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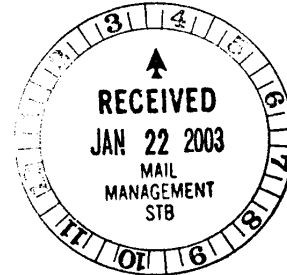
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January 22, 2003



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

FILED

JAN 22 2003

ENTERED
Office of Procurement

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 (Sub-No. 1))**

Dear Mr. Williams:

Enclosed for filing in the above-referenced docket please find an original and 10 copies of the Petition of Sunflower Rail Company, LLC For Crossing Authority Under 49 U.S.C. § 10901(d). **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

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
David A. Hirsh

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34210 (Sub-No. 1)



**PETITION OF SUNFLOWER RAIL COMPANY, LLC FOR
CROSSING AUTHORITY UNDER 49 U.S.C. § 10901(d)**

Pursuant to 49 U.S.C. § 10901(d), Sunflower Rail Company, LLC ("SRC") hereby petitions the Surface Transportation Board ("Board") for an order directing The Burlington Northern and Santa Fe Railway Company ("BNSF") to permit SRC to cross tracks owned by BNSF. SRC is filing the subject petition ("Crossing Petition") simultaneously with a petition for exemption from the prior approval requirements of 49 U.S.C. § 10901 ("Construction Petition"). The requested exemption would allow SRC to construct and operate a line of railroad which is intended to cross BNSF's line and connect to a spur line used by Sunflower Electric Power Corporation's ("Sunflower")¹ to serve its coal-fired electric generating plant ("Holcomb Plant") at a location known as Holcomb Station, which is near Holcomb, Kansas (southwest of Garden City, Kansas). The BNSF track as to which crossing authority is sought is located in the vicinity of the Sunflower spur. The purpose for SRC's proposed new line is to create a competitive route to Sunflower for coal originated on the Union Pacific Railroad Company ("UP"). See Sunflower Rail Company, LLC – Construction and Operation Exemption – Finney County, Kansas, STB Finance Docket No. 34210.

¹ SRC, a wholly-owned subsidiary of Sunflower, has been created specifically to construct, own, and operate railroad property.

I. BACKGROUND AND DESCRIPTION OF PROJECT

Detailed background information and a description of the proposed rail line construction (including the crossing) and operation are set forth in SRC's Construction Petition (at pages 2 - 6), and in the Verified Statements of Carroll L. Waggoner ("Waggoner V.S.") (attached hereto and to the Construction Petition as Exhibit A) and Timothy R. Bennett ("Bennett V.S.") (attached hereto and to the Construction Petition as Exhibit B)).

In brief, SRC's proposed rail line construction and crossing of BNSF's line would facilitate intramodal competition between BNSF and UP for the movement of coal by rail from Powder River Basin ("PRB") sources in Wyoming to Holcomb Plant, and would thus enable Sunflower to enjoy reduced rail rates and improved service reliability.² SRC's proposed rail line would cross over BNSF's La Junta Subdivision at approximately BNSF milepost 406.9 (SRC milepost 0.6), through use of an overpass structure. *See Bennett V.S. at 5.*

SRC has approached BNSF in connection with the proposed rail line construction project, but to date has been unable to reach an agreement with it concerning the installation of, and operations over, the crossing. *See Waggoner V.S. at 6.* While SRC is hopeful that it will reach an agreement with

² BNSF is the only rail carrier with direct rail access to Holcomb Station. Thus, without the proposed rail line construction and crossing of BNSF's line, the Holcomb Plant would not have competitive access to UP. In addition, as discussed in the Construction Petition (at pages 3-4), the benefits of the proposed new line would extend to a planned 600mW coal-fired electric generating unit, referred to as the "Sand Sage Plant," that may be constructed adjacent to the Holcomb Plant.

BNSF permitting it to cross BNSF's line without the need for further Board involvement, it has filed this petition to ensure that the rail line construction and crossing are not delayed by BNSF.³

II. DISCUSSION

SRC seeks a determination by the Board that its proposal to construct and operate a new line of rail (which is the subject of its separate Construction Petition) meets the criteria of 49 U.S.C. § 10901(d), so that BNSF may not block that construction by refusing to permit SRC to cross its property. In support of its request, SRC shows the following below: (1) the proposed crossing will promote the Rail Transportation Policy ("RTP") of 49 U.S.C. § 10101 and is consistent with Congressional intent in adopting Section 10901(d), (2) if and when the Board grants the exemption

³ The Board has recognized repeatedly that, in order to avoid unnecessary delays, crossing petitions may be filed, and related proceedings advanced or completed, prior to the Board's authorization or exemption from authorization requirements for the construction of the rail line requiring the crossing. *See, e.g., Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL*, STB Finance Docket No. 34060, slip op. at 3-5 (STB served March 21, 2002) (discovery issues on crossing petition resolved while final approval of related construction petition pending); *Illinois Central Railroad Company – Petition for Crossing Authority – In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877 (Sub-No. 1), slip op. at 2 (STB served October 25, 2001) (proceedings instituted on crossing petition prior to final approval of rail line construction in order to promptly resolve any issues that might impede construction, in the event that it is approved; "no reason to delay building a record and commencing consideration of the issues presented"). Doing so has permitted the Board to grant crossing petitions at, or shortly after the time it has granted related petitions for authorization or exemption from authorization for rail line construction. *See, e.g., 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) (crossing petition granted simultaneously with final approval of related construction petition for exemption); *WFEC Railroad Company – Construction and Operation Exemption – Choctaw and McCurtain Counties, OK*, STB Finance Docket No. 32607 (STB served February 23, 1996) (same); *Omaha Pub. Power Dist. – Construction Exemption – In Otoe County, NE*, Finance Docket No. 32630 (ICC served November 30, 1995) ("*Omaha Pub. Power I*") (same).

sought by SRC through its Construction Petition, SRC will qualify for crossing authority under Section 10901(d); and (3) the requested exemption and proposed crossing will satisfy all the other requirements of Section 10901(d), including the "certificate" requirement, requirements concerning interference with operation of the crossed line, and compensation requirement.

A. SRC's Proposed Crossing Will Further the Goals of the Rail Transportation Policy and Will Foster Intramodal Competition Consistent with Congressional Intent

As noted above, SRC is seeking to construct the proposed rail line so that Sunflower can gain competitive access to UP, a competitor of BNSF. By doing so, Sunflower expects to benefit from lower coal transportation rates and more reliable rail service. These objectives further the goals of the Rail Transportation Policy ("RTP") of 49 U.S.C. § 10101(1) (promote "the use of competition and the demand for services to establish reasonable rates"); § 10101(2) (minimize "the need for Federal regulatory control over the rail transportation system"); § 10101(4) (develop and continue "a sound rail transportation system with effective competition among rail carriers"); § 10101(5) ("ensure effective competition . . . between rail carriers and other modes"); § 10101(7) ("reduce regulatory barriers to entry into and exit from the industry"); § 10101(9) ("encourage honest and efficient management of railroads" through the discipline of direct competition"); and § 10101(12) ("avoid undue concentration of market power" by any railroad). See Construction Petition at 9-10.

SRC's goals, and the goals of the RTP itself, are in harmony with Congress's intended objective for § 10901(d), which is to facilitate railroad entry and to promote intramodal competition. As the Board has noted:

[T]he legislative history of [§ 10901(d)] indicates that the Congressional purpose in giving us authority over crossings was to facilitate railroad entry and promote intramodal competition by limiting the ability of incumbents to block new competitors. See H.R. Rep. No. 1430, 96th Cong., 2d Sess. 115-16 (1980), reproduced at 1980 U.S. Code Cong. & Ad. News 4147 (Staggers Act Conference Report).

Omaha Pub. Power Dist. – Construction Exemption – In Otoe County, NE, Finance Docket No. 32630 (Sub-No. 1), slip op. at 3-4 (ICC served Aug. 1, 1996) (“*Omaha Pub. Power II*”).

B. SRC Will Qualify As A “Carrier” For Purposes Of Crossing Authority Under § 10901(d)

Section 10901(d) provides that “no other rail carrier may block any construction” within the Board’s authority “by refusing to permit the carrier [constructing the line] to cross its property,” if the other criteria of Section 10901(d) are met. SRC is not presently a “carrier” within the Board’s jurisdiction, but it will become one by virtue of constructing and owning the line which is the subject of its Construction Petition.⁴ Under a long line of cases, the Board has determined that an entity, such as SRC, that has not yet become a railroad, but will become one upon completion of the agency-approved construction of a rail line, qualifies as a “carrier” for the purposes of § 10901(d). See, e.g., *Public Service Co. of Colorado – Petition for Crossing Authority Under 49 U.S.C. 10901(d)*, STB Finance Docket No. 33862 (Sub-No. 1) (STB served March 21, 2001) (non-carrier electric utility successfully invokes § 10901(d) to construct a line crossing tracks of BNSF); *Omaha Pub. Power II* (Board sets terms for non-carrier utility company’s proposed rail line crossing of a line of the

⁴ The proposed line itself will be a new line of railroad subject to the Board’s construction and operating authority under 49 U.S.C. § 10901(d). By virtue of its construction and ownership of a jurisdictional line of railroad, SRC will become a rail common carrier. Consistent with its common carrier obligation, SRC will ensure that rail service is available on the line to all interested shippers who may wish to receive common carrier service over it.

Burlington Northern Railroad Company); *Louisville & Jefferson County Riverport Authority and CSX Transportation, Inc. – Construction and Operation Exemption – In Jefferson County, KY*, 4 I.C.C.2d 749 (1988) (non-carrier riverport authority permitted to construct a rail line that would cross a line of the Paducah & Louisville Railway, Inc.).

C. SRC's Crossing Satisfies All Other Requirements of § 10901(d)

The provisions of 49 U.S.C. § 10901(d)(1) provide that no rail carrier may block another carrier from constructing a rail line by refusing to permit the carrier to cross its property if: (1) the Board has issued a "certificate" authorizing the construction of the rail line; (2) construction of the crossing "does not unreasonably interfere with the operation of the crossed line"; (3) operations over the newly constructed track will not "materially interfere with the operation of the crossed line"; and (4) the owner of the crossed line is compensated for the crossing. SRC's proposed crossing of BNSF's line meets each of these requirements, and is consistent with Board and Interstate Commerce Commission ("ICC") precedent.

1. The Construction and Operation Exemption Sought by SRC Will Satisfy the "Certificate" Requirement of Section 10901(d)

Although Section 10901(d) speaks in terms of a "certificate" issued by the Board authorizing construction of a railroad line, it is well settled that this requirement will be met if the Board grants an exemption from the authorization requirements for construction.⁵ Accordingly, if and when the Board

⁵ See *Omaha Pub. Power II* (under § 10901(d), Board sets terms for crossing of a line of the Burlington Northern Railroad Company following the Board's grant of the utility's rail line construction petition for exemption); *Gateway Western Railroad Company – Construction Exemption – St.*

grants SRC's Construction Petition, SRC will possess the requisite "certificate" for crossing rights pursuant to § 10901(d).

2. Construction of SRC's Proposed Line Will Not Unreasonably Interfere with the Operation of the Crossed BNSF Line

The attached verified statement of Mr. Bennett describes SRC's rail line construction project, including the location of the proposed crossing of BNSF's line. Bennett V.S. at 5. SRC intends to construct an overpass structure in order to grade separate the necessary BNSF crossing. Waggoner V.S. at 6. As noted by Mr. Bennett, HDR Engineering Inc. has recommended an overpass structure that can be constructed without interfering with train operations over the BNSF main line. Bennett V.S. at 5. That can and should be accomplished through use of construction phasing, which would avoid interference with BNSF and Amtrak traffic during construction. *Id.* SRC has contacted BNSF, and intends to pursue discussions with them in order to develop and implement such a construction phasing approach and thus avoid any unreasonable interference with operations on the BNSF line as required by 49 U.S.C. § 10901(d)(1)(A). *See* Waggoner V.S. at 6.

Clair County, Illinois, Finance Docket No. 32158, slip op. at 14 (ICC served May 11, 1993) (§ 10901(d) authorizes "carriers constructing new lines to cross the existing lines of other carriers whether the authority to construct grows out of a grant of authority under § 10901, an exemption from the provisions of § 10901 pursuant to § [10502], or construction outside the scope of the [Board's] § 10901 jurisdiction pursuant to § [10905]").

3. Operations over SRC's Line Will Not Materially Interfere with the Operations of BNSF's Crossed Line

The planned installation and use of the proposed overpass structure will create a fully grade separated crossing that will avoid any interference between operation of the new line and use of BNSF's crossed line. Accordingly, the no "material interference" requirement of 49 U.S.C. § 10901(d)(1)(B) is fully met.

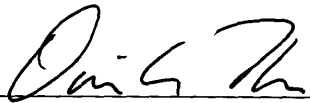
4. SRC Will Compensate BNSF for the Crossing

Section 10901(d) provides that the railroad whose line will be crossed must be compensated for the crossing. SRC will negotiate in good faith in an effort to reach an agreement on the proper level of compensation due BNSF in accordance with the respective property rights of the parties and consistent with the Board's fair market value compensation standards as set forth in *Omaha Pub. Power II* and *Chicago & N.W. Ry. – Construction & Operation Exemption – City of Superior, Douglas County, WI – Petition for Issuance of an Order Pursuant to 49 U.S.C. § 10901(d)*, Finance Docket No. 32433 (Sub-No. 1) (ICC served Aug. 11, 1995). If an agreement with BNSF cannot be reached, SRC reserves the right to have the Board resolve the dispute pursuant to Section 10901(d)(2). In order to permit SRC to proceed expeditiously with the project, it requests that the Board grant its Crossing Petition so that SRC may proceed with construction of the line and the crossing while attempting to establish the appropriate level of compensation due BNSF.

CONCLUSION

For the foregoing reasons, SRC respectfully requests that the Board grant it authority to cross BNSF's line in the vicinity of Holcomb, Kansas, in accordance with 49 U.S.C. § 10901(d). SRC further requests that construction of the crossing be permitted to commence immediately upon the issuance of decisions granting that authority and the Construction Petition, pending resolution of the appropriate level of compensation.

Respectfully submitted,



David A. Hirsh
HARKINS CUNNINGHAM
801 Pennsylvania Ave., 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.

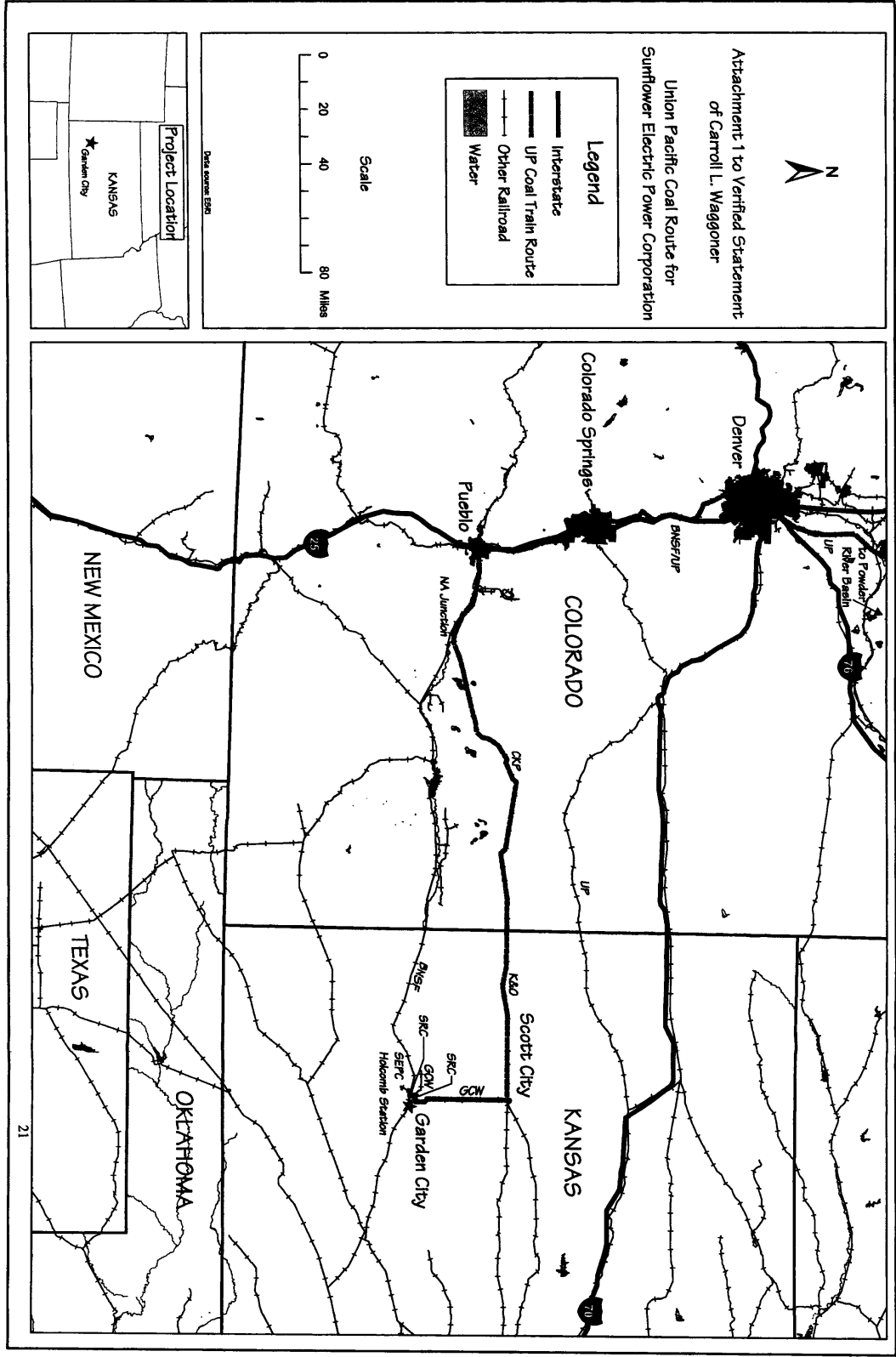
VERIFICATION

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



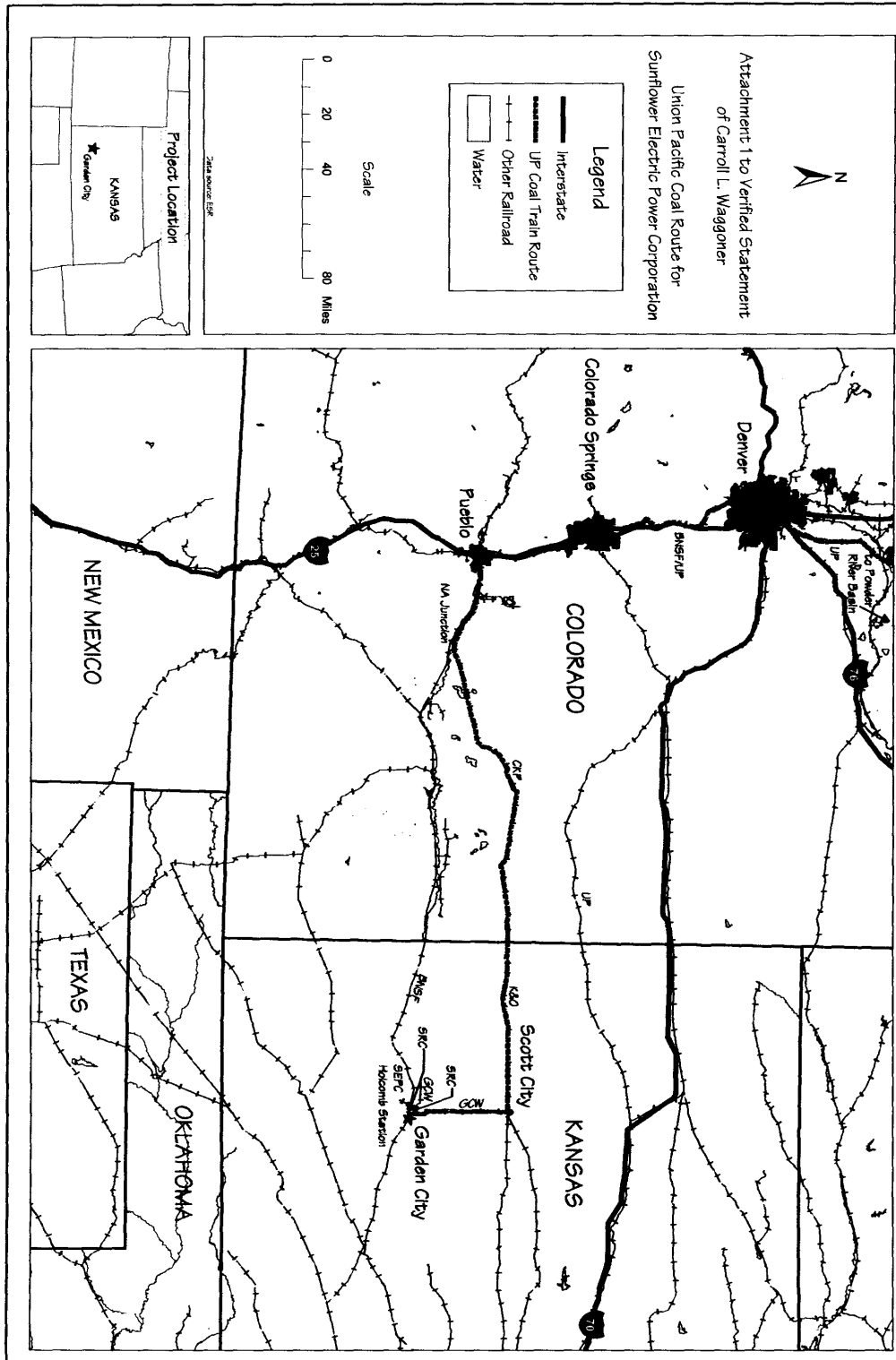


Exhibit B

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.

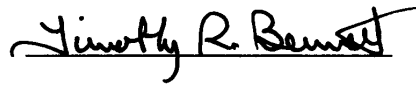
If the Sand Sage Plant is constructed, I understand it would increase the capacity of the Holcomb Station by 600 megawatts. Assuming that the new plant is serviced over the proposed line, the total number of coal trains moving over the line to the station would be expected to increase to between 282 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.

VERIFICATION

I, Timothy R. Bennett, 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

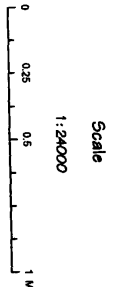
A handwritten signature in black ink, reading "Timothy R. Bennett", written over a horizontal line.

Timothy R. Bennett

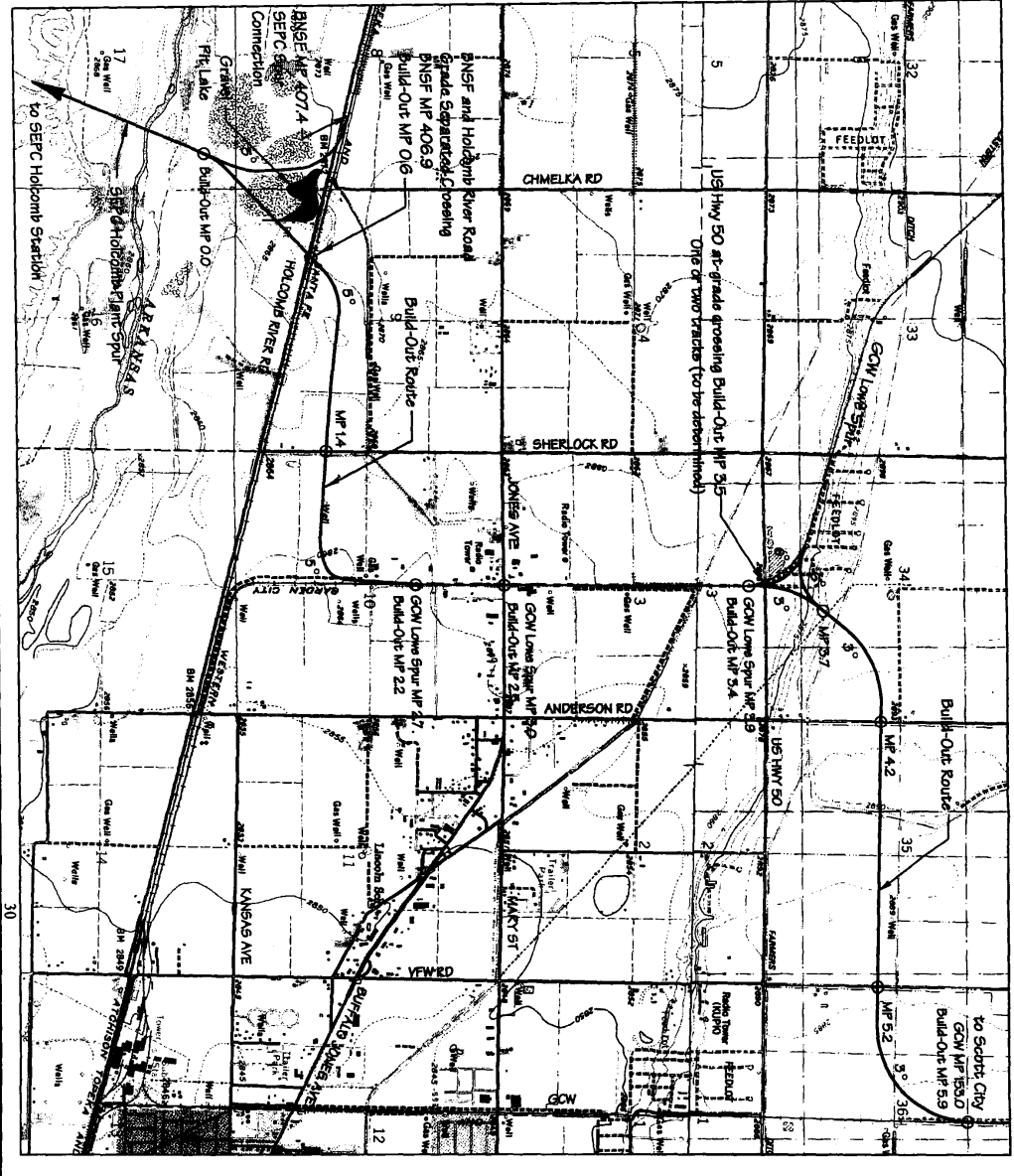
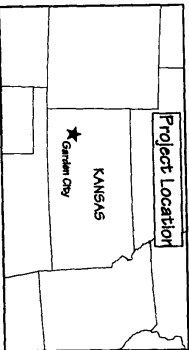
Attachment 1 to Verified Statement
of Timothy R. Bennett
Proposed New Construction
Sunflower Rail Company, L.L.C.



- Legend**
- Construct New Track
 - - - Rehabilitate Existing Track
 - SEPC Holcomb Plant Spur



Data source: United States Geological Survey



➤ Z

Proposed New Construction
Sunflower Rail Company, L.L.C.

Legend

- Construct New Track
- Rehabilitate Existing Track
- SEPC Holcomb Plant Spur

Scale

1:24000

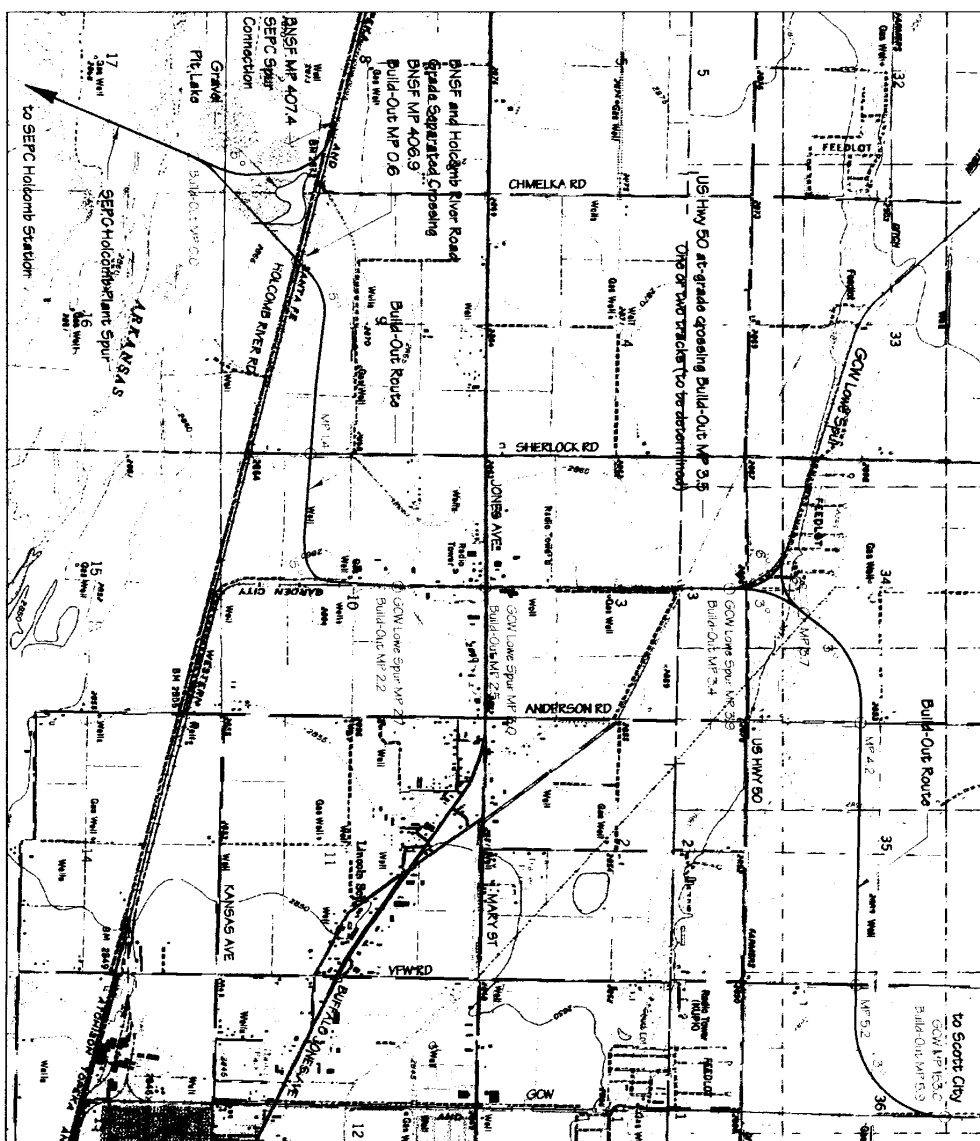
	0	0.25	0.5	1 Miles
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Data source: United States Geological Survey

Project Location

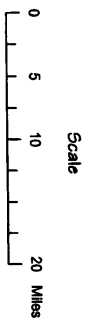
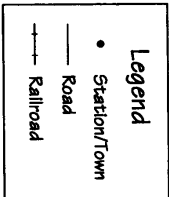
KANS

Garden City

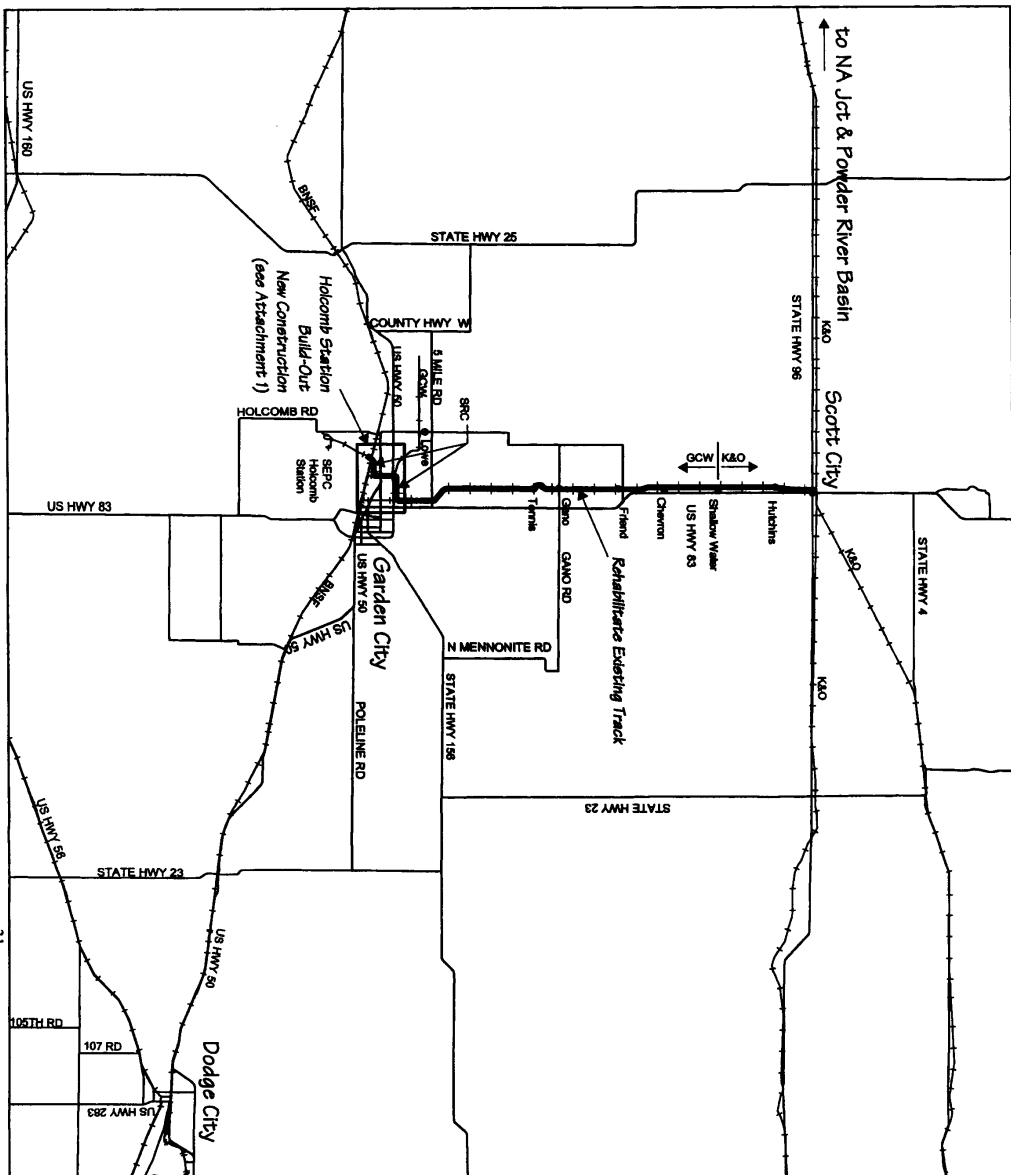
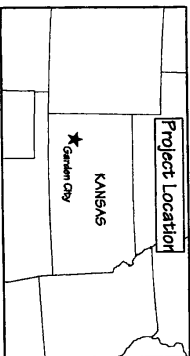




Attachment 2 to Verified Statement
of Timothy R. Bennett
Rehabilitated Track
Scott City to Garden City



Data source ES&S



➤

Station/Town

+ Railroad

10

20

Miles

Data source: ESR

★ Garden City

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