

207114

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ORIGINAL



January 27, 2003

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 27 2003

Part of
Public Record

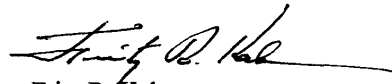
Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34310, Keokuk Junction Railway Company-Alternative Rail Service-Line of SF&L Railway, Inc. are the original and ten copies of the Reply of SF&L Railway, Inc.

Additional copies of this letter and of the Reply are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

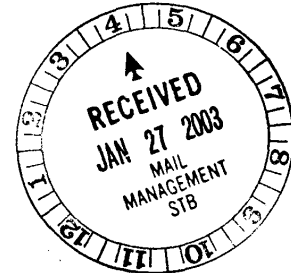
cc: William A. Mullins, Esq.
Louis E. Gitormer, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

STB Finance Docket No. 34310

KEOKUK JUNCTION RAILWAY COMPANY
- ALTERNATIVE RAIL SERVICE -
LINE OF SF&L RAILWAY, INC.



REPLY
OF
SF&L RAILWAY, INC.

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

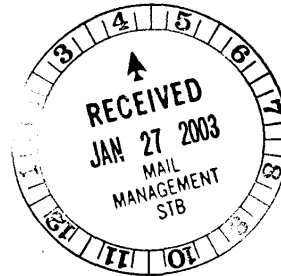
SF&L RAILWAY, INC.

Due and dated: January 27, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34310

KEOKUK JUNCTION RAILWAY COMPANY
- ALTERNATIVE RAIL SERVICE -
LINE OF SF&L RAILWAY, INC.



REPLY
OF
SF&L RAILWAY, INC.

SF&L Railway, Inc. ("SFL")¹, pursuant to 49 C.F.R. 1104.13(a), replies to the Petition to Provide Alternative Rail Service, filed by Keokuk Junction Railway Company ("KJRY") on January 21, 2003, by referring to the attached Verified Statement of Steven J. Van Wagenen, Assistant Vice President of SFL and the person in charge of the railroad's operations, and additionally stating, as follows:

Evidently believing it to be helpful to get its foot in the door, KJRY continues to pursue its acknowledged goal of trying to acquire the La Harpe-to-Peoria railroad line² by invoking the emergency provisions of 49 U.S.C. 11123(a), as implemented by the Board's alternative rail

¹ SFL is an affiliate of A&K Railroad Materials, Inc. ("A&K"), a supplier of new and used railroad materials to the industry. Other affiliated railroads are Southern Manitoba Railroad, operated since 1999, without any abandonment, V and S Railway, Inc., operated since 2000 without any abandonment, and Tulare Valley Railroad Company, operated since 1997 without any abandonment. A&K did not pay for the La-Harpe-to-Peoria railroad line, as KJRY alleges, at page 3 of its Petition; SFL paid for the line, albeit with a loan, secured by note, from A&K.

² See, pp.3, 4 of KJRY's Petition.

service regulation, 49 C.F.R. 1146.1.

The relief provided by the Board's alternative rail service regulation, however, is an extraordinary one. As far as SFL is aware, it has been employed only once,³ to authorize service on an abandoned railroad line pending its purchase by the interim operator, circumstances completely dissimilar from those in the instant case. The Board's authorization of alternative rail service is to be used only when there has been a demonstration of prolonged inadequate railroad service to the shippers on the affected railroad line. As the Board said in the Decision in which it adopted the alternative rail service regulation, "We emphasize that the temporary service relief to be offered under these rules is meant only to address serious service problems and only to the extent necessary to meet a demonstrated need for rail service; it is to be used for restorative or alleviative purposes only, and not as a punitive or preventative measure."⁴ KJRY has failed to make the requisite statutory and regulatory showing.

As was detailed in the Verified Statement of Mr. Van Wagenen in support of SFL's Petition for Exemption seeking Board authorization to abandon the La Harpe-to-Peoria railroad line,⁵ there lately have been only three active shippers on the line, Archer Daniels Midland at Bushnell, IL, Farmers Elevator Company at Scotia, IL, and Roquette America, Inc./Blandinsville Elevator, at Blandinsville, IL. A fourth, Pschirrer Asphalt/United Paving & Construction, Inc.,

³ STB Finance Docket No. 33762, Denver Rock Island Railroad-Alternative Rail Service-Lines of Kansas Southwestern Railway, L.L.C., served June 16, 1999.

⁴ STB Ex Parte No. 628, Expedited Relief for Service Inadequacies, served December 21, 1998.

⁵ STB Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL, filed September 17, 2002.

began receiving a few test cars during September 2002 at Good Hope, IL.

In the ten months from December 2001 through October 2002, Archer Daniels Midland tendered or received 61 revenue carloads, Farmers Elevator Company, 324, Roquette America, Inc./Blandinsville Elevator., 119, and Pschirrer Asphalt/United Paving & Construction, Inc., 34. Annualized, the shippers on the line accounted for 646 carloads of revenue freight, or fewer than ten cars per mile per year for the 71.5-mile La Harpe-to-Peoria railroad line. By any measure, that simply is insufficient traffic to support a railroad line of such length, and that was why SFL sought Board approval to abandon the line.

The shippers on the La Harpe-to-Peoria railroad line were sympathetic to the situation in which SFL found itself, and none protested the proposed abandonment.⁶ KJRY's assertion, at page 4 of its Petition, that shippers on the line in filings before the Board expressed their concern about SFL's proposed abandonment is unfounded and finds no support in the record.

In the meantime, SFL continued rendering service to the shippers until, because of unsafe track conditions, SFL, on October 18, 2002, was obliged to embargo the line. No traffic has moved on the line since then.

SFL is well aware of its obligation as a common carrier railroad to render adequate service upon reasonable request and, if need be, to effect such repairs to the track as will permit SFL to respond to a reasonable demand for service. No such request for service has been forthcoming. In the three months since SFL embargoed the La Harpe-to-Peoria railroad line, none of the shippers on the line have contacted Mr. Van Wagenen and asked him to restore service on the

⁶ See, Environmental Assessment in Docket No. AB-448 (Sub-No. 2X), served November 7, 2002.

line. KJRY's self-serving statements, at pages 2, 10 and 12 of its Petition, that local shippers and communities repeatedly have complained to SFL about the inadequacy of the railroad's service is a fabrication wholly lacking in supporting evidence.

The letters from the shippers on the La Harpe-to-Peoria railroad line appended to KJRY's Petition do not suggest the contrary. The letters from Farmers Elevator Company, Roquette America, Inc./Blandinsville Elevator and Pschirrer Asphalt/United Paving & Construction, Inc., tellingly do not allege that the shippers contacted SFL to have railroad service returned to the line.⁷ Indeed, none of the shippers on the line ever indicated to Mr. Van Wageningen that they were not satisfied with the service which they had received from SFL.

In the almost uniformly worded letters, undoubtedly prepared by KJRY, as KJRY conceded drafting other shipper support letters filed by it with the Board,⁸ the shippers contend that they would use the La Harpe-to-Peoria railroad line if only it were available for their use. The shippers' past performance, however, belies their assertion. As already noted, the three or four shippers situated on the line made little use of it during the ten months that SFL operated the line. The shippers' combined traffic came to fewer than ten cars per mile per year. The three shippers situated on the KJRY made even less use of the La Harpe-to-Peoria railroad line. Two

⁷ The other letters appended to KJRY's Petition are from shippers not situated on the La Harpe-to-Peoria railroad line, namely, Elkem Carbon, Colusa Elevator Co. and La Harpe Elevator. In fact, these shippers are situated on KJRY and, since KJRY acquired the line to Fort Madison, IA, have avoided routing overhead traffic via SFL. No letters were attached to KJRY's Petition from the Mayor or other representatives of the City of Macomb, which is not even on the La Harpe-to-Peoria railroad line, or from officials of the County of McDonough.

⁸ See, KJRY discovery responses, Attachment D, to the Reply of SF&L, et al., in STB Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation, filed January 11, 2002.

of them, Colusa Elevator Co. and La Harpe Elevator, tendered no traffic to SFL and received none from it, and the third, Elkem Carbon, throughout the ten-month period shipped a total of 25 carloads of freight.

KJRY contends it was SFL's reduction of service and increase of rates on the La Harpe-to-Peoria railroad line that caused the loss of traffic on the line. It is perfectly disingenuous for KJRY to ascribe to SFL the reduction from six-days-per-week service on the line to twice-a-week service, as KJRY does at page 8 of its Petition. KJRY knows full well that it was the rerouting by TPW and The Burlington Northern and Santa Fe Railway Company of their manifest intermodal train from Fort Madison, IA, to Galesburg, IL point of interchange, that occasioned a reduction in service, as it compelled an increase in rates. The intermodal train had been used to move the local and overhead traffic on the La Harpe-to-Peoria railroad line, and, with the train's loss, some reduction in service and increase in rates were inevitable.

It is no less deceitful for KJRY to maintain, as it does at page 8 of its Petition, that it was SFL's structuring of the transaction with TPW, whereby TPW retained a mile of track at La Harpe, that resulted in the need "to go through an unnecessary and expensive interchange with TP&W for that 1-mile stretch." KJRY's Petition, p. 3. The mile of track was retained by TPW at TPW's insistence; the subject never was a matter of negotiation between SFL and TPW at the time of SFL's purchase of the La Harpe-to-Peoria railroad line. Be that as it may, once SFL itself began to operate the line, effective December 12, 2001, SFL and KJRY interchanged traffic directly. Again, KJRY knows full well that there was no intervening haul by TPW in effecting the interchange between SFL and KJRY and that TPW did not share in the revenue of the traffic interchanged between SFL and KJRY.

What happened, however, was that the interchange between SFL and KJRY declined to a trickle once KJRY acquired the line between La Harpe and Fort Madison.⁹ Whether the number of carloads of overhead traffic which SFL had anticipated hauling over the La Harpe-to-Peoria railroad line once it took over operation of the line on December 12, 2001, was 3,600 a year, as Mr. Van Wagenen declared in his Verified Statement¹⁰ or 2007 a year, as KJRY maintained,¹¹ during the first six months of SFL's operation KJRY interchanged a total of 161 carloads of revenue freight with SFL or 322 on an annual basis.¹² While the overhead traffic contributed by KJRY is to be disregarded in determining the viability of the La Harpe-to-Peoria railroad line, there is no question that the revenue that traffic yielded would have aided SF&L in rendering better service at lower rates. The overhead traffic, however, was diverted away from SFL once KJRY acquired the La Harpe-to-Fort Madison railroad line. Without that overhead traffic, it was unavoidable that SFL's service would decline and its rates would rise. The shippers on the La-Harpe-to-Peoria railroad line understood such were the inescapable consequences of the diversion of the KJRY overhead traffic, and not one of the shippers complained to Mr. Van Wagenen, whether in a letter or other communication, about the inadequacy of SFL's

⁹ STB Finance Docket No. 34143, Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of Toledo, Peoria and Western Railway Corporation, served January 11, 2002.

¹⁰ Mr. Van Wagenen's Verified Statement, at page 4, in Finance Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL, filed September 3, 2002..

¹¹ KJRY's Reply, at p. 4, in Finance Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL, dated September 20, 2002.

¹² See, fn. 8.

performance.

SFL cannot be said to have neglected to render adequate service in response to a reasonable request from a shipper situated on the La Harpe-to-Peoria railroad line. KJRY has failed to demonstrate that "over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service by the incumbent carrier." 49 C.F.R. 1146.1(a). KJRY's Petition to Provide Alternative Service should be denied.

Notwithstanding that KJRY has failed to make a case for the entry by the Board of a decision authorizing KJRY to provide alternative rail service on the La Harpe-to-Peoria railroad line, SFL has responded affirmatively to KJRY's request that SFL make the line available to KJRY to render service on it. KJRY on January 8, 2003, first contacted SFL about gaining access to the line,¹³ and, two days later, on January 10, 2003, SFL replied that it would be willing to enter into an agreement granting KJRY the right to operate on the line.¹⁴ SFL, on January 20, 2003, by overnight courier, sent KJRY the draft of an operating agreement.¹⁵ The operating agreement requires no Board approval and, therefore, is a far more expeditious means of returning service to the line than invoking the Board's rule for alternative rail service. KJRY has not yet responded to SFL's offer.

Indeed, if KJRY were receptive, SFL is prepared immediately to sell its interests in the La

¹³ See, letter attached as Attachment A.

¹⁴ See, letter attached as Attachment B. As recited in the letter, the authorization for KJRY's operations on the line could only be for such time as SFL continued to possess the line and necessarily would terminate upon SFL's reconveyance of the line to TPW, as the Board ordered in Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation, served October 17, 2002.

¹⁵ See, letter attached as Attachment C.

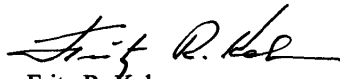
Harpe-to-Peoria railroad line to KJRY at its net liquidation value, subject, of course, to the Board's authorization.

WHEREFORE, SF&L Railway, Inc., asks that the Petition to Provide Alternative Service, filed by Keokuk Junction Railway Company on January 21, 2003, be denied.

Respectfully submitted,

SF&L RAILWAY, INC.

By its attorney,

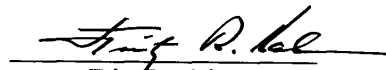

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Due and dated: January 27, 2003

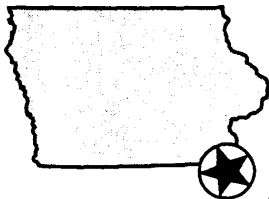
CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Reply upon each of the parties by facsimile transmitting copies thereof to their counsel.

Dated at Washington, DC, this 27th day of January 2003


Fritz R. Kahn

ATTACHMENT A



Keokuk Junction Railway

1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

January 8, 2003

*Please note
corrected
date*

Kern W. Schumacher and Morris H. Kulmer
SF&L Railway

Dear Messrs. Schumacher and Kulmer:

I am requesting that you permit the Keokuk Junction Railway Co. (KJRY) to provide rail service over the presently embargoed LaHarpe Line, the 71.5-mile segment of rail line in Illinois between milepost 194.5 at LaHarpe and milepost 123.0 at Peoria. KJRY would provide reasonable compensation for use of the line, as mutually agreed upon between KJRY and SF&L. Moreover, KJRY is immediately ready to negotiate the specific fees for such use, should you agree to this proposal.

KJRY is prepared to provide service along the LaHarpe Line, consistent with current transportation needs within a reasonable period of time. In fact, several shippers have already indicated that they would use KJRY's rail service along the LaHarpe line, should you agree to this proposal. Furthermore, since the line is currently embargoed, KJRY could provide alternative rail service safely without degrading service to any existing customers and without unreasonably interfering with SF&L's provision of service. Accordingly, KJRY is ready, willing and able to provide rail service on the LaHarpe line in the near future, and urges you to accept this proposal.

Please contact me with your response as soon as possible. I look forward to hearing from you soon.

Respectfully,

J. Michael Carr
Chief financial Officer

ATTACHMENT B

SF&L Railway, Inc.

P.O. Box 26421
Salt Lake City, UT 84126
(801) 977-6346 / (801) 977-9387 Fax

January 10, 2003

Certified Mail Z583632384
J. Michael Carr
Chief Financial Officer
Keokuk Junction Railway
1318 South Johanson Road
Peoria, IL 61607

RE: Railroad line between Peoria and LaHarpe

Dear Mr. Carr:

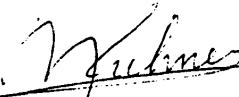
This letter is written in response to your letter dated January 8, 2003, requesting the opportunity for KJRY to provide rail service over our railroad line. The general concept of your proposal is accepted. Will you please provide some additional details?

We will need to enter into an agreement that will address such issues as: liability, insurance, consideration and the capacity in which KJRY would operate on the railroad line. I believe that we could complete such an agreement in short order. If you have a proposed agreement, I shall be happy to review it. I will also ask our legal counsel to commence a draft of such an agreement. We will proceed on the basis that our exchange of correspondence and documents, concerning this topic of your proposal, will be done so on a confidential basis. Will you please so acknowledge in your next communication?

As you are aware, the Surface Transportation Board has ordered that the railroad line be transferred to TP&W. We are in the process of finalizing the documents to affect such a transfer. Any agreement executed by SF&L and KJRY would be subject to termination, upon the transfer of the railroad line to TP&W. Thank you.

I will look forward to your response.

Sincerely yours,



Morris H. Kulmer
President

cc: Michael J. Van Wagenen

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Orr
CFD
16044 K Junction Parkway
13145 S. Johnson Rd.
Peoria, IL 61607

2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-44-1789

A. Received by (Please Print Clearly)

1/14/93

C. Signature

Michael Orr

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2583632384

Z 583 632 384

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Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995

ATTACHMENT C

SF&L Railway, Inc.

P.O. Box 26421
Salt Lake City, UT 84126
(801) 977-6346 / (801) 977-9387 Fax

January 20, 2003

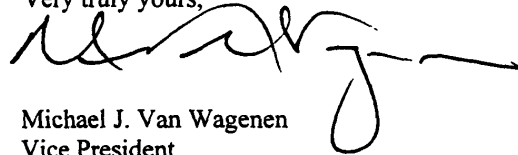
VIA OVERNIGHT MAIL

J. Michael Carr
Chief Financial Officer
KEOKUK JUNCTION RAILWAY, CO
1318 South Johanson Road
Peoria, IL 61607

Dear Mr. Carr:

I have enclosed a draft agreement for the operation of the SF&L Rail Line between Mapleton, IL and LaHarpe, IL. If it is acceptable, will you please sign both copies and return them to me for execution? If you should have any questions, please contact me directly at (801) 977-6346. Thank you.

Very truly yours,



Michael J. Van Wagenen
Vice President

MJV:mn
ENCLOSURES

SERVICE AGREEMENT

THIS SERVICE AGREEMENT, made and entered into this ____ day of January, 2003, by and between SF&L Railway, Inc. ("Owner"), a Nevada corporation, and Keokuk Junction Railway, Co. ("Agent"), an Iowa corporation.

WITNESSETH

WHEREAS, Owner owns a line of railroad (hereinafter referred to as "Rail Line") located in the State of Illinois and more particularly described as follows:

WHEREAS, Owner desires that Agent, in the capacity of Agent for Owner, perform certain enumerated and delegated services on behalf of Owner in connection with the operation of the Rail Line, as more fully described herein, and Agent desires to do so; and

WHEREAS, Owner desires to be the sole common carrier on the Rail Line, and agent has agreed to provide the services set forth hereunder on that basis,

NOW, THEREFORE, in consideration of the premises and mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. DEFINITIONS.

For purposes of this Service Agreement, the following capitalized words and phrases shall have the meanings ascribed to them below.

Agent. Keokuk Junction Railway Co.

COMMENCEMENT DATE. January ____, 2003.

FRA Track Safety Standards.

Those several applicable requirements for specific classes of track found in 49 C.F.R. § 213 et seq.

Gross Operating Revenues.

All revenues generated and received by the Owner, from whatever source derived, which are attributable and derived from the operation of rail cars, trains, locomotives, equipment, rolling stock, engines or other vehicles over the Rail Line by the Agent in behalf of the Owner for the purpose of and in furtherance of Rail Service and including the rental and lease of the Rail Line for rail operations.

Maintenance Obligations.

The normal and regular work required to keep the Rail Line in the condition necessary to enable continued safe and efficient operation of the Rail Line, in accordance with FRA Track Safety Standards, including but not limited to, ties, rail, culvert and bridge repairs,

spot tamping and lining, tightening bolts, driving and replacing spikes, adjusting and lubricating switches, brush cutting and weed control, and other necessary repairs.

Owner. SF&L Railway, Inc.

Rail Line.

The line of railroad to be operated by Agent under this Service Agreement. It is more fully described as follows: The former TP&W Line between MP 123.0 AT Mapleton, IL to MP 194.5 at La Harpe, IL.

Rail Service.

The placement, maintenance, and operation by the Agent on behalf of the Owner of railcars, trains, locomotives and other equipment on and over the Rail Line for the purpose of transporting commercial goods and cargo in accordance with the provisions of this Service Agreement.

STB. The Surface Transportation Board of the United States of America.

Standard of Maintenance.

The level at which Agent shall maintain the Rail Line during the Term of this Service Agreement, as more fully described in Section 6 hereto.

Term. The Term of this Service Agreement, as defined in Section 3 hereto.

Section 2. AGENCY.

A. Subject to the terms and conditions in this Service Agreement, Owner hereby grants Agent an exclusive agency to conduct Rail Service on behalf of Owner on the Rail Line subject to the right of Owner to direct Agent in the provision of such Rail Service.

B. Subject to the terms and conditions in this Service Agreement and Purchase Agreement, Agent hereby accepts such grant and agrees to conduct Rail Service on behalf of Owner on the Rail Line subject to the right of the Owner to direct Agent in the provision of such Rail Service.

C. Owner shall have the right to direct Agent in the provision of Rail Service on the Rail Line.

D. Owner and Agent agree and recognize that Owner's grant and Agent's acceptance of this obligation to conduct Rail Service on the Rail Line in accordance with the terms of this Service Agreement, creates a valid and binding agency relationship between Owner and Agent.

E. Agent shall indemnify and hold harmless Owner from and against any losses, damages, judgments, orders and expenses of any nature whatsoever (including without limitation reasonable attorneys' fees and disbursements) arising out of or in connection with any act or omission of Agent, or the act or omission of any third party arising out of Agent's operations other than Owner, relating to the Rail Line, including without limitation acts or omissions causing, or alleged to cause, personal injury or death, injuries to property, environmental conditions) or contractual damages. Without limiting the foregoing, Agent shall indemnify and hold harmless Owner from and against any and all claims of

employees of Agent under the Federal Employers' Liability Act, Railroad Retirement Act, Railroad Unemployment Insurance Act, or claims by employees of Agent for employee protective conditions under State or Federal Law, regardless of when such claims are made. Agent further agrees to assume Owners obligation under the terms of the Purchase Agreement, attached hereto and incorporated by reference.

Section 3. TERM OF AGREEMENT.

The term of this Service Agreement shall begin on the Commencement Date. Unless terminated as set forth herein, this Service Agreement shall have an initial Term of one (1) year and may be extended for an additional one (1) year if mutually agreed to by both parties at least sixty (60) days prior to the expiration of the initial Term. Notwithstanding the foregoing, this Service Agreement may be cancelled at any time by mutual consent of both parties. It may also be terminated as provided for in Section 9.

SECTION 4. RAIL SERVICE.

A. Provision of Rail Service on Behalf of Owner. Agent shall, subject to the direction of the Owner, provide Rail Service over the Railroad Line on behalf of, and solely in the name of, the Owner in the manner set forth herein. All Rail Service provided by Agent hereunder shall be undertaken in the name of, and for the benefit of, Owner.

B. Operating Rules. Agent shall conduct Rail Service over the Rail Line pursuant to rules and regulations adopted and promulgated by the Agent and acceptable to the Owner for the operation of such Rail Service ("Operating Rules"). Agent shall furnish Owner with complete copies of the Operating Rules prior to the Commencement Date, and at such times as the Operation Rules may be amended or deleted.

C. Train Schedules. Agent shall conduct Rail Service over the Rail Line in accordance with train schedules adopted and promulgated by the Agent, in consultation with Owner, for the provision of such Rail Service ("Train Schedules"). If necessary, Owner may direct a modification of the train schedule to insure adequate service.

D. Local Freight Service. Agent shall provide local freight service to shippers located on the Rail Line, in the name of Owner, subject to the direction of the Owner. All of Agent's dealings with shippers and receivers on the Rail Line shall be undertaken in the name of Owner for the benefit of Owner.

E. Marketing. Agent may provide additional marketing services subject to the direction, coordination, and supervision of Owner.

F. Tariffs. The Owner shall have the right and obligation to determine rates, tariffs, and charges for the services rendered in operating the rail property, subject to all necessary approvals of governmental authorities having jurisdiction over the same.

G. Prohibited Acts. With respect to the provision of Rail Service over the Rail Line, Agent hereby covenants that it shall not do any of the following acts:

1. Publish tariffs or enter into transportation contracts or agreements other than in the name of Owner;
2. Participate in or enter into contracts or agreements with third parties other than in the name of Owner;
3. Participate in or enter into agreements establishing joint rates or through routes other than in the name of Owner;
4. Accept or receive any divisions of rates or allowances, switching charges, or other payments, except as otherwise provided herein;
5. Provide or hold itself out as willing to provide Rail Service in its own name to the public;
6. Issue bills of lading or waybills of any type, unless under the express direction, control, and supervision of the Vice President, and then, only on behalf of and in the name of, Owner;
7. Take any action in the name of Owner that is not expressly authorized or directed under the terms of this Agreement;
8. Take any action in the name of Agent that would be inconsistent with the rights and obligations of the parties under the terms of this Agreement;
9. Fail to promptly pay when due obligations owed by Agent to third parties with respect to the Rail Line.

H. Insurance. Agent shall obtain public liability and property damage insurance with respect to its operations on the Rail Line, with such limits and responsibilities as required by the Purchase Agreement. Owner shall be named as an additional insured on such policies. Agent shall provide Owner with a copy of such policies, and Owner may obtain any additional coverage, at its sole expense, that it desires. Agent shall obtain and keep in force at all times during the term of this Agreement, at its sole expense, insurance for claims of Agent's employees, agents, and contractors under the Federal Employer's Liability Act or under comparable law. Such coverage shall have per occurrence limit of not less than \$10 million and a self-insured retention of not more than \$50,000. Agent shall provide Owner with evidence of coverage prior to commencement of the Term of this Agreement and at any time during the Term or Successive Terms.

I. Reports. Agent shall provide Owner with such reports concerning Agent's operations on the Rail Line, as Owner shall request from time to time. Agent shall provide Owner with copies of any FRA report within 5 days of receipt and shall provide Owner with copies of each monthly report and other reports submitted to the FRA within 5 days of submittal.

J. Contractors. Agent agrees to coordinate service with any other independent contractor hired by Owner to provide interim train service on the line, until Agent is able to utilize its own equipment in providing the service contemplated herein. Agent agrees to meet with such contractors to ensure safety of all Agent and Contractors personnel and equipment, and to ensure the needs of customers are being met in a timely manner.

SECTION 5. CREW PERSONNEL.

A. In accordance with the terms of this Section 5, Agent agrees to provide qualified, competent crew personnel for the provision of Rail Service on the Rail Line. Agent shall provide Owner with copies of personnel resumes and qualification certificates. Agent shall provide evidence of compliance with FRA pre-employment screening, operational testing, and hours of service regulations.

B. Agent shall consult with Owner so as to ensure that crew size and composition shall promote safe and efficient service on the Rail Line.

C. All of Agent's personnel shall be hired by Agent and shall be the sole employees of Agent. Agent shall obtain a written statement from each of its employees, acknowledging that he/she is an employee of Agent and not of Owner. Agent shall be the sole party responsible for payment of salaries; payroll taxes; withholding taxes (including without limitation railroad retirement taxes and railroad unemployment insurance); health and welfare benefits; and all other payments to or on account of Agent's employees.

D. Agent shall submit a copy of its drug and alcohol policy to the Owner within 15 days after the Commencement Date. The Agent's policy shall include a program of company-directed random drug and alcohol testing, and provide for compliance with FRA testing requirements. Agent shall not permit any covered service employee in violation of the Federal and State regulations to perform such service.

SECTION 6. MAINTENANCE.

A. Agent shall, at its own expense, repair and maintain the Rail Line, subject to this agreement, in compliance with this Section and the FRA Track Safety Standards, so as to accommodate train operations on the Rail Line. For reasonable cause, the parties may agree to designate a portion of the trackage as excepted track and operate the same in accordance with FRA requirements. Nevertheless, the Agent shall perform the maintenance described in Appendix A.

B. Agent agrees to maintain detailed maintenance records for the Rail Line during the Term to permit a determination of the existing maintenance level for the Rail Line at any given point in time. The parties understand and agree that such records shall include inspection reports, reports of materials removed, scrapped, redeployed or installed new, and other such maintenance records. Agent agrees to submit a monthly summary of track inspections performed, defects noted and remedial action taken to remedy defects. Agent agrees to perform and record all inspections required by the FRA (49 CFR 213) and to have records available for inspection when requested.

C. Agent shall immediately notify Owner of any condition, which prevents the safe operation of the line; of any potential damage or destruction of the Owner's property, equipment or facilities; or of any derailment, incident or accident on the property.

D. Agent agrees to perform the maintenance outlined in Appendix A as a condition of this service agreement. Notwithstanding the specific maintenance requirements, Agent accepts full responsibility for evaluating and correcting track conditions. The Agent, or its designated track inspector, shall be solely responsible for the determination of safe operating conditions. Agent shall issue its own operating bulletins concerning track conditions and shall govern its own trains over the line. Agent shall prohibit its own trains over any portion of track it deems unsuitable for operation.

E. Railroad hereby accepts the Trackage, including the condition of the Track, "AS IS, WHERE IS." SF&L makes absolutely no representations or warranties, express or implied, as to the condition, standard, quality, or fitness for any particular purpose whatsoever, of said Trackage, and SF&L hereby disclaims any and all such responsibilities and warranties.

F. Agent shall be responsible for all utility costs, including telephone, fax, gas, electricity and water utilities associated with the depot and the signal crossings. As of the Commencement Date, all utilities are in the name of the Owner. Owner shall deduct the utility costs from the compensation provided to Agent as outlined in Section 8. Utilities may be transferred to the Agent upon prior written consent of the Owner. Any exterior lighting, fencing and security services are also the responsibility of the Agent.

SECTION 7. EQUIPMENT.

Agent shall provide all equipment, necessary for its operations under this Agreement. Agent shall bear all expense in connection with the maintenance of the Equipment. Agent shall bear all risk of loss or damage to Equipment, regardless of the cause of such loss or damage.

SECTION 8. COMPENSATION

A. For the services provided by Agent to Owner hereunder, Agent shall receive the proportion of Gross Operating Revenues set forth herein. Agent acknowledges and agrees that its compensation under this Agreement may not exceed the consideration stated in paragraph C in fulfilling its obligations hereunder, and that any loss resulting from Agent's activities under this Agreement shall be borne solely by Agent. Agent shall provide Owner with a financial statement for operations on the Rail Line at the end of the term.

B. Owner shall be entitled to ten (10%) Percent of the Gross Operating Revenues in connection with the Rail Line.

C. Agent shall receive Ninety (90%) Percent of the Gross Operating Revenues (L/E Cycle) for all cars moved in interchange service. Agent shall submit to Owner an invoice for all revenue due for traffic moving on the line by the 1st and the 15th of each month. Owner shall pay Agent the agreed compensation within ten (10) days from receipt of payment from customers or connecting carriers. The Agent shall be responsible for all costs associated with the operation, with the exception of the real property taxes, which shall be paid by the Owner.

SECTION 9. TERMINATION.

Notwithstanding any provision in this Service Agreement to the contrary, Owner shall have the sole and exclusive right to terminate this Service Agreement upon the happening of any of the following events, upon written notice (in the same manner as provided in Section 11); (1) in the event that the Agent defaults in the performance of its obligations under this Agreement, as defined in Section 11 hereof; (2) in the event that the Agent is prosecuted by the FRA for being in violation of federal or state regulations, or is not responding to the violations noted in any FRA report; (3) in the event that Agent becomes insolvent or is the subject of a bankruptcy, reorganization, or similar proceeding; or (4) in the event the Owner sells, transfers, or files to abandon or discontinue service on the Rail Line with the STB.

SECTION 10. ABANDONMENT.

In the even that Owner determines to abandon all, or any portion of the Rail Line, Agent agrees that it will not oppose such abandonment. Agent agrees and acknowledges that it shall not take the position in any proceeding before the STB or other administrative body or in any judicial proceeding that it is a common carrier on the Rail Line, during the term of this agreement without the written approval of the Owner.

SECTION 11. DEFAULT.

A. Either party hereto claiming default of any of the provisions of this Service Agreement shall furnish written demand to the other party for performance or compliance with the covenant or condition of this Service Agreement claimed to be in default, which notice shall specify wherein and in what respects such default is claimed to exist and shall specify the particular section or sections of this Service Agreement under which such claim of default is made.

B. Notwithstanding any other provision in this Service Agreement to the contrary, if such failure or default shall continue for an additional period of ten (10) days after receipt of such written notice, then the party hereto claiming such default may, at its option, terminate this Service Agreement by written notice, which termination shall be effective at the date specified in such notice of termination but in no event sooner than ten (10) days after the receipt of such notice of termination by the party alleged to be in default; provided, however, that failure to perform or comply with any covenant or condition of this Service Agreement which is due to strikes, Acts of God, or other causes beyond the control of the defaulting party are excepted. If the nature of the default is such that it cannot reasonably be cure within the twenty (20) days, the time to cure the default shall be extended to a reasonable time by a mutual consent of the parties.

C. Either party hereto entitled to claim default or failure may waive any such default or failure, but no action by such party in waiving such default or failure shall extend to or be taken to affect any subsequent defaults or failures or impair the rights of either party hereto resulting therefrom.

SECTION 12. ENTIRE AGREEMENT.

This Service Agreement constitutes the entire agreement between the parties and shall supersede all prior agreement and understandings, oral and written, between the parties hereto concerning the subject matter of this Service Agreement.

SECTION 13. ATTORNEY FEES.

In the even of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

SECTION 14. AMENDMENT.

No modification, addition, or amendments to this Service Agreement, or any of the attached Attachments, shall be effective unless and until such modification, addition, or amendment is in writing and signed by the parties.

SECTION 15. ASSIGNMENT.

This Service Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party; provided, however, that no assignment or transfer of this Service Agreement shall be affected by either party without the written consent of the other party, which consent cannot be unreasonably withheld. In the event that one party consent to an assignment of this Service Agreement by the other party, such assignment shall not be valid until a duplicate executed copy of such assignment and a written acceptance thereof by the assignee agreeing to assume and perform all of the terms, covenants, conditions, and provisions of this Service Agreement provided herein to be performed by the assignor shall first been delivered to both parties, and no assignment shall release the assignor from performing any of its obligations under this Service Agreement except upon agreement of the other party.

SECTION 16. GOVERNING LAW.

This Service Agreement shall be governed and construed in accordance with the laws of the State of Utah. Jurisdiction and venue shall be in the State of Utah.

SECTION 17. COUNTERPARTS.

This Service Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

SECTION 18. NOTICES.

All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by either part to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to the parties as follows:

If to Owner:	SF&L Railway, Inc. 1505 South Redwood Road P.O. Box 26421 Salt Lake City, UT 84126 ATTN: President
If to Agent:	Keokuk Junction Railway, Co. 1318 S. Johanson Road Peoria, IL 61607 Attn: Guy L. Brenkman, President

Each notice demand, request, or communication which shall be mailed by registered or certified mail to either party in the manner aforesaid shall be deemed sufficiently given, served, or sent for all purposes at the same such notice, demand, request, or communication shall be either received by the addressee or refused by the addressee upon presentation. Either party may change the name of the recipient of any notice, or his or her address, at any time by complying with the afore said procedure.

SECTION 19. INTERPRETATION.

- A. In the event that any section, subsection, sentence, clause, or phrase contained herein shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, no determination, declaration, or adjudication shall in any manner affect the other sections, subsections, clauses, or phrases of this Service Agreement, which shall remain in full force and effect as if the section, subsection, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof, unless the invalidity of such provision has the effect of substantially impairing the benefits or frustrating the intent of this Service Agreement.
- B. The headings and title to provisions contained herein are for convenience only, and shall not be deemed to modify or affect the rights and the duties of the parties to this Service Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

SF&L Railway, Inc.

Keokuk Junction Railway, Co.

By: _____
Its: _____

By: _____
Its: _____

Appendix A

Track Maintenance Standards

Agent shall perform the following maintenance on the line in an ongoing effort to upgrade and maintain the line at Class II standards:

1. Track Inspections and Maintenance. Agent shall provide all necessary equipment, hi-rail vehicles, tools and supplies necessary for the regular inspection and maintenance of the Rail Line. Regular maintenance includes repair of broken or missing bolts, replacement of broken bars, installation of gage rods, respiking ties, repair of pull-aparts or track buckles (sun kinks), securing and maintaining switches and switch stands, repair and spot tamping of washouts and bridge approaches, cleaning debris from bridges and culverts, etc. to comply with FRA track standards.
2. Supply OTM necessary for routine track maintenance. Agent shall be responsible for supplying spikes, bolts, bars, anchors and gage rods necessary for regular track maintenance.
3. Vegetation Control. Agent shall provide trimming at any crossing where sightlines are inadequate to see vehicular or pedestrian traffic. Agent shall also trim branches and vegetation along the right-of-way, which have the potential of damaging equipment or causing injury.
4. Signal Maintenance. Agent shall provide or contract for monthly signal inspection and regular maintenance and testing in accordance with federal and state requirements. All inspection records shall be retained by the inspector and a copy should be available in the yard office for review. All parts, materials, and utilities required for ongoing signal use and maintenance shall be provided by the Agent.

red **EX** **USA Airbill**
Express

FedEx Tracking Number
836578668349

1 From Please print and press hard
Date **1.20.03** Sender's FedEx Account Number **1013-2490-7**
Sender's Name **Michael J. Van Wagenen** Phone **(801) 977-6346**
Company **SF&L Railway, Inc.**
Address **1505 S. Redwood Rd**
City **Salt Lake City** State **UT** ZIP **84104**
2 Your Internal Billing Reference
For 24 characters will appear on invoice
3 To
Recipient's Name **Michael Carr** Phone **(309) 697-1400**
Company **Keokuk Junction Railway, CO**
Address **1318 South Johanson Road**
City **Peoria** State **IL** ZIP **61607**

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Questions? Visit our Web site at fedex.com
or call 1.800.GoFedEx® 800.463.3338

Est. No. **0200**

4a Express Package Service
XX FedEx Priority Overnight ☐ FedEx Standard Overnight ☐ FedEx First Overnight ☐
Next business morning Next business afternoon Next business day
Delivery commitment may be later in some areas (see www.fedex.com for details)
☐ FedEx 2Day ☐ FedEx Express Saver ☐ Next business day
FedEx Envelope (not available. Maximum charge. One pound limit)
4b Express Freight Service
Delivery commitment may be later in some areas (see www.fedex.com for details)
☐ FedEx 1Day Freight* ☐ FedEx 2Day Freight ☐ FedEx 3Day Freight ☐
Next business day Second business day Third business day
*Call for Confirmation
5 Packaging
☐ FedEx Envelope* ☐ FedEx Pak* ☐ Other
Includes FedEx Small Pak, FedEx Large Pak, and FedEx Shrink Pak
6 Special Handling
☐ **SATURDAY DELIVERY** ☐ **HOLD Saturday**
FedEx Priority Overnight and FedEx 2Day to select ZIP codes. FedEx First Overnight and FedEx 3Day to select locations.
Does this shipment contain dangerous goods?
☐ No ☐ Yes, except Shipper's Declaration not required ☐ Yes, Dangerous not required ☐ Dry Ice ☐ Dry Ice, UN 1845
Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging
7 Payment Bill to: ☐ Sender ☐ Recipient ☒ Third Party ☐ Credit Card ☐ Cash/Check
FedEx Account No. **2365-5527-5** Total Packages **2365-5527-5** Total Weight **00** Total Declared Value* **00**
FedEx Use Only
Your liability is limited to \$100 unless you declare a higher value. See back for details.
8 Release Signature Sign to authorize delivery without obtaining signature
By signing this Airbill you agree to the service conditions on the back of this Airbill and to our current Service Guide, including terms and conditions.
Questions? Visit our Web site at fedex.com or call 1.800.GoFedEx® 800.463.3338
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VERIFIED STATEMENT
OF
STEVEN J. VAN WAGENEN

the extent necessary to meet a demonstrated need for rail service; it is to be used for restorative or alleviative purposes only, and not as a punitive or preventative measure."¹ KJRY has failed to make the requisite showing.

As I detailed in my Verified Statement in support of SFL's Petition for Exemption seeking Board authorization to abandon the La Harpe-to-Peoria railroad line,² there lately have been only three active shippers on the line, Archer Daniels Midland at Bushnell, Farmers Elevator Company at Scotia and Roquette America, Inc./Blandinsville Elevator, at Blandinsville. A fourth, Pschirrer Asphalt/United Paving & Construction, Inc., began receiving a few test cars during September 2002 at Good Hope, IL.

In the ten months from December 2001 through October 2002, Archer Daniels Midland tendered or received 61 revenue carloads, Farmers Elevator Company, 324, Roquette America, Inc./Blandinsville Elevator, 119, and Pschirrer Asphalt/United Paving & Construction, Inc., 34. Annualized, the shippers on the line accounted for 646 carloads of revenue freight, or fewer than ten cars per mile per year for the 71.5-mile La Harpe-to-Peoria railroad line. By any measure, that simply is insufficient traffic to support a railroad line of such length, and that was why SFL sought Board approval to abandon the line.

The shippers on the La Harpe-to-Peoria railroad line were sympathetic to the situation in

¹ STB Ex Parte No. 628, Expedited Relief for Service Inadequacies, served December 21, 1998.

² STB Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL, filed September 17, 2002.

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which SFL found itself, and none protested the proposed abandonment.³

In the meantime, SFL continued rendering service to the shippers until, because of unsafe track conditions, SFL, on October 18, 2002, was obliged to embargo the line. No traffic has moved on the line since then.

SFL is well aware of its obligation as a common carrier railroad to render adequate service upon reasonable request and, if need be, to effect such repairs to the track as will permit SFL to respond to a reasonable demand for service. No such request for service has been forthcoming. In the three months since SFL embargoed the La Harpe-to-Peoria railroad line, none of the shippers on the line have contacted me and asked me to restore service on the line.

The letters from the shippers on the La Harpe-to-Peoria railroad line appended to KJRY's Petition do not suggest the contrary. The letters from Farmers Elevator Company, Roquette America, Inc./Blandinsville Elevator and Pschirrer Asphalt/United Paving & Construction, Inc., tellingly do not allege that the shippers approached SFL to have railroad service returned to the line.⁴ Indeed, none of the shippers on the line ever indicated to me that they were not satisfied with the service which they had received from SFL.

In the circumstances, I do not believe that SFL can be said to have neglected to render adequate service in response to a reasonable request from a shipper on the La Harpe-to-Peoria railroad line. KJRY has failed to demonstrate that "over an identified period of time, there has

³ See, Environmental Assessment in Docket No. AB-448 (Sub-No. 2X), served November 7, 2002.

⁴ The other letters appended to KJRY's Petition either are from shippers not situated on the La Harpe-to-Peoria railroad line, namely, Elkem Carbon, Colusa Elevator Co. and La Harpe Elevator. In fact, they are situated on KJRY and, since KJRY acquired the line to Fort Madison, IA, have avoided routing overhead traffic via SFL.

been a substantial, measurable deterioration or other demonstrated inadequacy in rail service by the incumbent carrier." 49 C.F.R. 1146.1(a). Its Petition to Provide Alternative Service should be denied.

Notwithstanding that KJRY has failed to make a case for the entry by the Board of a decision authorizing KJRY to provide alternative rail service on the La Harpe-to-Peoria railroad line, SFL has responded affirmatively to KJRY's request that SFL make the line available to KJRY to render service on it. As I understand it, KJRY on January 8, 2003, first contacted SFL about gaining access to the line, and, two days later, on January 10, 2003, SFL replied that it would be willing to enter into an agreement granting KJRY the right to operate on the line.⁵ SFL, on January 20, 2003, by overnight courier, sent KJRY the draft of an operating agreement. It would have required no Board approval and, therefore, would have been a far more expeditious means of returning service to the line than invoking the Board's rules for alternative rail service. Its Petition to Provide Alternative Rail Service was KJRY's response to SFL's proposal.

VERIFICATION

I, Steven J. Van Wagenen, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of myself and SF&L Railway, Inc.. I know that willful misstatements or omissions of material facts constitute Federal criminal violations

⁵ The grant of trackage rights could only be for such time as SFL continued to possess the line and necessarily would terminate upon SFL's reconveyance of the line to TPW, as the Board ordered in Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation, served October 17, 2002.

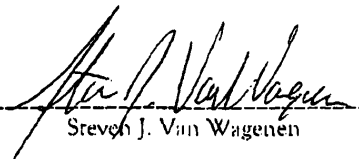
punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Salt Lake City, UT, this — day of January 2003.

Steven J. Van Wagenen

each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Salt Lake City, UT, this 23rd day of January 2003.


Steven J. Van Wagenen