter of 2003.

For all of these reasons, I urge the Board promptly to review and to grant SRC's
Construction and Crossing Petitions.

VERIFICATION

I, Carroll L. Waggoner, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January 22, 2003

Carroll L. Waggoner

Carroll L. Waggoner

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Interstate

UP Coal Train Route

— Other Railroad

Water

Scale

Data source: EBN

Project Location

KANSAS

Trident City

Colorado Springs

COLORADO

KANSAS

Scott City

Pueblo

NA Junction

Garden City

Holcomb Station

✓

1

10

1

1

1

1

NEW MEXICO

TEXAS

OKLAHOMA

26

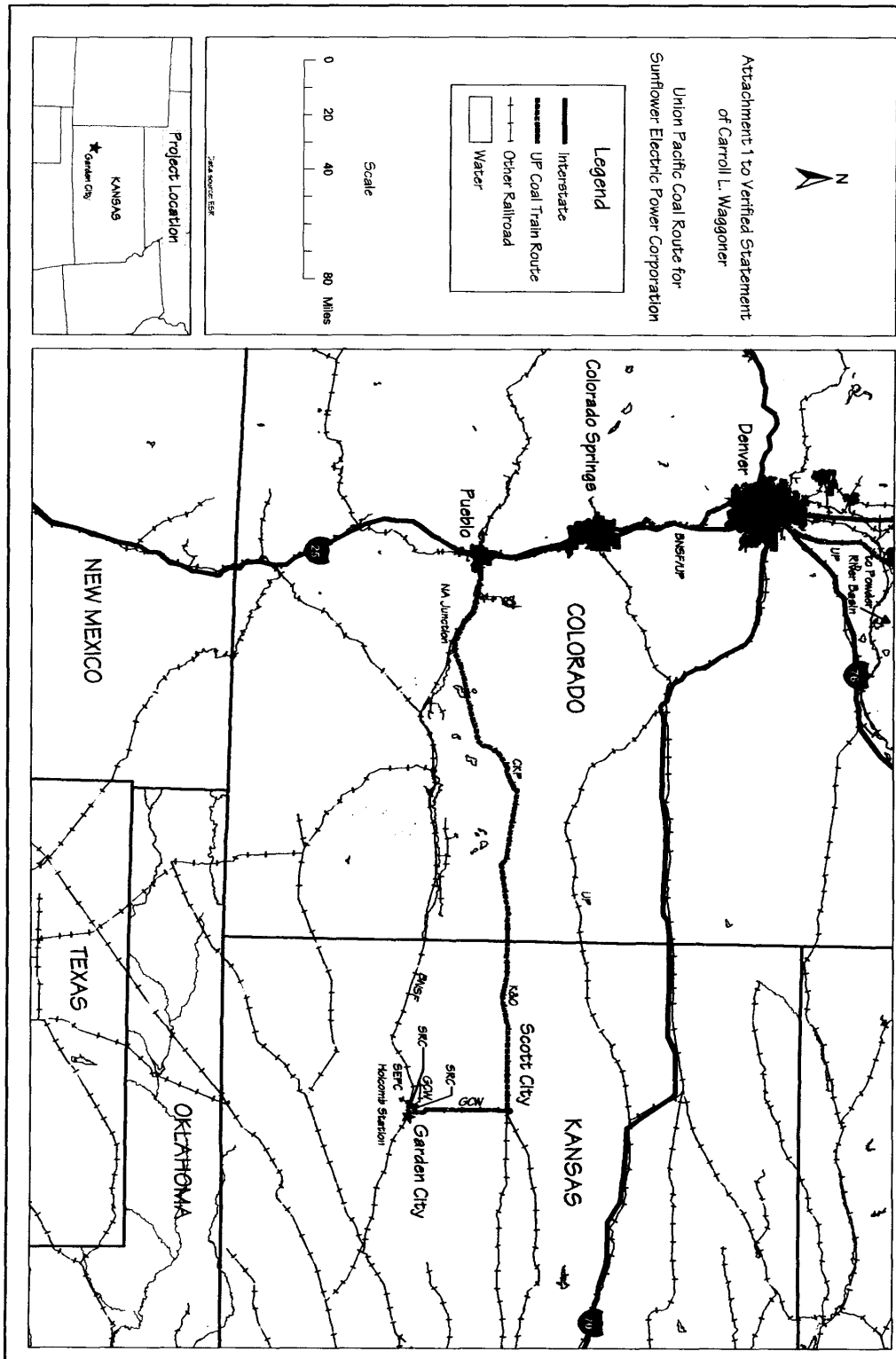


Exhibit B

VERIFIED STATEMENT
OF
TIMOTHY R. BENNETT

My name is Timothy R. Bennett. I am Railroad Design Manager – Track and Facilities for HDR Engineering, Inc. (“HDR”). HDR is an international engineering and design firm of over 3,100 employees, with 71 offices in 30 states. Among other things, HDR has broad experience with the operation, design, engineering, and construction of railroad lines and facilities in the United States, including the lines and facilities of the major U.S. freight carriers. My business address is 8404 Indian Hills Drive, Omaha, Nebraska 68114-4049.

During the past 17 years, I have gained extensive experience in railroad design, construction, and maintenance. My experience with railroad projects has included project management, resident engineering, track, utility and civil site work design, preparation of design specifications and drawings, railroad yard and terminal traffic studies, construction cost estimating, construction inspection, and field supervision for railroad maintenance. I have worked on numerous projects involving major Class I railroads, including The Burlington Northern and Santa Fe Railway Company (“BNSF”) and Union Pacific Railroad Company. I am a registered professional engineer, and hold a Bachelor of Science degree in Civil Engineering from Purdue University, which was awarded in 1985. After earning my degree, I joined CSX Transportation where I worked for over five years

first as an Assistant Project Engineer and later as an Assistant Roadmaster. In 1990, I joined Consoer Townsend Envirodyne Engineers, where I worked as a railroad project engineer and resident engineer on railroad construction projects, before joining HDR in 1994. I am an active member of the American Railway Engineering and Maintenance-of-Way Association ("AREMA").

HDR has been retained by Sunflower Electric Power Corporation ("Sunflower") to advise it, and its wholly-owned subsidiary, Sunflower Rail Company, LLC ("SRC"), in connection with a proposed rail line construction and rehabilitation project. We have assisted SRC and Sunflower with identification of the route for the proposed line construction, design engineering for the new construction and associated track rehabilitation (discussed below), and identification of potential environmental impacts of the project. I understand that the line construction project (including the associated track rehabilitation) is intended to secure direct rail competition for delivery of coal to Sunflower's coal-fired electric generating plant at Holcomb Station west of Garden City, Kansas ("Holcomb Plant"), which is presently served solely by BNSF. In addition, the line could be used to serve another generating plant that I understand may ultimately be constructed immediately adjacent to the Holcomb Plant ("Sand Sage Plant").

The purpose of this statement is to describe (a) the rail line construction that is the subject of SRC's petition for exemption in STB Finance Docket No. 34210 and SRC's petition for crossing authority in STB Finance Docket No. 34210 (Sub-No. 1); (b) the rehabilitation of existing rail lines that will accompany the proposed line construction; (c) the rail operations that may take place on the lines to be constructed and rehabilitated; and

(d) plans for an overpass structure to provide a grade separated crossing over the main line of BNSF for SRC's proposed new rail line.

Attachment 1 to my statement is a map depicting the location and alignment of the rail line SRC proposes to construct (the "SRC Line"). As shown on that map, the SRC Line would begin at a connection switch with Sunflower's existing spur track (the "Holcomb Station Spur") that runs between BNSF's main line (the La Junta Subdivision) and the coal unloading facilities at Holcomb Station. The connecting switch would be located about 0.8 miles southwest of the connection between the Holcomb Station Spur and BNSF's main line (Build-Out milepost 0.0). The new line would proceed from the switch in a northeasterly direction, crossing Holcomb River Road and BNSF's main line on an overpass structure at approximately Build-Out milepost 0.6 (BNSF milepost 406.9). The SRC Line would then turn to the east on a 5-degree curve, and then, approximately 1 mile later, turn north on another 5-degree curve to a connection with a line known as the Lowe Spur, which is owned and operated by the Garden City Western Railway Company ("GCW"). The SRC Line would connect with the Lowe Spur at a switch (the "South-End Lowe Spur Connection") located at approximately Build-Out milepost 2.2 (GCW milepost 2.7), a point about one-third of a mile south of Jones Avenue.

As Attachment 1 shows, the SRC Line would begin again further north at a switch diverging from the GCW Lowe Spur (the "North-End Lowe Spur Connection") at approximately Build-Out milepost 3.4 (GCW milepost 3.9), a point near the Lowe Spur's crossing of U.S. Highway 50. The SRC Line would turn from the north-south alignment of the Lowe Spur on a 3 degree curve to the east, and would proceed on an east-west

alignment until it crosses VFW Road, at which point the line would turn northward on a 3 degree curve which would end at a connecting switch with GCW's north-south line between Shallow Water and Garden City at Build-Out milepost 5.9 (GCW milepost 153.0), a point roughly 1.8 miles north of Garden City.

The proposed SRC Line would thus consist of approximately 4.7 miles of new track (entirely located within Finney County, Kansas), which, taken together with the connecting portion of the GCW Lowe Spur, would create a coal train route which would bypass the Garden City business district. HDR has also evaluated the rail lines that would serve, in conjunction with the SRC Line, as part of a competitive routing alternative to BNSF service to the Holcomb Station. We have determined that certain existing lines forming part of this route would require rehabilitation to safely handle the heavy unit coal trains that we understand may operate to the Holcomb Plant and the planned Sand Sage Plant. Specifically, in addition to the 1.2-mile portion of the Lowe Spur between the South-End and North End Lowe Spur Connections, approximately 28 miles of GCW track between Garden City and Shallow Water would require rehabilitation, as would roughly 5 miles of rail line owned by the Kansas & Oklahoma Railroad, Inc. ("K&O") between Shallow Water and Scott City, Kansas.¹ The lines we have identified as in need of rehabilitation to handle coal train traffic in connection with this project are shown in Attachment 2.

¹ We understand that the rehabilitated portions of both the GCW and K&O lines will continue to carry existing rail traffic and serve existing customers.

The 4.7-mile SRC Line will be constructed in accordance with current standards and methods approved by the AREMA for "heavy axle loading" unit train operations. The new line will be built with 115-pound, continuously welded steel rail on wood ties and will be designed so that no curve will exceed 5 degrees. The lines that will be rehabilitated in connection with the new line construction will receive 115-pound, continuously welded rail, and, where necessary, will receive replacement ties and ballast and grading and sloping work to ensure proper drainage. The new line and rehabilitated lines will be designed and improved to accommodate safely unit coal trains at speeds ranging from 25 to 40 miles per hour.

A grade separated crossing of BNSF's main line at about BNSF milepost 406.9 is an important element of SRC's proposed rail line construction. SRC plans to construct an overpass structure recommended by HDR in order to avoid any interference between operation of the new line and use of the BNSF line. The construction of the recommended overpass itself should, in addition, have little, if any, impact on BNSF and Amtrak operations over the line.² By coordinating construction with BNSF and Amtrak, a construction phasing approach can be developed that would avoid any construction interference with train operations over the BNSF main line.

It is expected, depending on the number and size of hopper cars, that between 110 and 149 trainloads per year (or approximately 0.3 to 0.4 trainloads per day) would be

² In addition to approximately six BNSF trains per day, we understand that, as part of Amtrak's Southwest Chief passenger service, Amtrak currently operates two trains per day over BNSF's La Junta Subdivision (one eastbound and one westbound). My conclusion regarding a lack of any significant construction interference would remain valid even if a considerably larger number of trains were using this line.

needed to meet the current level of fuel needs of SEPC's Holcomb Plant. The lower number of 110 trains per year is based on a train consist of 130 cars, each with 120-ton capacity. Assuming three 4000 or 4400 horsepower locomotives power each train, the approximate length of this train would be 1.36 miles. The higher number of 149 trainloads per year assumes a train consist of 115 open-top hopper cars, each with a 100-ton capacity. Assuming the same complement of locomotives, the approximate length of the 115-car train would be 1.21 miles.

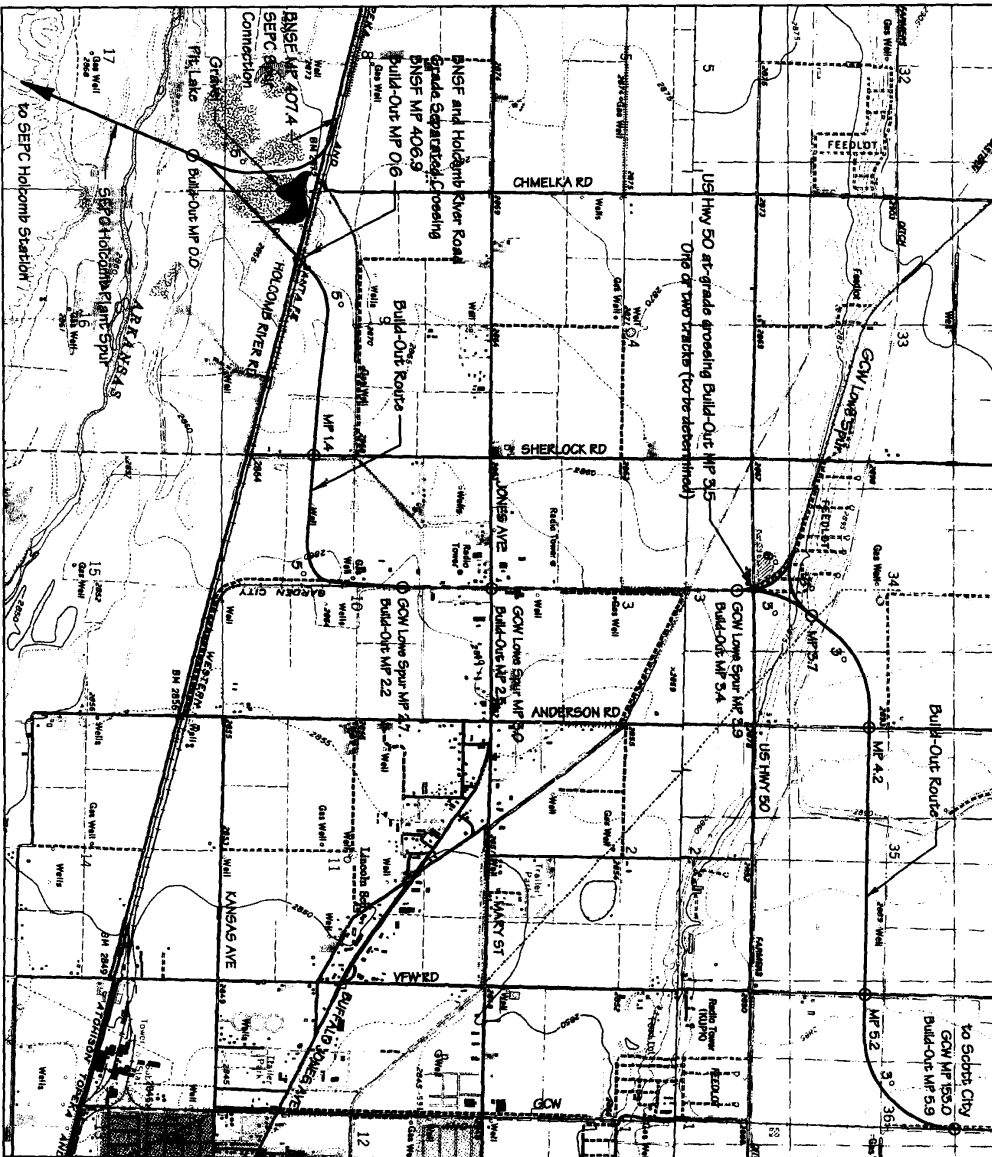
If the Sand Sage Plant is constructed, I understand it would increase the capacity of the Holcomb Station by 600 megawatts. Assuming that the new plant is serviced over the proposed line, the total number of coal trains moving over the line to the station would be expected to increase to between 282 and 310 trainloads per year, based on the anticipated use of an all 120-ton capacity fleet of cars and average train sizes of between 120 and 130 cars. Total train traffic on the new line for both plants would thus be between 1.54 and 1.70 trains per day (including both loaded and empty trains).

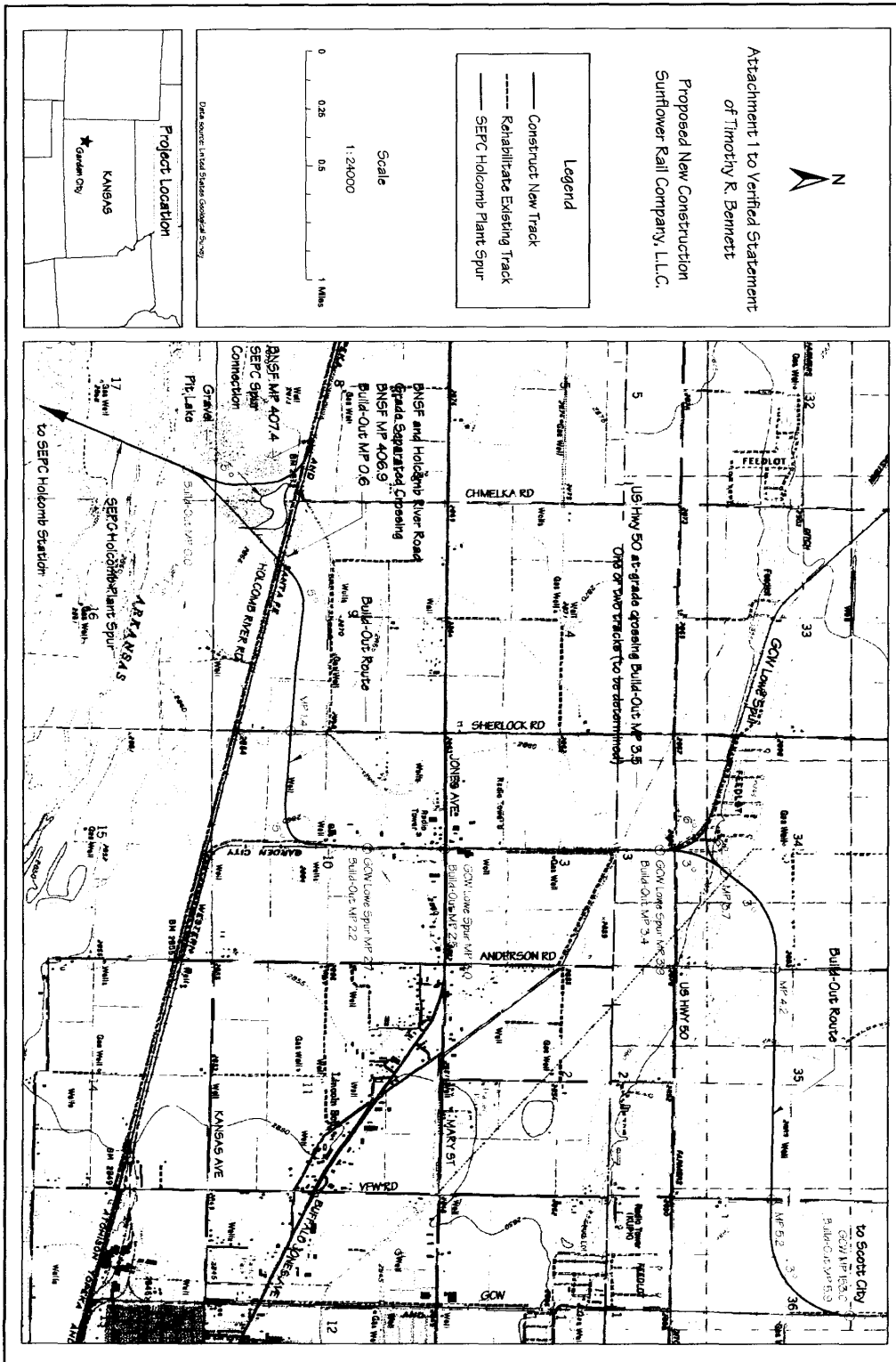
Based on our analysis, I conclude that the construction of the new grade-separated crossing will not unreasonably interfere with operation of the crossed line. Further, I conclude that SRC's proposed operations using a grade-separated crossing will cause no interference at all (and certainly no material interference) with operation of the crossed line.

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SEPC Holcomb Plant Spur

Project Location





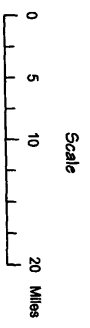


Attachment 2 to Verified Statement
of Timothy R. Bennett

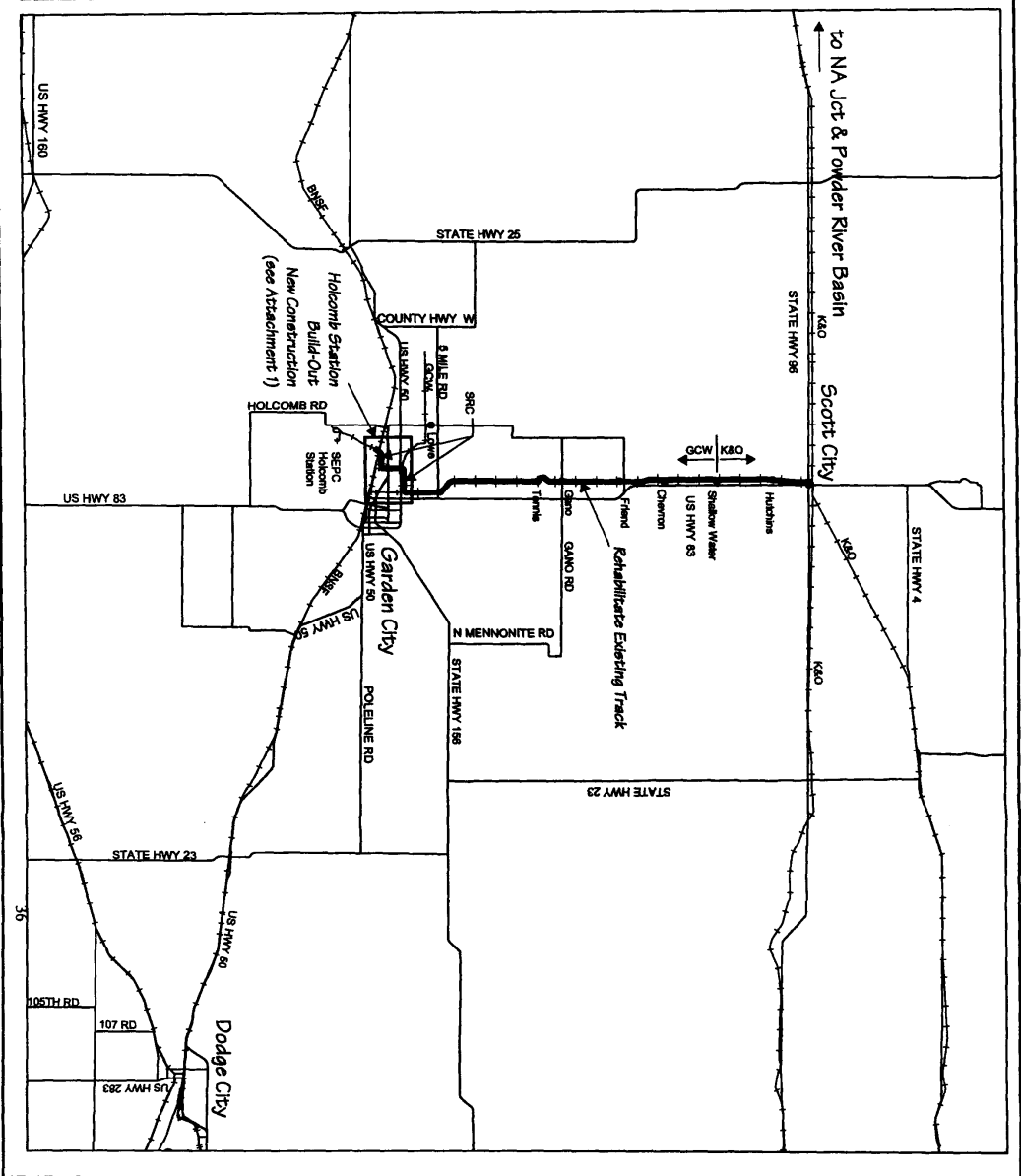
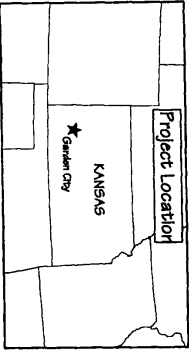
Rehabilitated Track
Scott City to Garden City

Legend

- Station/Town
- Road
- +— Railroad



Data source: ESRI



$\triangleright z$

Station/Town

Road

+ Railroad

A horizontal scale bar with tick marks at 0, 5, 10, and 20 miles. The text "0", "5", "10", and "20 Miles" is positioned below the bar.

Data source: ESR

KANSAS
★
Garden City

