

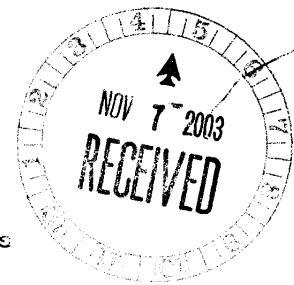
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November 7, 2003



BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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NOV -7 2003

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Public Record

RE: Finance Docket No. 34335
Keokuk Junction Railway Co.--Feeder Railroad Development Application
--Line Of Toledo, Peoria & Western Railway Corporation Between
LaHarpe And Hollis, IL
Reply Supporting Feeder Railroad Development Application

Dear Secretary Williams:

Pursuant to the Surface Transportation Board's ("STB") scheduling order served in this matter on September 26, 2003, as amended by the STB's order served November 4, enclosed please find an original and eleven copies of the two-volume *Public Version* of the Reply of Keokuk Junction Railway Co. Supporting Feeder Railroad Development Application -- Volume 1 of 2 (Narrative) and Volume 2 of 2 (Exhibits). An original and ten copies of the *Highly Confidential Version* of Volume 1 of 2 (Narrative) are also being filed under seal. A complete copy of this filing has been served on all required parties of record. A copy of the portions of this filing available to KJRY electronically is enclosed on each of the three accompanying diskettes.

Please acknowledge receipt of the enclosed pleading by date stamping the extra copy of the filing and returning it to the individual making this filing for return to me. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823, or by e-mail: wmullins@bakerandmiller.com.

Sincerely,

William A. Mullins

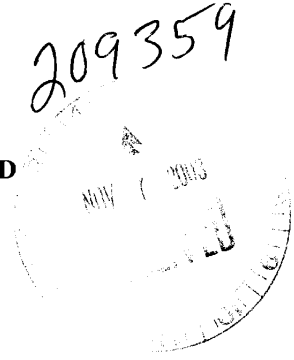
Enclosure

cc: All Parties of Record

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34335



**KEOKUK JUNCTION RAILWAY CO.
--FEEDER RAILROAD DEVELOPMENT APPLICATION--
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

**REPLY OF KEOKUK JUNCTION RAILWAY CO.
SUPPORTING FEEDER RAILROAD DEVELOPMENT APPLICATION**

VOLUME 1 OF 2

NARRATIVE

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DATED: November 7, 2003

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PUBLIC VERSION

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SURFACE TRANSPORTATION BOARD**

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**KEOKUK JUNCTION RAILWAY CO.
--FEEDER RAILROAD DEVELOPMENT APPLICATION--
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

**REPLY OF KEOKUK JUNCTION RAILWAY CO.
SUPPORTING FEEDER RAILROAD DEVELOPMENT APPLICATION**

Keokuk Junction Railway Co. ("KJRY" or "Applicant") hereby replies to the Comments in Opposition to Application ("Comments") filed by Toledo, Peoria & Western Railway Corporation ("TP&W") on October 16, 2003. TP&W's Comments contain many errors and contradictions, and are not a valid basis for denying KJRY's Application. Rather, the Surface Transportation Board ("Board" or "STB") should order the LaHarpe to Hollis line, not including the Mapleton Spur, sold to KJRY at a Net Liquidation Value of \$3,321,745, and require KJRY to offer to enter an agreement with TP&W, in the form contained in Exhibit C to Appendix 3 to KJRY's June 9 filing herein, allowing TP&W access to the Mapleton Spur without trackage rights charge.

SUMMARY

KJRY filed its feeder railroad development application ("Application") with the Surface Transportation Board ("Board") on April 9, 2003, to preserve an historic through route for traffic between LaHarpe and Hollis, Illinois ("the Line") and to provide service on that Line to shippers that have not had service for over three years. As set forth in the Application, the Supplement to

the Application, and in these Reply Comments, the facts of this proceeding are precisely the type of facts for which the feeder line statute was developed. Granting the Application will restore service to shippers without harm to TP&W or any other party. TP&W's comments in opposition are self-serving, disingenuous, contradictory, and simply do not rebut the notion that a grant of the Application is clearly in the public interest. Granting this Application is fully consistent with the congressional intent behind adoption of the feeder line statute and with this Board's long standing precedents utilizing and applying the feeder line statute.¹

As noted, KJRY filed its Application to restore for shippers the long-standing through route between Peoria and LaHarpe that existed for almost 130 years and that TP&W has sought to extinguish over the past three years. That continues to be KJRY's goal in this proceeding: restore an historic through route and restore service to shippers who are actually located on the Line. In contrast, TP&W has done everything possible to prevent restoration of that service. Its most recent tactic is to claim that the Application would substantially harm TP&W because KJRY would take away TP&W's most profitable source of revenue—the revenues generated from TP&W's service on the Mapleton Spur. TP&W's concerns are simply unfounded.

Throughout this proceeding KJRY sought to acquire the Line either with or without the Mapleton Spur, an industrial track that connects with the Line near its eastern terminus. As KJRY's pro formas show, KJRY can operate the Line profitably either with or without the Mapleton Spur. Although TP&W's Comments show good reason why shippers at Mapleton might desire KJRY to acquire the Mapleton Spur as part of this feeder line Application

¹ See generally *Kansas Southern Railway Company-Feeder Line Application-Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 31823 (ICC served July 9, 1991), *Indiana Hi-Rail Corporation-Feeder Line Acquisition-Conrail Lines Between Beesons and Connersville, IN*, Finance Docket No. 29601 (ICC served Aug. 6, 1981), and *Sandusky County, et al.-Feeder Line Application-Conrail*, 6 I.C.C.2D 568, 470 (1990).

(inasmuch as KJRY could offer lower rates given that TP&W claims that its cost of serving them is only 30.9% of the revenues it earns; giving TP&W a substantial profit margin on that traffic), KJRY nevertheless did not initiate this proceeding with the purpose of taking traffic away from TP&W or creating new competition where previously there had been none. Rather, it is KJRY's intent to restore the status quo that had existed for almost 130 years. Thus, in light of TP&W's assertions that it must have the Mapleton traffic to survive (assertions that, KJRY believes, are significantly overblown), KJRY remains willing to purchase just the Line, from Hollis to LaHarpe, without the Mapleton Spur, and to grant TP&W access from Hollis, where TP&W's trackage rights over the UP from Peoria end and TP&W ownership begins (ownership that would be transferred to KJRY if this Application were granted), to the point of connection with the Mapleton Spur without a trackage rights charge so that TP&W could continue to serve the shippers on the Mapleton Spur. Under such an arrangement, KJRY would not have the right to serve shippers located on the Mapleton Spur, TP&W would not lose what its claims to be its most significant source of revenue, but shippers would have their historic option restored.

The option of acquiring the Line without the Mapleton Spur has consistently been set forth in the Application as accepted by the Board, and it is this option, when one reviews the record as a whole, that is best for the public interest. Accepting this option will satisfy TP&W's professed interests while allowing KJRY to restore the service to shippers, which is at the heart of KJRY's Application. It will allow TP&W to continue exclusive service to Mapleton shippers. Indeed, TP&W's own evidence is somewhat consistent with this approach, as TP&W calculated the NLV of the Line without using an NLV valuation for the Mapleton Spur and insists that Mapleton traffic is essential to TP&W's well-being.

With this understanding in place, it is absolutely clear that KJRY's Application to acquire the Line without the Mapleton Spur fully satisfies the public convenience and necessity test required under 49 U.S.C. Section 10907(c). TP&W's service over the Line, not including the Mapleton Spur, is inadequate to meet the needs of the vast majority of the shippers who have previously used the Line. Their letters of support for KJRY in this case, coupled with their complaints against TP&W, and TP&W's collaborator SF&L in other proceedings before the Board, demonstrate (TP&W's attempts to re-write the statute notwithstanding) that service "is inadequate for the majority of shippers who transport traffic over such line." Indeed, TP&W itself confesses that it has refused to make service reasonably available because, when it has been requested to provide rates for service, it either has not done so (*see* Comments at Exhibit P) or has quoted rates so high as to cause shippers to cancel their orders for service, *see* Comments at 76.

TP&W's statements that it is ready, willing and able to serve the Line are disingenuous at best. Indeed, for the most part TP&W does not even publicly acknowledge that it owns the track west of Mapleton. Attached as Exhibit 1 is a copy of TP&W's listing from the September/October 2003 Official Railway Guide, a publication used by many to determine available rail routings and services. TP&W's listing specifies points at which TP&W interchanges with other railroads. Notably, TP&W lists no interchange with KJRY and shows no connection with any carrier at any point west of Mapleton. Similarly, the map of TP&W's system currently shown on RailAmerica's website does not show any station west of Mapleton as a TP&W service point, instead showing the line there as "SFLR;" *i.e.*, SF&L Railway, Inc. ("SF&L"). *See* Exhibit 2 (copy of the map of TP&W's system printed from RailAmerica's website on November 3, 2003).

In addition, TP&W's fertilizer and lumber tariffs currently posted on the carrier's website contain no rates for service at points west of Mapleton and show no connection with KJRY at LaHarpe. See Exhibits 3 and 4. Finally, and perhaps most crucially, TP&W's listing in The Official Railroad Station List, used by carriers to determine available routings and for rating shipments and a governing publication for TP&W's tariffs, lists no interchange between KJRY and TP&W, which it should if TP&W were truly holding itself out to provide service over the entire Line (*see* Exhibit 5). In other words, almost without exception, TP&W's rate and service publications treat the Line west of Mapleton as if it did not exist. Is this indicative of a line that TP&W intends to operate? The answer, of course, is obvious.

In the context of TP&W's expressed desire to abandon most of the Line, (as stated in Docket No. AB-448 (Sub-No. 2X) on October 30, 2002) these actions may not be surprising, but they nevertheless clearly are not provision of adequate service to shippers who have used and want to use the Line nor are they indicative of a carrier who claims to be holding itself out to provide service over the Line. TP&W's assertions that it is ready, willing and able to provide service ring hollow when confronted by their behavior. Granting TP&W's desire to retain the Mapleton Spur while ordering the sale of the Line (the LaHarpe to Hollis segment without the Mapleton Spur) to KJRY will assure that, even by TP&W's standards, the sale of the Line will not harm TP&W, while allowing KJRY to provide improved service – *i.e., actual service*, not merely a professed willingness to serve or a theoretical holding out at prices that preclude movement of traffic – to shippers who use the Line.

While it is clear that the PC&N fully supports granting KJRY's Application to acquire the Line, there is a dispute between the parties as to what is the value of the Line, either with or without the Mapleton Spur. However, there is no dispute on the record that without the

Mapleton traffic, the Line has no Going Concern Value (“GCV”) to TP&W. While KJRY disagrees with TP&W’s position that the Board can bifurcate the Line for valuation purposes, applying GCV for one segment and Net Liquidation Value (“NLV”) for another segment, the Board no longer needs to address that issue. As TP&W’s own evidence shows, the only segment that has a GCV (the so-called “Eastern Segment”) was based on traffic from the Mapleton Spur. Because TP&W will retain exclusive access to that traffic, there is no segment that KJRY desires to acquire that has a GCV. Indeed, while KJRY’s Application and the Supplement to the Application also presented both an NLV and a GCV for the entire Line and for both options (the Line with the Mapleton Spur and the Line without the Mapleton Spur), because KJRY is no longer seeking to acquire the Mapleton Spur, the proper methodology to apply to value the Line is the NLV methodology. Therefore, the statutory constitutional minimum value for which the Board should order the Line sold is NLV.

TP&W would like this Board to believe that the NLV value of the Line is \$11,800,230,² but this value is vastly overstated. TP&W, using one of its own affiliated employees, claims the Line should be valued as a corridor (which TP&W’s own comments admits is contrary to Board precedent) and that the vast majority of the real estate is in fee simple, although its witness is not an attorney and obtained no title opinion in relation to his claims. TP&W, again using one of its own employees, claims that the value of the tracks, ties, switches, equipment, and other materials is worth \$4,790,733. TP&W’s analysis is simply wrong.

Based on a review of the information provided in TP&W’s Comments and on additional inquiries and analyses conducted by KJRY’s independent experts as explained herein, KJRY

² *I.e.*, \$7,009,497 corridor-based real estate value (Comments at 116) + \$379,813 net salvage value Hollis to Mapleton (Comments at 96) + \$4,410,920 net salvage value Mapleton to LaHarpe (Comments at 98).

now believes the NLV of the Line, not including the Mapleton Spur,³ to be \$3,321,745.

TP&W's claim for valuing the real estate as a corridor contradicts Board precedent. The claim for corridor valuation should therefore be rejected. Furthermore, as shown by the title opinion of Illinois real estate attorney Brian D. Mooty presented herein, TP&W holds only an easement for the vast majority of the right of way. In addition, TP&W's in-house witness fails to adequately discount the Across-the-Fence ("ATF") values he applies, as shown by the testimony of independent Illinois real estate appraiser L. Arlen Higgs submitted herewith. With these corrections, the Line's real estate value is merely \$37,140.

Meanwhile, KJRY's independent track valuation expert explains why the testimony of TP&W's in-house witness is incorrect in valuing rail and track materials by applying prices at which TP&W purchases such materials, rather than the significantly lower prices at which materials buyers purchase such materials. Mr. Gohmann also explains a number of other errors in the approach taken by TP&W's in-house valuation witness.

Altogether, KJRY's evidence shows that the Line (without the Mapleton Spur) has a NLV of \$3,321,745. KJRY's evidence previously submitted herein shows that KJRY, which has a loan commitment of \$7 million for this project, is fully capable of paying this amount. KJRY's evidence also shows that it is fully capable of operating the Line for at least three years, notwithstanding the erroneous assertions of TP&W witnesses Messrs. Dowd and Claytor. Accordingly, KJRY is a financially responsible person to whom the Board should order the Line sold for its constitutional minimum value, \$3,321,745.

³ TP&W's NLV witness Mark Garvin presents no NLV estimate for the Mapleton Spur. *See* TP&W's Comments at Exhibit E, indicating TP&W's willingness to retain that property as suggested by KJRY.

BACKGROUND

In a hasty December 2000 effort to raise year-end cash, TP&W deliberately chose to sell the shippers using the Line between Mapleton and LaHarpe down the river. At that time, TP&W discontinued discussions about selling much of the Line to KJRY, and instead sold most of the rail assets between Mapleton and LaHarpe, but not the real estate, to SF&L. Curiously, while TP&W now claims in this proceeding that the very same line that it sold to SF&L is worth \$4.4 million, the purchase price paid by A&K Materials, Inc. (“A&K”), a railroad scrap dealer owned by the same individuals who controlled SF&L, was only \$2,179,878 for approximately 71.5 miles of rail and track materials. TP&W subsequently told the Board that the net salvage value of those materials was actually \$5.6 million, notwithstanding that they sold them to SF&L for much less. Motion to Substitute The Toledo, Peoria and Western Railway Corporation for SF&L Railway, Inc., filed in *SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL*, STB Docket No. AB-448 (Sub-No. 2X), filed Oct. 30, 2002 at 7, n. 10. Now, TP&W claims that the net salvage value of that portion of the Line is \$4.4 million. Comments at 41. Frankly, TP&W can’t get their story straight. The inconsistency of TP&W’s statements on the record calls into serious question the reliability of TP&W’s testimony, rendered entirely by in-house RailAmerica witnesses.⁴

As the Board itself later concluded, TP&W’s sale of the track west of Mapleton to SF&L was equivalent to TP&W facilitating abandonment of that portion of the Line. TP&W knew that

⁴ Still unresolved is the question of what “certain consideration” TP&W gave SF&L in order to cause SF&L to comply with the Board’s order to convey the portion of the Line west of Mapleton back to TP&W. [In its February 21, 2003 filing in STB Finance Docket Nos. 33995, 33996 and 34282 and STB Docket No. AB-448 (Sub-No. 2X) at 4, TP&W stated, “TP&W and SF&L have entered a settlement whereby, for certain consideration, SF&L agreed to convey the 74.5 [sic]-mile rail line between LaHarpe, IL, milepost 194.5 and west of Peoria, IL, milepost

SF&L did not attempt to evaluate the traffic potential of the line, but only sought information on the scrap value. TP&W knew that SF&L avoided buying portions of the rail structure such as bridges, which typically have a higher salvage cost than their scrap value. TP&W knew that SF&L did not request nor acquire the real estate underlying the line, an asset outside A&K's usual portfolio and one which usually is slow and expensive to liquidate. TP&W knew that SF&L did not acquire a connection with KJRY, which would have allowed interchange of freight. And TP&W knew that SF&L was owned by Kern Schumacher and Morris Kulmer, the two principals of A&K, a major rail scrap dealer. As the Board concluded, "When RailAmerica sold the La Harpe Line . . . it clearly knew or should have known by their conduct what respondents had in mind, and nevertheless Rail America acted in a way that furthered that objective." *SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation Between LaHarpe and Peoria, IL*, STB Finance Docket No. 33995, *et al.*, (STB served Oct. 17, 2002) ("*SF&L Revocation*") at 11, n. 24.

Under these circumstances, it certainly was not surprising that SF&L did what TP&W and KJRY expected SF&L would do – attempt to drive off remaining traffic on the line in order to abandon and scrap it. And that is exactly what SF&L did. While KJRY fought SF&L and TP&W to reverse the sale, SF&L failed and refused to provide service, even to the point of refusing to return phone calls. *See generally SF&L Revocation* at 15-16. SF&L deliberately downgraded service on the line, even though shippers wanted service, and substantially increased rates. *Id.* at 17. Ultimately, SF&L filed for an exemption to abandon the track and imposed an embargo on the line for 4 months.

123.0 (the "Line"), to TP&W and to dismiss each of the pending Petitions for Review in the Tenth Circuit."]

Once the Board had ordered the sale reversed, TP&W asked to be substituted for SF&L as the abandonment exemption petitioner, saying,

TP&W requests the Board to substitute TP&W as the party seeking abandonment of the Line. Based on TP&W's analysis of the Line's potential traffic weighed against the costs of operating and maintaining the Line, TP&W plans to rationalize the Line, either through possible sale or abandonment. . . . TP&W believes that KJRY is the logical party to acquire the Line.

Motion to Substitute The Toledo, Peoria and Western Railway Corporation for SF&L Railway, Inc., filed in *SF&L Railway, Inc.-Abandonment Exemption-In Hancock, McDonough, Fulton and Peoria Counties, IL*, STB Docket No. AB-448 (Sub-No. 2X) at 4, filed Oct. 30, 2002. Ironically, despite the fact that the standards for evaluation of offerors and lines in OFA sales are substantially the same as the standards of evaluation in feeder line applications,⁵ TP&W now concludes that KJRY is not an acceptable purchaser.

Why is this history important? Simply because it reveals TP&W's and KJRY's true intent. Despite disclaiming responsibility for SF&L's behavior, TP&W had every reason to expect that behavior when it sold the rail and track materials to SF&L. Moreover, TP&W tried to take advantage of SF&L's behavior by asking to be substituted as the abandoning carrier in SF&L's abandonment exemption petition. And while TP&W claims that it has not sought abandonment of the line *since reacquiring same from SF&L*, there is no rational doubt that TP&W will attempt abandonment once again.⁶

⁵ *Cheney Railroad Company-Feeder Line Acquisition-CSX Transportation, Inc., Line Between Greens and Ivalee, AL*, 5 I.C.C.2d 250, 1989 ICC LEXIS 19 at *40.

⁶ For example, TP&W has not repudiated the Board's finding in the SF&L case that sale of the line west of Mapleton was "part of an 'asset rationalization plan to sell non-core, non-strategic assets'." *SF&L Revocation* at 4, n. 10. RailAmerica has publicized via press release, SEC filings and elsewhere its plan to "rationalize more than \$100 million in non-strategic/non-core/non-operating assets by year-end 2004." See RailAmerica Press Release dated February 6, 2003, Exhibit 6 hereto.

Contrast against TP&W's abandonment intentions KJRY's three years of litigation before the Board, attempting to bring reliable rail service back to the Line. KJRY fought to overturn the sale to SF&L, a fight that sought to restore the route for overhead traffic that TP&W and SF&L conspired to eliminate. While that restoration has had essentially no direct benefit to KJRY thus far, as the Board's *SF&L Revocation* decision reversing the sale shows, fighting to overturn that exemption was the right thing to do. In addition, KJRY has sought twice, though unsuccessfully so, to obtain alternative service authority in order to provide at least some service to grain shippers on the Line during harvest to move their grain to market. And KJRY has filed this Application, not to take away from TP&W the traffic at Mapleton that TP&W actually handles, but to restore service that TP&W has effectively abandoned. In short, KJRY's intention has been to buy the Line to restore service, while TP&W's intent has been to sell the line or abandon it.

The recent history of this line illuminates the true intentions of the principal parties before the Board here -- TP&W, whose desire is abandonment and removal of virtually all of the Line, and KJRY, whose desire is to restore service that, up until 2001, had been available since approximately the time of the Civil War. Faced with these two conflicting directions, it is clear that KJRY's plan to pay TP&W the NLV of the Line and to preserve service serves the public convenience and necessity. TP&W's shenanigans over the past three years, on the other hand, have disserved and continue to disserve that interest.

ARGUMENT

I. THE PUBLIC CONVENIENCE AND NECESSITY IS SERVED BY GRANTING THIS APPLICATION, AS SHOWN BY SHIPPER SUPPORT FOR THE APPLICATION..

As the Board concluded in *SF&L Revocation*, TP&W had every reason to know that SF&L's intent was to abandon service and scrap the portion of the Line west of Mapleton. Through significant effort and cost, KJRY convinced the Board to prevent that from occurring. The line was sold back to TP&W, only to find that TP&W itself has raised rates even higher than SF&L (*see* Exhibit 15), these levels that effectively prevent local service on that portion of the Line, failed to establish an interchange with KJRY for overhead traffic and whose own website and tariffs do not even recognize the Line exists. Should TP&W succeed in its designs, it will be able to abandon the part of the Line west of Mapleton (and probably sell the track back to A&K pursuant to the aforementioned "certain consideration"), permanently destroying a valuable and historic through route for traffic. Shippers are ready to use that route, if only they could get actual service, rather than lip service. KJRY's Application offers that actual service, and thereby will serve the public convenience and necessity.

A. The Statutory Test of the Adequacy of Service to Shippers Is Based on Shippers That Use the Line, Not Some Subset Thereof as Suggested in TP&W's Proposed Rewrite of the Statute

The statute governing this proceeding requires that the Board determine whether the public convenience and necessity support granting the Application based in part on whether "the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service *to shippers who transport traffic over such line*," and whether "the transportation over such line is inadequate for *the majority of shippers who transport traffic over such line*." 49 U.S.C. § 10907(c)(i)(A and B) (Emphases added.) TP&W rewrites that statute to

claim that this language means only shippers located “on” the line, and then claims that KJRY has failed to meet the statutory test with respect to that group. Yet, TP&W is clearly wrong. The rewrite of the statute suggested by TP&W would limit consideration to only some fraction of “shippers who transport traffic over such line.” The statute clearly uses the words “over such line,” not just “on such line.” Therefore, shippers who historically used the Line for overhead traffic clearly qualify as shippers who “transport traffic over such line.” In fact, TP&W cites no authority for its proposed rewrite of the statute except the *Caddo Antoine* case, which involved a stub-ended branch rail line that, by definition, could not serve overhead traffic.

TP&W’s argument is flawed because it would exclude from consideration the needs of several substantial users of the Line, including Roquette America, Inc. (“Roquette”). According to the evidence in this proceeding, Roquette was the second largest user of the Line in 2000 and 2001, the period selectively chosen by TP&W as its test of shippers’ qualifications to speak in this case. While TP&W’s pleading shows CF Industries at Mapleton as shipping over 2000 carloads in both 2000 and 2001, KJRY’s records (pages 155 and 157 of the April 9 Application) show Roquette as having shipped 1055 and 1113 carloads in 2000 and 2001, respectively. This volume is nearly as much as all of the other Mapleton shippers combined (1316 and 1208 carloads in 2000 and 2001, respectively, according to TP&W’s figures) yet, according to TP&W, those shippers silence should be counted against KJRY while Roquette’s vocal support, stating “TP&W has not resumed operations or restored service,” and “TP&W has not responded in a timely manner to requests for rates and when they have replied, rates have not been competitive,” should be ignored.

Were TP&W’s re-write of the statute to be accepted and only on-line shippers to be counted, then the shippers supporting KJRY would still constitute the majority of the shippers to

be counted because the Mapleton shippers -- the very shippers who TP&W points to as showing that KJRY does not have the majority of shippers -- would be excluded from the shippers to be counted because they are off-line shippers. The Mapleton shippers are located in an industrial park served by the Mapleton Spur, which connects to the Line. Thus, if one takes TP&W's definition, this would exclude the Mapleton shippers, and if the Mapleton shippers are excluded, KJRY still has the majority of the shippers.

In its Comments, TP&W excluded the Mapleton Spur track from its NLV calculation, and stated that it needed to retain Mapleton traffic in order to survive. Previously, KJRY had offered to allow TP&W to retain the Mapleton Spur. KJRY understands from TP&W's exclusion of the spur track from the property it valued and from its stated dependence on retention of Mapleton traffic that TP&W desires to retain the Mapleton Spur. KJRY has no objection to TP&W's desires and is no longer seeking to acquire the Mapleton Spur. Given that TP&W would be retaining the Mapleton Spur, the Mapleton shippers are not 'on the Line,' and would not be served by KJRY's proposed service. Therefore, under TP&W's formulation, these shippers should not be considered by the Board. By TP&W's own tabulation, that would leave only six on-line shippers,⁷ five of whom support KJRY's Application due to deficiency of TP&W's service and the sixth -- Archer Daniels Midland -- which apparently has diverted its traffic from rail to truck.⁸

TP&W further argues that allowing consideration of potential shippers of overhead traffic is unworkable because of the large number of potential users of the Line. ("If the Board

⁷ *I.e.*, Blandinsville Elevator; West Central FS/Sciota; Farmers Elevator/Sciota; Archer Daniels Midland; West Central FS/Bushnell; and Hitchcock Scrap Yard.

⁸ Oddly, in this respect, TP&W benefits from the inadequacy of its past service by having discouraged one shipper on the Line from using rail service and therefore from supporting KJRY's efforts to restore adequate service.

considers potential shippers of overhead traffic on the Line, then there are thousands of shippers who could route traffic over the Line.” Comments at 16.) KJRY thanks TP&W for acknowledging the eventual potential of the Line, but must point out that it is not asking the Board to consider any *potential* shipper not located on the Line. All of the off-line shippers identified by KJRY⁹ have used the Line sometime in the recent past to ship goods, either to or from points on the Line or as overhead traffic for the Line. Thus, KJRY is not asking the Board to consider any mere *potential* off-line shippers, but only those who have used the Line. Indeed, in its tally of shippers presented at page 116 of the Application, KJRY included one off-line shipper -- Griffin Wheel -- that both KJRY and UP admit has diverted its traffic and is not likely to use the Line again, but nevertheless has done so in the recent past.

KJRY also does not agree with TP&W’s desire to exclude West Central FS or Hitchcock Scrap Yard from consideration as “shippers who transport traffic over such line.” Hitchcock’s letter (Application at 122) states that Hitchcock used to ship via TP&W from Canton, IL until TP&W rates made shipping uneconomical. Clearly, then, Hitchcock is a shipper that used the Line and whose use of the Line was suspended in the face of service by TP&W that no longer met Hitchcock’s needs. West Central FS, with locations at Bushnell and Sciota, leases property along the Line from TP&W, and plans to use rail service in the future. Clearly, if it did not plan to do so, leasing land along the Line from TP&W at rates which West Central characterizes as “very unreasonable and excessive” would make little sense. To exclude these two companies from consideration in determining the fate of the line that serves them because TP&W’s behavior has temporarily prevented them from using the Line would directly contradict

⁹ *I.e.*, Elkem Carbon – Keokuk (formerly Midwest Carbide), Roquette, Griffin Wheel, Central Iron & Metals, LaHarpe Elevator and Colusa Elevator.

the purpose of the feeder line statute, which is to allow shippers to buy lines in order to avoid continued inadequate service and eventual abandonment of the properties.

TP&W's proposed re-write of the statute to exclude off-line shippers and to exclude shippers that did not use TP&W's service in 2000 or 2001, is contrary to the purpose of the feeder line statute. The testimony of all shippers supporting KJRY's Application should be considered. If they are not, TP&W will have benefited from its service failures and made a mockery of the Congressional intent in enacting the feeder line statute. In any event, the shippers supporting KJRY constitute the majority of shippers who transport traffic over the Line.

B. TP&W's "Service" to These Shippers is Clearly Inadequate, as Even TP&W's Own Evidence Clearly Shows

1. TP&W Does Not Even Hold Itself Out As Providing Service Over the Line

Perhaps the most telling evidence of TPW's failure to provide adequate service is that TP&W does not hold itself out as providing service over the Line. In fact, TP&W's published notices of its available service generally show that TP&W does not even own the line west of Mapleton. Attached as Exhibit 1 is a copy of TP&W's listing from the September/October 2003 Official Railway Guide. As can be seen there, TP&W's listing does not show that it interchanges with any carrier on the Line west of Mapleton. Similarly, TP&W's own website, perhaps the most widely-available form of TP&W's holding out service, shows the line west of Peoria as not belonging to TP&W. See Exhibit 2. Several TP&W tariffs do not state rates for service to points on the line west of Mapleton. See Exhibits 3, 4 and 7 (TP&W lumber, fertilizer and scrap metals tariffs, respectively). And finally, and perhaps most revealing of all, TP&W's listings in the Official List of Open and Prepay Stations, OPSL-6000 series, which govern the application of TP&W tariffs, do not list any interchange with KJRY or service available at

LaHarpe. See Exhibit 5. Thus, TP&W is, in fact, not offering service on the line west of Mapleton, but rather is intending to discourage traffic by hiding the fact that TP&W even owns the Line. There could not be a more blatant failure to offer service!

2. Shippers Have Requested Rates But TP&W Did Not
Provide Them, Or If They Did, The Rates Were Excessive

In an effort to establish that its service is adequate, TP&W boldly claims on Page 14 of its Comments that:

It is important to note that no shipper asked TP&W to quote rates for service over the Western End [after February 10, 2003].¹⁰ Since no shipper requested rates from TP&W, there was no one to negotiate rates and volume commitments. Only KJRY asked TP&W to quote rates and KJRY never indicated that it had authority to make commitments for shippers.

TP&W's own evidence disproves this, as does ample evidence contained in KJRY's Application. TP&W can't keep its own story straight about whether or not shippers have requested service. On pages 14 and 16 of its Comments, TP&W says that no shipper asked TP&W to quote rates, but on page 76 of its Comments, TP&W's witness Michael J. Klass states, "I have reviewed TP&W's records and found one request for service over the Western Line since it was reacquired by TP&W on February 10, 2003." Moreover, in a series of e-mails between Mr. Klass and Catherine Busch of Pioneer contained in Exhibit P to TP&W's Comments, Mr. Klass wrote, "I have received a request from Incobrasa for a Rule 11 rate from LaHarpe to Gilman [IL] . . . We will quote that rate directly to Incobrasa."¹¹ Thus, TP&W's own witness

¹⁰ Similarly, on page 16 of its pleading, TP&W says "There is no evidence of any shipper requesting service over the Western End after it was reacquired by TP&W. Absent a request for service there can be no failure to provide service." And on page 69 of its pleading, TP&W's Mr. Satunas stated, "The Western Line has had no request for car service since it was reacquired from SF&L Railway Company on February 10, 2003."

¹¹ Gilman, IL is a point on TP&W's line approximately 100 miles east of Peoria. See June 9 Supplement to Application at 54 (map of TP&W).

twice contradicts TP&W's statement that no shippers have requested rates relating to the line west of Mapleton.

Mr. Klass's statement also is contradicted by KJRY's evidence. KJRY's Application contains evidence from Colusa Elevator, which states that rates being quoted are 3 to 4 times higher than those "quoted before the SF&L debacle." Application at 123. Clearly, from the mention of "the SF&L debacle," this is a reference to rates quoted after TP&W reacquired the portion of the Line west of Mapleton. Similarly, United Paving stated that its shipper, Rogers Group/Newton County Stone Company, had found TP&W reluctant to quote rates for shipping to United during 2003. Application at 127. This is echoed by Rogers' testimony, which says, "The rates we received back are 37% higher than last year[']s quoted rates for the same move." Application at 128. Roquette's evidence says that TP&W quoted a rate of \$705 for a move for which SF&L quoted \$275. Application at 132. Again, this shows a rate quotation by TP&W after TP&W took over the Line from SF&L. And Blandinsville Elevator and LaHarpe Elevator each indicate that they consulted TP&W's tariff only to find a 475% rate increase for shipping from Blandinsville and a 300% increase in shipping from LaHarpe. Application at 130-131. Apparently, TP&W is so inattentive to requests for service that it failed even to record the requests for rates from Colusa, Rogers Group and Roquette.¹²

Thus, even when TP&W has quoted rates, as reflected in the shipper letters supporting KJRY's Application, the level of TP&W's rates constitutes an economic embargo that keeps

¹² This inattention to shipper needs proves that it is not lack of shipper interest, but rather lack of adequate carrier service, that is strangling traffic on the Line. For example, Mr. Klass states that after discussing TP&W's rates with Farmers Elevator at Sciota, Farmers Elevator canceled its order for 18 cars. As Farmer's Elevator stated in its letter included in KJRY's April 9 Application, "As of today, we still have no rail service. I suppose we do, but only if we are willing to pay the TP&W Railway 20 [cents per bushel]. . . . The old rate was 4.5 [cents per bushel]." Application at 125.

shippers from using the Line. As stated by Central Iron & Metals, "Rail service is presently not available due to non competitive rates and service." Application at 124. Hitchcock Scrap says it "used to ship via the TP&W until the rates made it economically infeasible to continue." *Id.* at 122. As Colusa Elevator put it, "[T]he rates being quoted for any grain transit east are currently 3-4 times higher than was quoted before the SF&L debacle. In essence the rates have stopped any business we want to do." *Id.* at 123. And, as Roquette put it,

TP&W has not responded in a timely manner to requests for rates and when they have replied, rates have not been competitive. One example was a rate quote of \$705 for a move that SF&L charged \$275 which is \$75 higher than the rate we had received from the TPW prior to the SF&L's purchase of this portion of track. This is almost a 400% increase per car since 12/01.

Application at 132.

TP&W's failure to offer reasonable rates is also a failure to offer adequate service. Indeed, this principle was recognized by Congress when it enacted the feeder line statute in the first instance. The feeder line statute originated in 1980 as part of the House of Representatives' Rail Act of 1980. As originally structured, the statute required railroads to seek buyers for lines that were candidates for abandonment. In discussing that provision, the House report stated as follows:

The Commission may find that a rail carrier applying a surcharge [*i.e.*, a rate increase] under 49 U.S.C. 10705 is de facto abandoning the surcharged line and require the abandoning carrier to attempt to find a purchaser for the line.

H.R. REP. NO. 96-1035 at 71 (1980). The final feeder line provision is a direct outgrowth of the House bill, the Senate bill not having included any comparable provision. *See* H.R. CONF. REP. NO. 96-1430 at 124 (1980).

As the Board's predecessor and the Supreme Court of the United States have both held, a carrier can effectively create a denial of adequate service through a failure to quote commercially

reasonable rates. *See ICC v. J-T Transport Co.*, 368 U.S. 81, 136-137 (1961) (concurring opinion)(stating that the ICC, “recognized . . . an ‘embargo’ exception to its usual practice of disregarding the level of rates charged by existing carriers”); *H.L. & F. McBride Extension-Ohio*, 62 M.C.C. 779, 790 (1954) (“there is a real difference between rate cutting and the use of rates to avoid traffic . . . the use of rates which will not move the commodities involved . . . has in reality effected an embargo on the traffic”) and *Ewell Extension-Philadelphia*, 72 M.C.C. 645, 648 (1957) (“their rates have not and will not move the traffic; and to this extent the available motor service is inadequate to meet the shipper’s requirements”). It is this sort of economic embargo, *i.e.*, a denial of service, that TP&W has instituted against shippers using the Line. TP&W’s goal is simple: provide no service, raise the rates, dry up traffic on the Line, and then eventually abandon it.¹³

Although the Board concluded in *KJRY Alternative Service*, “Rate disputes require permanent, not temporary, relief,” *KJRY Alternative Service* at 6, KJRY submits that this is not a rate complaint case. Instead, KJRY submits that this case is precisely the type of case for which the feeder line statute was designed. Feeder line proceedings allow for development of a complete record, but are not confined solely to the rate issue. Indeed, the purpose of the feeder line provisions is squarely applicable here. The House and Senate conferees said of the feeder line provisions,

The Conferees believe that the feeder line program will give shippers and communities an opportunity to insist upon adequate rail service. Where such

¹³ The Board’s rationale for rejecting the foregoing precedent in *Keokuk Junction Railway Co.-Alternative Rail Service-Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397 (served Oct. 31, 2003) at 6 (“*KJRY Alternative Service*”) does not apply here. As the Board noted, “Section 11123 provides that the Board may order relief for equipment shortages, traffic congestion, and unauthorized cessation of operations.” *Id.* Section 10907, however, is not similarly limited.

service is not forthcoming the provision provides, through acquisition, a viable alternative to poor service or total abandonment.

H.R. CONF. REP. NO. 96-1430 at 125 (1980). KJRY respectfully submits that if the only form of relief available for shippers like Farmers Elevator, Colusa Elevator, Blandinsville Elevator and other shippers using this Line is to prosecute a rate complaint, then the feeder line statute means nothing. If the feeder line provisions do not apply in this situation, where the carrier has once sold the line to foster abandonment, has itself requested to be allowed to abandon the line, has set prices that are 300% to almost 500% of previous prices for service, insists on shippers offering guaranteed volumes in order to obtain reasonable prices, refuses to quote rate factors for interline movements, and does not even hold out service or advertise most of the stations on the line as its own, then the feeder line provision does not apply to any line.

This is not a situation where shippers desire to create new competition or to wrest away from the current operator an alleged highly profitable traffic base such as Mapleton. Rather, this is a situation where shippers simply desire to preserve the service that existed before TP&W tried to foster abandonment by improperly selling the line to SF&L. Allowing shippers to save a line from complete degradation of service is the central purpose of the feeder line statute, and is the central purpose of KJRY's Application.

Indeed, a grant of the Application is fully consistent with that intent.

The Conference Report on the ICC Termination Act of 1995, H.R. CONF. REP. NO. 104-422 (1995), shows that both the House and the Senate intended that current Section 10907 retain the original meaning of former Section 10910, enacted as part of the Staggers Rail Act of 1980. H.R. CONF. REP. NO. 104-422 at 182 (1995). The Staggers Act did not confine the application of former Section 10910 as narrowly as it did former Sections 11123-25. Rather, the

Conference Committee Report characterized the intended application of the feeder line provision broadly:

To provide shipper groups and government agencies an alternative to inadequate rail service and to preserve feeder lines prior to the total downgrading of such lines, the House amendment provides for a feeder line development program which would require a rail carrier to sell a railroad line . . . if the Commission makes a finding that the present or future public convenience and necessity required or permitted the abandonment or discontinuance of a railroad line, or if the Commission makes a finding that the transportation provided over a particular line is inadequate. . . . The Conference substitute adopts the House provision with several modifications.

H.R. CONF. REP. NO. 96-1430 at 124 (1980). In other words, the feeder line provisions were not confined to narrowly-specified circumstances, but were constructed exactly for situations like this, in which the carrier owning a line no longer desires to serve it¹⁴ and shippers seek an alternative operator in order to avoid the death spiral of degraded service followed by abandonment.

3. Volume Commitments Are Not Lawful Prerequisites to Common Carrier Service

TP&W's second assertion supporting its theory that its service is adequate is that "Since no shipper requested rates from TP&W, there was no one to negotiate rates and volume commitments." As shown above, TP&W's premise that no shipper requested rates is wrong. Indeed, in its February 21, 2003 filing in *SF&L Revocation*, TP&W stated that once Farmers Elevator withdrew its car order due to TP&W's non-competitive rates, "TP&W is waiting for Scotia Elevator's [sic] proposal for guaranteed traffic in exchange for lower rates." As discussed above, there is ample evidence in this proceeding, including evidence of TP&W's own

¹⁴ KJRY's Application allows TP&W to continue serving the only shippers TP&W cares to serve; namely, those at Mapleton. KJRY's application will allow TP&W to do so by allowing it continued access to Mapleton at no trackage rights charge, and allowing TP&W to retain

witnesses, showing that shippers that use the Line have requested rates since TP&W reacquired the Line from SF&L.¹⁵

As for the assertion that “there was no one to negotiate rates and volume commitments,” TP&W also proceeds from the apparent misconception that volume commitments are prerequisites for common carrier service. A volume “commitment” is part of a reciprocal deal between a shipper and a carrier and is thus appropriate for a contract. It is not, however, appropriate for a common carrier provider, such as TP&W, who is obligated by its current ownership of the Line to provide service regardless of whether volume is guaranteed. That there is no one who will make a volume commitment at the cost-prohibitive prices TP&W has offered shippers is not an excuse for TP&W not to serve the shippers using the Line to take all of the other actions that TP&W has taken to eliminate rail service, or to fail to hold itself out as owning and providing service over the Line.

4. TP&W’s Failure to Cooperate with KJRY’s Rate Requests
Also Shows TP&W’s Failure To Meet Its Common Carrier
Obligations and Violates TP&W’s Undertaking to the
Board When it Reacquired the Line

ownership of the Mapleton Spur with exclusive access to Mapleton shippers, in accord with UP’s wishes for continued single-carrier access at that location.

¹⁵ As noted previously, KJRY disagrees with TP&W’s premise that it has no responsibility for SF&L’s actions. As the Board concluded, TP&W knew, or at the very least had reason to know, that SF&L was acquiring the part of the Line west of Mapleton with the purpose of scrapping it. TP&W willingly facilitated that plan, such as by selling SF&L only the parts of the property that were profitably salvageable and by retaining a one-mile gap between KJRY and SF&L for nearly a year. TP&W cannot shed responsibility for actions that SF&L took to degrade service while increasing rates, merely by stating that it is not the same company as SF&L. Had TP&W sold the Line with the good faith belief and intent that the Line would continue to be operated, then perhaps it could distance itself from SF&L’s actions. But having facilitated SF&L’s plan to foster abandonment of the Line and having itself attempted to profit from that plan through the sale to SF&L, TP&W is every bit as responsible for SF&L’s actions as was SF&L.

TP&W's third attempt to explain why its service is adequate is its statement that "Only KJRY asked TP&W to quote rates and KJRY never indicated that it had authority to make commitments for shippers." This statement references Exhibit P to TP&W's Comments, a copy of a series of e-mails between KJRY's Director of Marketing Catherine Busch and Michael Klass, Director of Marketing and Sales for Rail America's Operations Support Group. The e-mails show KJRY supplying TP&W with specific information (including origin, destination, commodity, car type and ownership, and route) on several proposed interline movements, along with KJRY's request for TP&W's rate factor for the movement. TP&W, however, refused to provide any rate factors, insisting on the name and phone number or e-mail of the person requesting the rate. As shown by Ms. Busch's e-mail on page 295 of TP&W's Comments, UP and Norfolk Southern each responded within a day to KJRY's requests for their rate factors on these moves. TP&W, however, never responded, insisting instead on being able to circumvent KJRY and to directly solicit the shipper contacts developed by KJRY. This action again illustrates that TP&W has no interest in providing service and is simply trying to hide its true intentions.

TP&W's behavior also contradicts what it told the Board when it reacquired the Line from SF&L. In its February 21, 2003, filing with the Board in *SF&L Revocation* and related cases, TP&W told the Board of KJRY's request to quote rates, and said that it was "following the process in 49 C.F.R. §1300.3." Toledo, Peoria and Western Railway Corporation Response, dated February 21, 2003, at 4. What TP&W did not tell the Board was that by "following the process in 49 C.F.R. §1300.3," it meant that it would not behave like other railroads and provide a rate factor for a through movement, but would instead insist on being put in touch with KJRY's direct shipper contact. This type of behavior clearly is not normal practice under Section 1300.3,

as indicated by Ms. Busch's e-mail at page 295 of TP&W's Comments and by UP's and NS's willingness to quote rate factors without such artificial obstacles.

The evidence in this proceeding establishes clearly that TP&W's so-called service on the Line is inadequate for a majority of shippers using the Line. It is beyond question that TP&W is engaging in many of the same behaviors that the Board found in *SF&L Revocation* indicative of an intent to abandon -- slow or no response to rate and service requests; vastly increased prices accompanied by decreased service;

C. Sale of the Line Will Not Harm TP&W Because It Will Retain All of Its Alleged Exorbitantly Profitable Mapleton Traffic

TP&W claims that KJRY's Application should not be granted and is not in the public interest because such an action would harm TP&W and its shippers more than it would help the other shippers. However, KJRY is no longer seeking to acquire the Mapleton Spur. In fact, TP&W's only claim that a grant of KJRY's Application will harm TP&W is based on the possibility that TP&W would lose the revenue generated by shippers on the Mapleton Spur. Throughout this proceeding, KJRY has offered TP&W either (1) the opportunity for TP&W to retain the Mapleton traffic; or (2) to sell both the Line and the Mapleton Spur to KJRY. It is obvious that TP&W deserves to keep the Mapleton Spur. KJRY has no objection to this desire and will accede to it. KJRY is prepared to pay the NLV for the entire Line without the Mapleton Spur. TP&W's own NLV evidence excludes the Mapleton Spur from property considered for sale. By retaining the Mapleton Spur, TP&W would remain the sole carrier serving shippers on that spur. Accordingly, TP&W will not lose its Mapleton traffic and will not be harmed by a grant of KJRY's Application.

1. The Trackage Rights Proposal Does Not Impose Unnecessary Costs on TP&W

From the beginning of this proceeding, KJRY has offered TP&W the ability to retain the Mapleton traffic. Initially, KJRY offered to purchase the Line and the Mapleton Spur, but to grant TP&W trackage rights to also serve shippers there at a trackage rights charge of \$2.50 per car. TP&W claimed that charge was exorbitant and was a threat to 15% of its revenue. *See* TP&W Comments at 199. The Board required KJRY to supplement its Application without using the trackage rights proposal, which KJRY did.

KJRY's June 9 Supplement to the Application then made its earlier offer even more attractive for TP&W. KJRY offered TP&W the option to retain the Mapleton Spur, and to have access thereto over KJRY without trackage rights charge (a nominal \$1.00 per year fee was proposed to create the requisite consideration for the contract), under the terms of a proposed trackage rights agreement contained in Exhibit C to the Supplement. Now, TP&W claims that KJRY's purchase of the Line, even under the terms stated in the June 9 Supplement, would harm TP&W in three ways. TP&W asserts that it would be harmed by (1) being forced to sell the Line at less than its market value; (2) a disguised trackage rights fee in KJRY's proposed trackage rights agreement; and (3) the loss of traffic at Mapleton. In reality, however, none of these claims is credible.

TP&W's first objection is easily disposed of. TP&W asserts that it would be harmed if forced to sell the Line to KJRY at less than market value. The short answer is, of course, that the Board will not order the sale for less than the Line's market value. Consistent with 49 U.S.C. §10907(b)(1), the Board will order the sale of the Line for "not less than the constitutional minimum value." Clearly, KJRY and TP&W do not presently agree on what that constitutional minimum value is. It is the Board's function to determine which party's valuation is correct.

TP&W also claims that sale of the Line will harm its liquidity. TP&W claims that if TP&W were forced to sell the Line for less than market value, then its liquidity would be harmed by being forced to provide replacement collateral to its lenders or to use cash to pay down debt. Again, the simple answer is that the Board will determine the market value of the Line and KJRY will have to pay that value to acquire the Line. TP&W can use that cash to pay down its debt in an amount equal to the value of the Line. Only if TP&W has overvalued the Line to its lenders will this transaction impair TP&W's liquidity. Presumably, TP&W has not done that.

TP&W's second objection -- that KJRY's proposed trackage rights agreement contains hidden trackage rights charges -- is equally unfounded. The proposed trackage rights agreement is found at pages 72 through 84 of KJRY's June 9 Supplement. Only 5 sections of that agreement mention any kind of charge being paid by TP&W to KJRY. All of those are relatively minor and/or relate directly to special services KJRY would provide to TP&W.

The first such charge, found in Section 4 of the agreement, is a \$1.00 per year fee. Clearly, even considering the 999-year proposed term of the agreement, this is not significant. The second payment is found in Section 6 of the agreement. It states that if *additional* connecting track or related facilities are needed on the main line right of way to permit TP&W's entrance to or exit from the main line track between Hollis and Kolbe Junction (*i.e.*, the connection to the Mapleton Spur), the costs thereof shall be divided equally between KJRY and TP&W. This certainly is not a hidden trackage rights charge. Rather, it applies only to "additional" facilities not presently in place. KJRY proposed this requirement to assure, for example, that if TP&W's current pattern of operating the Mapleton Spur included parking its trains on the main line (which seems unlikely), that KJRY and TP&W would share the cost of preventing obstruction of the main line track. Furthermore, Section 6 requires KJRY to confer

with TP&W before installing such facilities, while Section 24 of the agreement contains a mandatory arbitration provision for disputes about the agreement. Moreover, KJRY must contribute equally with TP&W to the cost of these additional facilities. Together, these provisions protect TP&W against any possibility of abuse of this provision by KJRY.

Sharing equally in the cost of whatever additional facilities might be required along the main line to ensure that TP&W's access to Mapleton will not interfere with KJRY's access to Hollis bears no resemblance to a trackage rights fee. Whatever facilities may be required are likely to be relatively minor, at least as compared to the 3.5-miles of track covered by the trackage rights. Section 7(A) of the agreement places the burden of maintaining that existing track on KJRY, entirely relieving TP&W of that cost. By comparison, TP&W's witness Mr. Claytor suggests that TP&W would charge KJRY \$ per car/mile for access to that 3.5-mile segment. KJRY, by contrast, proposes to charge nothing. What Mr. Claytor suggests TP&W would charge KJRY for access would properly be labeled a trackage rights fee. Requiring TP&W to pay only *half* the cost of *additional* facilities necessary for it to operate safely on and off the main line bears no resemblance to a trackage rights charge.

The third provision which could require payment by TP&W to KJRY is found in Section 7(C), which states that if TP&W derailed on the joint trackage and cannot readily re-rail the train, KJRY will do so and charge TP&W. The fourth provision is found in Section 8(A and C) which provides that if KJRY must provide pilots or rules examiners for TP&W crews, TP&W shall pay relatively minor fees connected with the direct cost of those services. The final provision, Section 9, provides that KJRY will provide its rulebooks, switch keys and timetables to TP&W for free, but if TP&W employees lose those items, TP&W must pay to replace them. None of

these relatively minor charges for special services provided by KJRY to TP&W even remotely resemble a trackage rights charge.

In short, none of the charges that the agreement provides even remotely resembles a trackage rights fee like the \$ per car/mile fee proposed by Mr. Claytor to be levied against KJRY. TP&W's assertion that the proposed agreement contains a hidden trackage rights fee is simply unsupportable.

2. Granting the Feeder Line Application Would Not Result in TP&W Losing Revenues

TP&W claims that a grant of the Application would cause TP&W to lose a significant amount of revenue and jeopardize the financial viability of TP&W. This claim is wrong on several accounts. First, KJRY is no longer seeking to purchase the Mapleton Spur and instead is seeking merely to acquire the Line from Hollis to LaHarpe for NLV. TP&W can keep the Mapleton Spur. TP&W will access Mapleton through 3.5 miles of trackage rights from Hollis to Mapleton over what would become KJRY's line, which should not interfere with TP&W's operations at all as TP&W already accesses its Line at Hollis from Peoria via trackage rights over the P&PU and the UP. Second, because KJRY would not be operating over the Mapleton Spur nor serving the Mapleton shippers, the concerns expressed by UP are no longer valid. TP&W asserts that "Based on the attached Verified Statement of Warren C. Wilson . . . TP&W expects to lose all of the business it has at Mapleton, if KJRY's Application is granted, with or without the Mapleton Spur." Comments at 20. However, upon reading Mr. Wilson's statement, it is clear that TP&W's 'expectation' is misguided.

Mr. Wilson's statement itself is based upon the misconception that "[U]nder KJRY's proposal, there would be two carriers rather than one serving the same industries on the Mapleton segment." Comments at 49. From this, UP concludes that while it "is satisfied with

TP&W's switching and interchange services," that "*if TP&W's service were no longer available*, we would commence direct trackage rights operation to Mapleton."

Obviously, UP's key misconception is that TP&W's service "would no longer be available," and that "two carriers" would be serving Mapleton shippers, not one. These statements are completely at odds with KJRY's offer to TP&W. KJRY's Supplement offers that TP&W "would retain exclusive access to (and revenues from serving) the shippers at Mapleton, . . . [t]his proposal would allow TP&W to retain ownership of and exclusive access to the Mapleton Spur." June 9 Supplement to Application, at 21.

With this fundamental misconception corrected, it is clear that TP&W would not lose traffic at Mapleton, especially given that KJRY is no longer seeking to acquire the Mapleton spur. TP&W has asserted that Mapleton revenue is crucial to its operations, and has excluded the Mapleton Spur from the NLV calculations it presents. This is consistent with KJRY's offer to allow TP&W to retain ownership of and exclusive access to the Mapleton Spur. As the sole carrier serving the Mapleton shippers, TP&W would retain all of the revenue of that operation. UP would continue to use TP&W because UP would not have to segregate traffic between two carriers serving Mapleton. Thus, as with the other two financial harms projected by TP&W, this supposed harm will not materialize.

3. Even If TP&W Would Lose Some Mapleton Traffic, Which It Will Not, TP&W Overstates The Harm

Similarly, the adverse effect on its operations postulated by TP&W is without substance. That alleged effect is based entirely on the supposition that TP&W would lose the revenue from the Mapleton Spur. With TP&W having exclusive access to the Mapleton Spur and UP, its interchange and switching partner, being satisfied with TP&W's service, there is no reason that TP&W would lose Mapleton revenue. Accordingly, TP&W would not have to reduce

operations, cut back on maintenance or reduce its workforce, as it asserts. Since TP&W would continue in the future to serve the same shippers that it serves now, and would at the same time have cash in its pocket from liquidating a line that it did not want to operate, TP&W's operations would, if anything, be improved, not weakened.

The financial losses that TP&W projects would result from the supposed loss of Mapleton traffic (Comments at 77 and 82) are completely unexplained and without foundation. Most notably, there is a completely unexplained \$1.83 million dollar difference between TP&W's top line revenues in the column representing TP&W with Mapleton traffic and the column representing TP&W without Mapleton traffic. Other unexplained differences in various revenue and expense items are similarly unexplained. This merely compounds the confusion that results from the complete lack of any of the raw data (*e.g.*, carloads handled) in TP&W's presentation. Quite simply, there is no way to validate any of the numbers on which TP&W bases its claim that it would lose money if it no longer had access to Mapleton. Assuming, for example, that some of the revenue loss projected involves off-Line revenues, TP&W provides no basis for concluding that it could not continue to handle the traffic via interchange with UP. The projected losses are unexplained, untested and unreliable. They are not an adequate basis for finding that TP&W would be harmed by a grant to KJRY's Application.

In short, TP&W's supposed downward spiral will not occur because the triggering event - the loss of traffic at Mapleton -- will not occur. Even if they did occur, the alleged financial impacts are overstated and not adequately proven in the record. In the end, given that TP&W gets to keep the Mapleton spur under KJRY's proposal, the only financial effects of this Application on TP&W will be positive, giving it cash for an unused asset and relieving it of

responsibility to maintain that facility, while allowing it to retain the traffic (and revenues) that it currently enjoys.

D. The Ultimate Effect of the Application Is Better Service to Shippers on the Line, and No Change for Shippers Served by TP&W, Leading to Improvement in the Overall Quality of Rail Service Available

The evidence in this proceeding clearly shows that the public convenience and necessity will be served by granting KJRY's Application. Mapleton shippers will continue to receive the same service from TP&W that they have heretofore received. UP will continue to be able to interchange with TP&W to serve Mapleton. KJRY, on the other hand, will bring service back to those shippers who effectively have been abandoned by TP&W since late 2000.

Many shippers who have supported KJRY's efforts to provide them service on a temporary basis when TP&W would not offer them service that they could use, are hanging their last hope on this Application. They are right to do so. There can be no doubt that if the Board does not use the powers granted it by Congress in Section 10907 that TP&W will in the near future move to abandon the portion of the Line west of Mapleton. This will effectively assure the abandonment of that part of the Line, destroying a 130+ year old historic rail route. Likewise, as discussed in more detail below, the Board should not segment the Line into a western segment from LaHarpe to Mapleton and an eastern segment from Mapleton to Hollis, nor could it as a legal matter. The Line at issue is the entire Line. In fact, it is KJRY's opinion that operating the line west of Mapleton, without the ability to connect directly to UP at Hollis, would be a doomed venture. There is limited local traffic on that part of the Line, and the interposition of TP&W on the short section of track between Hollis and Mapleton would (as the Board found with the similar situation where TP&W owned the short stretch between LaHarpe and SF&L) make interchange of freight cumbersome and ineffective. Granting this Application

is the only means by which the Board can assure the preservation of service to shippers west of Mapleton, including overhead shippers who have used the Line as an alternate route to and from Peoria for over 130 years.

II. THE CONSTITUTIONAL MINIMUM VALUE OF THE LINE IS \$3,321,745; THE BOARD SHOULD ORDER THE LINE SOLD TO KJRY FOR THAT PRICE.

The inadequacy of TP&W's service, including but certainly not limited to its rates, coupled with the lack of harm to TP&W from a sale in which it retains ownership of and exclusive access to the Mapleton Spur, clearly establish that a grant of KJRY's Application is consistent with the public convenience and necessity. KJRY's evidence establishes a reasonable and workable operating plan, Mr. Claytor's inconsistent and inadequately-founded criticisms notwithstanding. Moreover, KJRY is not the grossly unsafe operator that Mr. Dowd's ill-informed opinion makes KJRY out to be. Therefore, in order to grant KJRY's Application, the remaining issues before the Board are determining the constitutional minimum value for the Line and whether KJRY has the resources to pay that value.

A. Precedent Requires Selling The Entire Line at NLV And The Line Cannot Be Divided Into Segments

Section 10907 is clear that the Board is to order the sale of a feeder line at not less than its constitutional minimum value. 49 U.S.C. §10907(b)(1). The statute further defines constitutional minimum value for these purposes as not less than NLV or GCV, whichever is greater. 49 U.S.C. §10907(b)(2). In these circumstances, where TP&W has done everything possible since December 2000 to frustrate and prevent shippers on the Line from receiving adequate service, KJRY submits that constitutional minimum value -- NLV or GCV -- is also the

highest price the Board can set for the Line. To do otherwise would be to reward TP&W with a bonus for flouting its common carrier obligation for the past three years.

NLV is the value of these rail properties for their highest and best non-rail use. *See generally New York Central Lines, LLC-Abandonment Exemption-In Berkshire County, MA; In the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-565 (Sub-No. 3X), 2002 STB LEXIS 234 at *5 - *6 (served Apr. 19, 2002), citing *Chicago and North Western Transportation Co.-Abandonment*, 363 I.C.C. 956, 958 (1981), *aff'd sub nom., Chicago and North Western Transportation Co. v. United States*, 678 F.2d 665 (7th Cir. 1982). This includes both the value of the real estate and the net salvage value (*i.e.*, gross salvage value less removal costs) of the rail and track materials.

GCV, on the other hand, is the value of the properties as a continuing rail business. As the Board's May 9 decision in this case held, slip op. at 3, the portion of the Line west of Mapleton has no GCV. Indeed, TP&W's request to substitute itself for SF&L and to abandon that portion of the Line is an admission that the line segment west of Mapleton loses money as a going concern. Therefore, that segment has a negative GCV. Were the Board to apply a GCV valuation methodology in valuing this line (which it should not), this negative GCV would largely or completely offset any positive GCV found based on the Mapleton traffic. However, as argued in the next section, treating the Line as two separate properties for valuation purposes contradicts plain statutory language and the decisions of the courts in the *Caddo Antoine* cases. The Board must apply the same valuation methodology for the entire Line.

Here, KJRY does not believe that the Board should apply a GCV analysis in valuing the Line that KJRY is purchasing. The only traffic that TP&W has argued has a GCV is that moving to and from Mapleton. KJRY agreed to allow TP&W to retain the Mapleton Spur, and thus to

retain the same exclusive access it has today to the traffic and revenues there. TP&W apparently has accepted that option. TP&W excluded from its NLV calculations any portion of the Mapleton Spur. As stated in KJRY's September 9 letter to the Board, "If TP&W desires to continue to own and operate the Mapleton Spur, then as noted, KJRY is willing to allow it to do so and TP&W should present its evidence on whether or not it agrees with KJRY's NLV valuation for the Line without the Mapleton Spur." September 9 Letter at 3. This is what TP&W has done -- presented an NLV calculation that excludes the Mapleton Spur. Therefore, KJRY is no longer seeking to acquire the Mapleton Spur and thus the appropriate methodology for the entire Line is NLV. Indeed, it is the only methodology that has even been presented for the Line without the Mapleton Spur.

To allow TP&W to engage in "cherry-picking" by breaking the Line into separate parts -- whether for granting the Application or determining the Line's value -- would contravene case law precedent and legislative policy. Indeed, the Board has a duty to be vigilant to detect and restrain any attempt to make the remainder of a line useless and subject imminently to abandonment. *Futurex Industries, Inc. v. I.C.C.*, 897 F.2d 866, 870-73 (7th Cir. 1990) (quoted by *Caddo Antoine and the Little Missouri Railroad Company, et al. v. STB*, 95 F.3d 740, 747 (8th Cir. 1996) (*Caddo Antoine II*). As discussed below, the entire Line -- from LaHarpe to Hollis -- is the proper subject for the Board's evaluation.

A unified evaluation of the Line is justified in light of the only decision on point -- the Eighth Circuit's decision in *Caddo Antoine II*. In that case, the court used a three-part test to determine whether a line subject to a feeder line application should be separately evaluated. *Caddo Antoine II*, 95 F.3d at 745. Those factors include the history of the line's operation, the circumstances surrounding bifurcation of the line, and the legislative history of the feeder line

development program. *Id.* (Importantly, this approach is not refuted by TP&W anywhere in its *Comments*.) As demonstrated below, all three of these factors support consideration of the Line as a single unit from LaHarpe to Hollis. Even the valuation maps provided by TP&W refer to all of the line west of Hollis as TPW's "Western Division." *See* Exhibit 6.

First, the Line has been historically operated as a single entity. It was operated as a single route by TP&W for over 100 years prior to the sale to SF&L.¹⁶ Despite its weak protests that "there does not exist sufficient unity of operation" to treat the Line as a single unit,¹⁷ TP&W provides no data whatsoever to support this claim. Moreover, TP&W's statement that the Line has "at times" operated as part of an overhead route¹⁸ is contrary to its own evidence, namely, TP&W's 1998 traffic summary and projection that \$5.54 million in revenues were directly attributable to overhead traffic that would have moved on the Line.¹⁹ Thus, the history of this Line is clearly that of being operated as one unit. As demonstrated by the TP&W marketing materials, schedules and many other indicia presented in KJRY's Application at Appendix 1, Exhibit A and as Appendix 2 to KJRY's June 9 Supplement, the Line has been operated in a unitary manner for over 100 years.

Second, the circumstances surrounding TP&W's attempts to bifurcate the Line have been -- and should continue to be -- rejected as improper by the Board. In a well-reasoned decision, the Board revoked TP&W's sale to SF&L based on TP&W's knowing participation in SF&L's plot to choke off traffic on the portion of the Line west of Mapleton (culminating in an embargo

¹⁶ *July 9 filing* at 7-10.

¹⁷ *Comments* at 31.

¹⁸ *Id.* at 29.

¹⁹ *July 9 filing* at 10.

during SF&L's ownership). *See SF&L Revocation* at 11, n.24. Failing in those efforts, TP&W showed its true intent by requesting to be substituted as the abandoning carrier in SF&L's abandonment exemption petition. (Again, the Board rejected TP&W's efforts.) Even now, TP&W prevents traffic from flowing continuously over the Line by quoting commercially prohibitive rates to shippers on the Line, by diverting overhead traffic, and failing to provide service upon reasonable request. *See, e.g., July 9 filing* at 6, n.4. If the Board, as KJRY urges it to do, follows the only applicable case law provided by either party, then the circumstances surrounding bifurcation of the Line clearly cut against a decision to treat the Line as separate units.

Finally, the legislative intent of the feeder line development program supports a decision to prevent TP&W from effecting an abandonment of various portions of the Line. TP&W's argument that "there exists no abandonment listing or proceeding" misses the point because those are not prerequisites for granting a feeder line application. In fact, *Caddo Antoine II* specifically discussed the requirements and (quoting the statute) stated that "a line is available for forced sale if . . . the operating carrier is not providing adequate service." *Id.* at 747. In addition, TP&W has clearly forgotten its prior representations to the Board when one compares (a) its statement that there is an "absence of any evidence linking SF&L's [intent to abandon] to TP&W" with (b) TP&W's offer to substitute itself for SF&L in SF&L's application for abandonment of the Line.²⁰ Moreover, TP&W's attempt to rewrite the Staggers Act as supporting rail carriers' rights to reroute overhead traffic at the expense of any viable service to shippers is absurd. Rather, as *Caddo Antoine II* clearly stated, "the purpose of the feeder line

²⁰ Compare TP&W's *Comments* at 33 with TP&W's *Motion to Substitute* (filed Oct. 30, 2002).

development program is to preserve feeder lines and to preserve service to existing shippers.”

Id. at 748.

Because the history of the line’s operation, the circumstances surrounding bifurcation of the line, and the legislative history of the feeder line development program support a finding for a complete evaluation, it is clear that the entire Line is the proper subject of the Board’s consideration under the test announced in *Caddo Antoine II* (and tacitly accepted by TP&W).

B. TP&W’s NLV Estimates Are Vastly Overstated

TP&W’s valuation evidence submitted herein is unreliable and should not be accepted by the Board. TP&W’s NLV estimate is deficient because it relies on retail, rather than wholesale prices, because it accounts for inadequate tie removal and handling costs, and for several other reasons. See Section A, below. TP&W’s real estate valuation is deficient because TP&W’s interest in the vast majority of the right of way is held only by easement, not as a fee simple, and therefore has no liquidation value. Furthermore, the valuations applied by TP&W’s employee who purports to assess the real estate value contain many undisclosed adjustments which cannot be analyzed, and are unrealistic in terms of sell-off time and failure to adequately discount values in comparison to other Illinois sales of parcels of abandoned right of way.

TP&W’s GCV estimate is irrelevant because TP&W will retain the Mapleton traffic. Moreover, even by the standards set forth by TP&W’s own witness Mr. Claytor, the estimate is a gross overstatement of the value of the Mapleton traffic because it fails to account for off-branch costs and other pertinent expenses.

1. TP&W Has Overstated the Value of Rail and Track Materials.

KJRY’s evidence in this proceeding, prepared by two experienced independent rail valuation experts, has shown the NLV for the entire Line, not including the Mapleton Spur, to be

\$3,284,605. June 9 Supplement at 106. TP&W's evidence, prepared by Mark Garvin, RailAmerica's Chief Engineer, argues for an NLV of the Line (again, without the Mapleton Spur) of \$4,790,733. Comments at 96 and 98. The difference is, largely, based on the prices assigned by Mr. Garvin and, to a lesser extent, the quantities of various types of recoverable materials, particularly ties. KJRY stands by the correctness of the NLV estimate presented by its independent experts.

As stated in the accompanying Verified Statement of Mr. John W. Gohmann (Exhibit 8 hereto; "V.S. Gohmann"), states in detail the problems with Mr. Garvin's analysis. Succinctly, they are:

1. The valuation of rail, Other Track Material ("OTM") and Ties at prices that RailAmerica pays for materials, rather than the price that a track contractor or material sales company would pay RailAmerica for them. Throughout his verified statement, Mr. Garvin consistently states that his valuations are "prices TP&W would pay for such materials" or "prices we obtained recently from contractors in the area." For example, Mr. Garvin's statement says, "Unless otherwise noted, all values for track and material are based on local costs for the materials *which TP&W has recently purchased or inquired about purchasing.*" (Emphasis added.)

This is extremely deceptive. By using costs at which it purchases material for comparison, rather than costs at which materials are sold, Mr. Garvin gives his valuation a 15% to 30% boost. Ordinarily, purchasers of rail materials must allow a 15% to 30% margin to cover expenses such as materials handling, inventory carrying, and profit. To cover these costs, a materials purchaser offers 15-30% below the retail value when purchasing materials.²¹ TP&W's use of retail prices ignores this factor, and results in a significant overvaluation.

2. Mr. Garvin's NLV assessment treats grade crossing facilities (such as the rubber or metal inserts in the road or the crossing signals) as salvageable by TP&W when, in fact, many of them may be owned by local or state government. In most states, grade crossing signals are installed at the expense of the state or local municipalities. Grade crossing surfaces are

²¹ As Mr. Gohmann notes, the only recent offeror for this line, other than KJRY, was SF&L, which paid only \$2.18 million for materials that Mr. Garvin says should be valued at \$4.41 million, based on prices TP&W pays to purchase materials.

likewise done at the expense of the taxpayer. When this occurs, the government retains ownership of these materials when the line is abandoned. Accordingly, no salvage value is assignable to these materials. Nevertheless, Mr. Garvin's valuation includes \$78,000 as the salvage value of crossing signals.

Exhibit 9, copies of three agreements for crossing construction or repair work along the Line, these principles of government ownership of crossing devices hold true for this line.²² The first agreement states, in Section 3 that if the crossing is removed, the rubber panels of the prefabricated crossing surface will be turned over to the State. The second, on page 2 of the appended "Standard Provisions for State-Railroad Grade Crossing Agreements," says that when the railroad bills the state for crossing materials, the materials become the state's property. The third agreement refers to, in Section 1, the same "Standard Provisions," although they are not actually attached to the copy. Together, these agreements support Mr. Gohmann's analysis that grade crossing facilities installed under such agreements often belong to the state, and cannot be counted as salvage value to the railroad. Mr. Garvin's inclusion of salvage value for such materials is wrong.

3. Mr. Garvin's analysis makes no provision for potentially expensive removal of bridges. Bridges over major highways, waterways or streets have often been constructed at taxpayer expense, and must be removed at the expense of the railroad if the line is abandoned. Removal can be expensive, particularly the cost of transporting the structure away by truck which may require expensive heavy-haul trucking services. Mr. Garvin fails to account for these costs.
4. Tie removal and disposal costs are understated. There is a large number of ties on the Line – perhaps 60% of them – that have no value for reuse and are therefore merely a salvage expense. As shown in Mr. Gohmann's statement, the overall worth of ties in the line is an average net cost per mile of \$1,200, once Mr. Garvin's transportation costs are adjusted to a more realistic \$5.00 per tie to account for environmentally-appropriate tie disposal, in addition to mere transportation away from the site. For the entire 76.0-mile line, this results in a net salvage cost of \$91,200, even according the remaining portion of the ties some economic value. Mr. Garvin apparently did not accord any salvage value to the ties, but his removal and disposal cost is too low, as demonstrated by Mr. Gohmann.

²² Following initial review of TP&W's evidence by Mr. Gohmann, KJRY's counsel requested TP&W to provide copies of crossing agreements relating to the Line. Exhibit 9 contains three of the 5 agreements provided by TP&W prior to the date of this filing. The remaining materials included some engineering drawings of one crossing, a draft of one of the agreements in Exhibit 9, a 1935 agreement for relocation of a crossing, and an agreement for a private crossing.

Thus, Mr. Garvin's valuation again is overstated.

5. Mr. Garvin's approach of estimating the weight of other track materials based on unknown factors (*i.e.*, Mr. Garvin states vaguely "This material's weight is a function of the rail weight," Comments at 89) flies in the face of standard industry practice. By comparison, Mr. Gohmann and Mr. Richard Lane, who assisted Mr. Gohmann in his assessment, used the time-tested approach of treating the weight of OTM as 20% of the rail tonnage. As the time-tested approach, Mr. Gohmann's method is more credible.

While TP&W and Mr. Garvin emphasize their 'boots on the ground' inspection of the Line, a right which was denied KJRY by TP&W, TP&W submits that Mr. Garvin's use of retail rather than wholesale prices, and the other errors specified above and in Mr. Gohmann's accompanying statement, render Mr. Garvin's valuation demonstrably less reliable. Mr. Garvin is a RailAmerica employee while Messrs. Gohmann and Lane are veteran independent rail valuation experts averaging 40+ years' experience. Messrs. Gohmann and Lane used time-tested methodologies while Mr. Garvin used substantially unexplained methodologies. The bottom line valuation result reached by Messrs. Gohmann and Lane, while above the price paid by SF&L, at least is not twice that price. KJRY's NLV testimony is more credible and should be accepted.

2. TP&W Has Vastly Overstated the NLV of the Real Estate Underlying the Line

TP&W's real estate valuation testimony is not credible. TP&W has not justified departure from Board precedent that refuses to allow appraisal of rail right of way as a corridor. Moreover, as shown by the attached title opinion (Exhibit 10) prepared by Brian D. Mooty, an experienced Illinois title attorney, all but a few parcels covered by TP&W's deeds are easements for railroad purposes. They therefore have no value in a NLV analysis. Moreover, as shown by the attached Verified Statement of L. Arlen Higgs (Exhibit 11 hereto; "V.S. Higgs"), an Illinois-certified real estate appraiser, the valuation report by RailAmerica employee Todd Cecil fails to properly account for the length of time for necessary to sell the parcels and does not adequately discount across-the-fence values. Making proper adjustments for these failings, TP&W's fee interests in the right-of-way are worth no more than \$37,140.

TP&W's NLV estimate for the Line includes alternative real estate estimates, both of which vastly overstate the actual value of TP&W's property interests. The first valuation presented is based on rejecting Board precedent and valuing the Line as a continuous rail corridor. RailAmerica employee Todd Cecil assigns a value of \$7,009,497 to this supposed corridor. Comments at 116. Mr. Cecil's alternative non-corridor valuation, \$2,863,173 (Comments at 120), is based on anticipated sales of parcels of the right of way to adjoining landowners. In both cases, the real estate underlying the eastern portion of the Line, between Mileposts 118.5 and 123.0 is included (see Comments at 128).²³

Mr. Cecil's valuation of the real estate is severely flawed. First, Mr. Cecil is a Texas-based RailAmerica employee and apparently not an attorney. Nevertheless, Mr. Cecil treats the vast majority of the real estate as fee ownership, based on his "extensive experience and familiarity with railroad titles." Comments at 118. By contrast, the title opinion provided by Brian D. Mooty, an experienced local real estate title attorney in Illinois, *see* Exhibit 10, shows that TP&W's ownership interest in the corridor is comprised almost entirely of easements for railroad purposes. With respect to the valuation of those few parcels to which TP&W does have fee interests, the accompanying statement of L. Arlen Higgs, a certified Canton, IL real estate appraisers, shows that Mr. Cecil underestimates how long it will take to sell the property and greatly understates the discount from ATF values that are appropriate for sales of abandoned rail rights of way in Illinois. *See* Exhibit 11. As a result, the greatest value that could reliably be assigned to the real estate underlying the Line is \$37,140.

²³ Mr. Cecil's statement says that the Mapleton Spur is not included in the determination of the length of the real estate he values. Comments at 108. However, his total "Across The Fence" ("ATF") valuation includes his estimate of \$757,500 in real estate value of 30.3 acres underlying the Mapleton Spur. At the outset, that amount should be excluded because TP&W will retain the Mapleton Spur.

a. The Real Estate Should Not Be Valued as a Corridor

In an abrupt departure from Board precedent, TP&W seeks to inflate the value of its real estate interests by 20% to 40% by arguing that they should be valued as a corridor, rather than as individual parcels. TP&W argues that the Board should depart from precedent in this case and value the rail right of way as a corridor, including a corridor “Enhancement Factor” that Mr. Cecil pegs at 1.2 to 1.4 times the value he assigns based on sales of allegedly comparable property. In other words, TP&W invites the Board to add 20% to 40% to the value of the right of way on the supposition that the property has value as a rail corridor and that, if one were to attempt to assemble a rail corridor from scratch, costs beyond normal acquisition costs would be incurred that a prospective rail user would pay extra to avoid. The Board should decline TP&W’s invitation to depart from precedent that has repeatedly refused to accept a corridor “enhancement factor.”

Board precedent has consistently declined to allow corridor enhancement factors (also sometimes referred to as corridor assembly factors) in an NLV valuation of a rail line because they are speculative and contradict the fundamental concept of NLV-based valuation. In instances where railroads have argued for corridor assembly value in assessing the NLV of a rail line, the Board has refused to allow the ‘assembly factor’ because of the lack of a documented use for the corridor for non-rail purposes. For example, in *Railroad Ventures, Inc.-Abandonment Exemption-Between Youngstown, OH and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X), STB Finance Docket No. 33385, 2000 STB LEXIS 8 (served Jan. 7, 2000) at *22, the Board said,

RVI bases its NLV for land on use of the right-of-way as an assembled corridor. Unless there is a specific documents interest expressed by a potential purchaser of an intact corridor, we do not consider this to be an acceptable method of valuation

for NLV purposes. The highest and best non-rail use is to sell parcels to adjoining landowners or other interested parties. [Citation omitted.] RVI contends that the highest and best use of the right-of-way is as an assembled corridor, but it fails to support this contention with an executed sales contract or even an offer for an assembled corridor. [Footnote, citing case in which a signed contract to purchase the corridor being abandoned was allowed as evidence of corridor value, omitted.]

See also Boston and Maine Corporation-Abandonment-In Hartford and New Haven Counties, CT; Springfield Terminal Railway Company-Discontinuance of Service-In Hartford and New Haven Counties, CT; Request to Set Terms and Conditions, STB Docket No. AB-32 (Sub-No. 83), *et al.* (served July 1, 1998), 1998 STB LEXIS 167 at *8-*9; *Union Pacific Railroad Company-Abandonment Exemption-In Lancaster County, NE*, STB Docket No. AB-33 (Sub-No. 112X) (served Sept. 24, 1997), 1997 STB LEXIS 241 at *20-*21. The Board should follow that precedent and refuse to accept TP&W's argument for establishment of a corridor value.

TP&W offers three reasons why the Board should depart from this precedent and accept a corridor enhancement factor in this case. None of these reasons is convincing. First, TP&W contends that in all other situations where the carrier was denied a corridor assembly enhancement, the carrier had shown its intent to abandon the Line. TP&W, however, says that it has not shown that intent with respect to the line west of Mapleton. Quite frankly, such a contention is absurd. The Board has already found that TP&W knowingly facilitated SF&L's abuse of the Board's acquisition exemption process to allow service west of Mapleton to be downgraded to facilitate abandonment of that part of the Line. When SF&L sought an exemption to abandon the line, TP&W sought to be substituted for SF&L as the abandoning carrier in the event that it was forced to take the Line back from SF&L. Since being forced to take the Line back from SF&L, TP&W has imposed prohibitive prices, demanded that shippers guarantee traffic in order to receive service, refused to quote rate factors for movements over the Line, and has issued numerous publications, including on its website, which do not even

acknowledge that it owns the track west of Mapleton. All of these factors clearly show that TP&W has no interest in providing service over the Line.²⁴

TP&W's contention that its efforts to rid itself of the portion of the Line that it did not want also do not distinguish this situation from precedent. TP&W states, "TP&W sold the Western End to SF&L as a going concern railroad, and has offered to sell a substantial portion of the Western End to KJRY as a going concern railroad." Comments at 42-43. TP&W, of course, did not sell the "Western End to SF&L as a going concern railroad." The Board specifically found that TP&W sold the track to SF&L to facilitate its abandonment, not as a going concern. Moreover, TP&W did not sell "the Western End" to SF&L; rather, it sold only the rail and track materials. It retained the real estate itself. And TP&W's offers to sell KJRY a portion of the Line (a) have not yielded a contract that would fix a value for that property and (b) did not appear to have been based on real estate valuations anywhere near those now contended for by TP&W. KJRY has not offered to pay an amount for the real estate that is anything close to that sought by TP&W, nor would KJRY pay such an outrageous price. As for other possible, non-rail, corridor uses, hinted at vaguely by Mr. Cecil, TP&W has failed to establish that there is any realistic possibility that someone would purchase the corridor for such a use. Indeed, because most of the right of way is held as easement, as shown by the title opinion contained in Exhibit 10, there would be no corridor to sell if the railroad use ceased.²⁵ In short, TP&W has utterly

²⁴ To the extent that TP&W attempts to stand on the fact that it has not filed a system diagram map or equivalent descriptions stating that it intends to abandon the track west of Mapleton, that is only because TP&W has not met its obligations under 49 C.F.R. §1152.10(a) to file such a description. Each time counsel for KJRY has inquired of Board staff or visited the Board's offices in search of a SDM-like line description filed by TP&W, Board staff has stated that no such filing exists. For TP&W to assert that it should receive a 20% to 40% adder to the value of the real estate because it has not yet abandoned the track is simply ludicrous.

²⁵ Even Mr. Cecil admits that there are gaps in TP&W's fee title. These are identifiable on Exhibit D to Mr. Cecil's statement, Comments beginning at page 149, as the parcels in which an

failed to distinguish this situation from others in which the Board has refused to accept a corridor assembly enhancement factor for NLV valuation of real estate.

One other significant defect of TP&W's corridor assembly value argument is that it flies directly in the face of TP&W's other testimony. For example, TP&W's witness Claytor testifies that KJRY's traffic projections are "a fantasy," and that KJRY's operation will lose money. Similarly, TP&W's Comments value the portion of the Line west of Mapleton on an NLV basis rather than a GCV basis. Unless the Line overall has a GCV -- which no party contends -- then the real estate has no added value as an assembled corridor.

Finally, the concept of an NLV valuation is to assess the value of the property to the seller, not on the basis of its potential value to the buyer. As the court said in *Chicago and North Western Transportation Company v. United States*, 678 F.2d 665 (7th Cir. 1982), the case by which the Board defines NLV:

Setting aside measurement problems, we think it irrelevant whether private property is taken for a new use or to continue an old one, and even question whether this is a meaningful distinction. If C&NW owned a hospital that was losing money and had no prospects for profitable operation, and the State of Wisconsin condemned it for a public hospital, C&NW would not be entitled to the value of its property as a hospital.

Id. at 669. TP&W has shown and said many times that it cannot (or will not) operate a profitable railroad using the Line. Therefore, being forced to sell the Line to KJRY does not deprive TP&W of the opportunity to make profitable use of the real estate as an assembled rail corridor.

acreage is shown in the "Less Reversions" column. Comparing Mr. Cecil's Exhibit B to his Exhibit D shows that he treated these properties in his corridor valuation as if they were held by fee title. Even though Mr. Cecil's review of the title to the property is less expert and less impartial than that of Mr. Mooty, and is therefore less credible than Mr. Mooty's title opinion contained in Exhibit 10 hereto, even the gaps admitted by Mr. Cecil would destroy the continuity of the corridor for a non-rail use.

Sale of the Line under the feeder line provisions will not deprive TP&W of the value of the real estate as an assembled rail corridor.

The Board should adhere to its precedent which holds that unless a party convincingly establishes an alternative corridor use, no 'enhancement factor' or 'corridor assembly factor' can be added to the across the fence values. TP&W has not established such an alternative use, nor is one feasible in light of the significant gaps in TP&W's fee title which would prevent there being a corridor if railroad use were discontinued. Accordingly, the proper methodology for determining the real estate value is an ATF methodology contemplating piecemeal sales of individual parcels.

b. TP&W Holds Almost No Fee Title to the Real Estate

Although TP&W admits that it does not hold fee-title to the entire right of way for the Line, TP&W vastly understates the proportion of that right of way which is held only by easement. The accompanying title opinion, specifically addressing and supporting KJRY's contention that all but 28.24 acres of the right of way are held by easements for railroad purposes, support KJRY's original estimate that the NLV of the right-of way real estate at only \$100,000.

The Board accords an NLV to real estate only if the railroad holds marketable title. An easement for railroad purposes is not marketable title for purposes of an NLV valuation because the easement ceases to exist when the railroad use ceases. *Cheney Railroad Company-Feeder Line Acquisition-CSX Transportation, Inc. Line Between Greens and Ivalee, AL*, 5 I.C.C.2d 250, 1989 ICC LEXIS 19 at *46-*47, *pet'n for review den'd, Cheney Railroad Co., Inc. v. ICC*, 284 U.S. App. D.C. 101 (1990). Cessation of the railroad use and liquidation of the right of way to adjoining landowners is the premise of NLV real estate valuation, absent convincing evidence of

the sale of the corridor, as discussed above. Thus, to claim a NLV for the right of way, Mr. Cecil needed to establish that TP&W owns a fee simple or comparable interest, not an easement for railroad purposes.

TP&W's foundation for Mr. Cecil's opinion of the quality of TP&W's title to the right of way is extremely weak. First, Mr. Cecil gives no explanation of the basis or reasoning for his opinion. Although he describes the efforts TP&W expended to gather relevant documents, he provides no real analysis of those documents. Instead, he merely says, "[W]e relied upon our extensive experience and familiarity with railroad titles." He does not discuss any of the documents he presents, analyze their language, or even explain why he chose to label certain of them (identifiable only from the "Less Reversions" column of Exhibit D to Mr. Cecil's statement) as non-fee interests. Moreover, Mr. Cecil is neither an attorney nor an Illinois resident, and thus clearly is not qualified to give expert opinion as to the quality of title to properties under Illinois law. Finally, Mr. Cecil is a RailAmerica employee, which obviously has the potential to bias his opinion and lead him to conclusions that an impartial person would not reach. Based upon the record, Mr. Cecil lacks qualification to give a title opinion, unlike KJRY's witness who is fully qualified to give such a title opinion.

By comparison to TP&W's cursory mention of the quality of its title to the real estate, the opinion presented in Exhibit 10 hereto is well-substantiated and convincing. First, Mr. Mooty's opinion is an actual title opinion, not just an unexplained listing of deeds. Second, Mr. Mooty is impartial, being an independent attorney who is not employed by KJRY. Indeed, as his opinion states, he has never worked for KJRY before. Third, Mr. Mooty is a licensed attorney, giving his opinion about the legal impact of the deeds presented by Mr. Cecil more weight than that of a layperson. Moreover, he is an Illinois attorney, whose practice focuses on real estate and who

has authored chapters in books on real estate, including a chapter on easements. Finally, and most importantly, Mr. Mooty supports his opinion regarding the quality of TP&W's title with legal authority and explanation, not a mere listing. Clearly, the title opinion of an Illinois real estate attorney who has analyzed the deeds and explained his opinion of the quality of TP&W's title to the real estate is more convincing evidence of the quality of title than is the opinion of a Texas-based RailAmerica employee.

Mr. Mooty's title opinion convincingly shows that TP&W holds marketable title to only approximately 28.24 acres of the right of way, not the hundreds of acres claimed by Mr. Cecil. Mr. Mooty reviewed each of the deeds presented by Mr. Cecil; in fact, in doing so he even noticed that multiple copies of several deeds had been provided, leading one to wonder what sort of analysis Mr. Cecil actually performed of the materials that he presented. Attached to Mr. Mooty's opinion is a listing of all of the deeds presented by Mr. Cecil, categorizing them by the language that is pertinent, under Illinois law, in determining whether the interests they represent are fee or easement. Mr. Mooty's opinion letter highlights the pertinent language distinguishing the deeds in each of the categories from those in other categories, and cites to pertinent Illinois cases and law which govern whether the interests conveyed by that language is fee or easement.

Of the 18 categories analyzed by Mr. Mooty, only those deeds listed in Rows 3, 5, 7, 10, 11 and 12 of his Addendum qualify as fee interests. The deeds listed in those rows appear on the following pages of Mr. Cecil's addendum (listed acreage determined by KJRY's counsel from the deed language and from TP&W valuation maps):

Row of Mr. Mooty's Addendum	Pages on Which Listed Deeds Appear	Acreage
3	21	6.0
5	31 130 271	.86 5.733 *
7	92 95	.825 3.307
10	139 352	2.5 .07
11	189 193	0** 1.477
12	191 206	7.46 .005
	TOTAL	28.24±

* Specific size is not stated but appears to be vacation of a street, and hence much less than an acre.

** See accompanying statement of Mr. LaKemper at Exhibit 18.

Therefore, it is only for these approximately 28 acres of property, not the approximately 672 acres valued by Mr. Cecil on his Exhibit D, that the Board should assign any NLV.

c. The Real Estate "Comparables" Used by TP&W
Are Not Comparable

Mr. Cecil's valuation also fails because he uses non-comparable real estate to obtain the per-acre values that he applies to the oddly-shaped and small sections which comprise this right of way. By contrast, KJRY includes herewith as Exhibit 11 a review of Mr. Cecil's valuation of the real estate by L. Arlen Higgs, an Illinois-certified appraiser with offices in Canton, IL. Mr. Higgs statement makes two points. First, the real estate parcels will sell somewhat more slowly than Mr. Cecil projects. Second, the average discount from ATF value found by Mr. Cecil in Illinois sales of abandoned right of way is 70%, not the 10% or 20% discount applied by Mr. Cecil to ATF values. Mr. Higgs' statement reviews 6 sales of parcels of abandoned rail right of way occurring over a 7-year period to ascertain the degree of discount from ATF value that occurs when abandoned right of way is sold to adjoining landowners. The

report shows that rail right of way sold at a 51% to 84% discount from the value of adjacent property. This heavy discount is attributable to the size, shape and limited number of potential buyers for a narrow strip of land between two adjoining landowners. For example, much of the Line parallels a state highway, effectively leaving only the owners on the side of the right of way opposite the highway as potential purchasers. When the potential market is only a single buyer, the seller could not even approach the per acre prices paid for 100-acre plots of prime farmland that Mr. Cecil uses as comparables. While Mr. Cecil says that he based his valuation on “per acre values reflected by sales of similarly-sized properties,” Comments at 114, the analysis in Mr. Higgs’ statement clearly demonstrates that discounting of per acre for farm land by only 8% for sales costs and 5% per year for sales delay is woefully inadequate to reflect the deep discounts from value of adjoining properties that actual sales of rail rights of way have incurred in Illinois in recent years. While the sales of TP&W right of way used as comparables by Mr. Cecil reflect instances in which neighboring businesses had needs to purchase rail-owned property, the vast majority of sales along an abandoned 76-mile rail corridor would not involve buyers with such motivation, and would occur at the types of heavy discounts reflected in Mr. Higgs’ statement.

Applying this 70% discount factor alone to the average \$5,227 per acre ATF valuation assigned by Mr. Cecil²⁶ to the overall line yields an average adjusted ATF value of \$1,568 per acre. Applying that amount to the 28.24± acres of fee title yields a total an NLV of TP&W’s marketable real estate interests of \$44,280. When discounted according to Mr. Cecil’s discount

²⁶ Cecil Exhibit D gross sales value of \$3,512,603 ÷ 672 acres valued equals \$5227.09/acre.

methodology adjusted for Mr. Higgs' sales period projections,²⁷ the NLV of TP&W's real estate becomes \$37,140.

3. The Line Has No GCV When TP&W Retains the Mapleton Traffic

TP&W's only claim of Going Concern Value for the Line is for the portion of the Line to which the Mapleton Spur connects. *See* Comments at 43 ("Going concern value for the Eastern End.") TP&W claims that the Eastern End (which it defines as the portion between Mileposts 118.5 and 123.0 -- *see* Comments at 3, n.1) has a GCV of \$7,841,000. TP&W's claim of GCV of the Eastern End is based on the statement of Michael Klass, Exhibit D to the Comments. Mr. Klass's statement relies entirely upon revenues generated in serving shippers located on the Mapleton Spur. *See* Comments at 76 ("Revenue from the Mapleton Spur").

This valuation estimate is an amazing overstatement of the GCV of Mapleton traffic, even using the standards of TP&W's witness Mr. Claytor. Nevertheless, it is effectively an irrelevant estimate. Under KJRY's proposal, as accepted by TP&W's exclusion of the Mapleton Spur from the NLV estimate, TP&W will retain the revenue from the Mapleton traffic and, thus, retain the only Going Concern Value it attaches to any portion of the Line, or even for the eastern end.

Even if the Board should consider the GCV of the Mapleton spur, TP&W has not provided persuasive evidence of GCV for Mapleton. TP&W's GCV evidence is irrelevant to this proceeding because KJRY's proposal allows TP&W to retain the only traffic to which it assigns a GCV. Nevertheless, the Board

²⁷ $\$44,280 \times .5 \times .92 \times .95 = \$19,350$
 $\$44,280 \times .225 \times .92 \times .903 = \$8,277$
 $\$44,280 \times .225 \times .92 \times .857 = \$7,855$
 $\$44,280 \times .05 \times .92 \times .814 = \$1,658$

should also note that, like the owning carrier in the Caddo Antoine case, TP&W has failed to provide convincing evidence of the GCV of the Mapleton traffic.

First, the analysis apparently credits all TP&W revenues for shipments to or from Mapleton as attributable to the Mapleton track, but makes no accounting for off-branch costs such as moving the traffic beyond Hollis.²⁸ Even if traffic is merely being interchanged nearby, it is likely that TP&W pays an access fee to use the tracks of UP and P&PU that lie between Hollis and TP&W's yard in East Peoria.²⁹ TP&W's Mr. Claytor suggests that a fee of \$ per car/mile is an appropriate fee for such access, but that does not appear to be accounted for in TP&W's GCV calculation. Also, if TP&W itself hauled the freight beyond Peoria, it would incur additional costs which should be offset against the revenues from the traffic. Those also are excluded from TP&W's analysis. TP&W's own witness Mr. Claytor was critical of KJRY's data for failing to assign overhead costs such as supervision and marketing to its planned operation of the Line, but TP&W does not include those sorts of costs in its GCV estimate either.

Second, TP&W's analysis includes none of the raw data on which it is based, only summaries that cannot be validated. While Mr. Klass states that TP&W "identified" various operating data for the Line, none of that data is presented. Not even the number of cars switched is shown. Further, all costs are based on a system average accounting system, the reliability of which is not demonstrated. In short, all of the basic data are hidden by TP&W, leaving only summaries that cannot be validated. While KJRY had no direct data on TP&W's operations and

TOTAL \$37,140 (See Cecil, Exhibit D, page 4 for methodology.)

²⁸ At the very least, if this is not the case, no explanation is given as to how it was determined what revenues to allocate to the branch and what not to so allocate.

²⁹ See Comments at 70, describing the tracks of other carriers that separate the Line from TP&W's other properties.

therefore was forced to rely on averages, TP&W, which has the data, is able to and should present the facts which form the basis of its GCV estimate.

Third, the analysis is based on a single, 9-month period of time. There is no indication whether TP&W's revenues and operating costs during that period were representative of TP&W's experience or were an aberration. Therefore, if TP&W's track maintenance costs were low this year, due to significant track work performed last year, for example, then TP&W's evidence concerning this year would not be representative of normal operating results at Mapleton. Using a 9-month period also does not account for seasonality of traffic patterns, a common factor in most rail shipping. By focusing on a single, 9-month period for its analysis, TP&W makes its presentation unreliable.

C. The True NLV of the Line is \$3,321,745.

By definition, NLV of a rail line is the net liquidation value of the real estate plus the net salvage value of the rail and track materials. As shown above, TP&W's assertions as to the value of both of these components are significantly overstated. Rather, the true NLV of the right of way real estate is \$37,140, and the accurate net salvage value of the rail and track materials is \$3,284,605.³⁰ The total NLV of the Line, therefore, is \$3,321,745.

III. KJRY IS A FINANCIALLY RESPONSIBLE PURCHASER.

In order to be found financially responsible, KJRY must show that it (1) has sufficient funds to pay the constitutional minimum value of the Line, and (2) is capable, financially and otherwise, to assure that adequate transportation will be provided on the Line for at least three years. 49 U.S.C. §10907(a). KJRY meets part (1) of the test because its financial evidence shows that it has a loan commitment for \$7.0 million (*see* June 9 Supplement at 70-71, as

³⁰ These figures do not include values for the Mapleton Spur real estate or track materials.

extended – *see* KJRY’s August 1, 2003 reply to TP&W and UTU appeals at Exhibit B) well in excess of the \$3,321,745 NLV of the Line. KJRY meets part (2) of the test because, contrary to Mr. Claytor’s claims, KJRY’s pro formas show the financial ability to operate the Line for at least 3 years and because Mr. Dowd’s criticism of KJRY’s safety is misinformed and wrong. As shown by KJRY’s pro formas, KJRY expects to be able to operate the Line profitably, even without the Mapleton traffic. Accordingly, KJRY is a financially responsible person, able to pay the constitutional minimum value for the line and to operate it for at least three years. TP&W’s attacks on KJRY’s financial responsibility are groundless.

A. KJRY Is Not the Unsafe Operator That TP&W Slanderosly Mislabels It

TP&W alleges baldly that “KJRY is an unsafe operator.” This slanderous statement, based on conclusions drawn from incomplete information and reached by an individual with no personal knowledge other than what TP&W officers told him, is completely unreliable and untrue.

TP&W bases its safety assertions on the brief, three-page verified statement of Arthur F. Dowd, a retired Conrail manager and self-proclaimed “Rail Transportation Consultant and Expert.” Mr. Dowd states that his conclusions are based on his review of “available documents,” interviews with two officers of TP&W, and that he ‘spoke with’ a Federal Railroad Administration (“FRA”) staff person in Chicago.³¹ Notably, however, none of the assertions in Mr. Dowd’s statement are attributed to his conversation with the FRA staffer. In short, Mr.

³¹ With respect to Mr. Dowd’s assertion that KJRY’s “refusal to produce any information” on its operational safety “set off alarms,” it should be noted that what KJRY refused to comply with and objected to producing was information responsive to TP&W’s six interrogatories and 10-part document production request which together sought substantially all of KJRY’s safety-related records. KJRY objected to these requests on grounds that they predominantly sought irrelevant (and in some cases sensitive personnel) information which would have been extremely

Dowd's accusation is based principally on what TP&W officers told him and a few letters from TP&W's file.

Mr. Dowd asserts, based on what TP&W officers told him, that "the KJRY operated over TP&W," and that KJRY "did not ask for permission to enter or obtain clearance to enter TP&W property." According to Mr. Dowd, this operation covered approximately 4 miles of TP&W track. Allegedly "KJRY's unauthorized incursion did result in a dangerous situation."

What TP&W officers did not tell Mr. Dowd was that at the time of the event Mr. Dowd describes -- August 23, 2001 -- KJRY was operating the track in question under a valid, Board-confirmed exemption from 49 U.S.C. Section 10902. On August 15, 2001, KJRY filed a notice of exemption with the Board, stating that it was exercising an option under a contract with TP&W that allowed KJRY to acquire the Line from Lomax to East Peoria, IL (including such trackage rights as were assignable) from TP&W. *See Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34085, 66 Fed. Reg. 45892 (Aug. 30, 2001) (copy attached as Exhibit 12). In exercising that option, KJRY had tendered its check to TP&W as payment for the rights acquired.

TP&W, as its officers must have known (but apparently neglected to tell Mr. Dowd), unsuccessfully sought to stay the effectiveness of KJRY's notice of exemption to operate the Line. In a decision served August 23, 2001 -- the date of the event of which Mr. Dowd complains -- the Board denied TP&W's last-minute petition to stay the effect of KJRY's

burdensome to produce. Had TP&W asked a reasonably focused question concerning the single event on which Mr. Dowd dwells, some of these objections would not have been necessary.

exemption to operate on the Line.³² As the Board noted, TP&W's stay petition asserted that in the absence of a stay, it could be compelled to transfer the Line to KJRY. The denial of the stay, combined with KJRY's exercise of its option and tender of payment to TP&W for the property, effected, in KJRY's view, exactly what TP&W stated; namely, a transfer of the line. Therefore, Mr. Dowd's assumption that the property was TP&W's at the time of the operation in question is based on incomplete facts.

Mr. Dowd also apparently did not know several additional facts about this movement. First, Paul Lofton, Sr., General Manager of KJRY, had checked with TP&W personnel prior to the train movement and had received assurances that TP&W was not operating west of Mapleton on that day. *See* Verified Statement of Paul Lofton, Sr., Exhibit 13 hereto ("V.S. Lofton") at 1. In addition, as should have been apparent to Mr. Dowd even from TP&W's paperwork, a hi-rail vehicle accompanied the train movement. Mr. Lofton took this step to assure the safety of the train's operation on this new territory. *Id.* at 1. Indeed, Mr. Lofton himself rode in the hi-rail to oversee the new operation.

Mr. Dowd also asserts that the refusal of the KJRY employees who operated the locomotive and hi-rail vehicle on August 23, 2001, to submit themselves to a disciplinary hearing conducted by TP&W demonstrates guilt of some sort by KJRY. Quite the contrary is true. At the time of KJRY's alleged "unlawful" and "unsafe" operation over the 4-mile western tip of the Line, KJRY had every reason to believe that its option to acquire the Line was valid, and that KJRY had all regulatory and legal authority needed to operate over that part of the Line. (TP&W, of course, wants to ignore these facts.) Therefore, TP&W would have no right to

³² A subsequent petition for stay filed by Joseph C. Szabo on behalf of the United Transportation Union-Illinois Legislative Board, was similarly denied by the Board by decision served Sept. 12, 2001.

conduct a disciplinary hearing of KJRY employees for operating on that line. Subsequent to the August 23 movement, KJRY learned through litigation it had initiated against TP&W over ownership of the Line that the option KJRY had exercised was no longer valid. When that became clear, KJRY dismissed its litigation against TP&W and voluntarily requested revocation of the exemption obtained from the Board to operate the Line.³³ Accordingly, a TP&W disciplinary proceeding against KJRY employees to prevent them from operating on TP&W's line was no longer relevant because KJRY would not operate there. Thus, KJRY declined to participate in TP&W's proceeding because it was irrelevant, not as an admission of guilt, as Mr. Dowd construes it.

Mr. Dowd asserts that the Illinois Commerce Commission ("ILCC") investigated KJRY's August 23, 2001, movement, and issued a report on the incident. Although Mr. Dowd confesses that he has never seen the report, he asserts that it threatens divestiture against KJRY which neither the ILCC nor FRA could do or did do.

Mr. Lofton met with ILCC and FRA personnel about this event. V.S. Lofton at 2. Although he does not have a copy of the ILCC's report on this incident, he understands that it simply issued a warning against a recurrence of the incident, without assessing any penalty against KJRY. *Id.* He has, he says, no reason to believe that any dire threats such as Mr. Dowd imagines were contained in the incident report. *Id.*³⁴

Mr. Dowd casts further doubt on his own credibility with his accusations based on injury data from 1996 through 1998. While it was not immediately apparent why Mr. Dowd chose that

³³ The Board revoked the exemption as requested by KJRY by decision served October 15, 2001.

³⁴ KJRY received a copy of the report in question by facsimile on the morning of this filing. *See* Exhibit 17. As Mr. Lofton states, it does not threaten the dire consequences stated by Mr. Dowd, but instead warns against a repetition of the incident.

period for his accusations, the reason becomes clear when one reviews KJRY's more recent data on the FRA's website at <http://safetydata.fra.dot.gov/officeofsafety/Downloads/Default.asp>. Attached as Exhibit 14 is a summary of that data (reformatted to fit on a single page). It shows that in the past four years, KJRY personnel have experienced six reportable injuries, resulting in only six missed days of work. Other data available on the same site shows that KJRY has not had a reportable train accident in the past 4 years.

Mr. Lofton also takes strong exception to Mr. Dowd's aspersions. Mr. Lofton points out that most of the injuries that Mr. Dowd discusses, while regrettable, were minor injuries. Moreover, the 1996-1998 period is not representative of KJRY's current accident/injury experience, as shown on Exhibit 14. While no injury or accident is desirable, KJRY and its employees make every effort to avoid injuries and accidents and have a vigorous safety program that is fully compliant with FRA requirements.

Finally, it should be noted that Mr. Dowd's bottom line conclusion is irrelevant in this proceeding. Mr. Dowd's conclusion is that he "would not recommend that KJRY be permitted to operate over the line of another railroad." Because Mr. Dowd's recommendation is based on less than all the facts, the conclusion is suspect. Moreover, his conclusion is irrelevant because KJRY is not asking in this proceeding to be authorized to operate over the line of another railroad. Rather, KJRY is seeking to acquire an additional rail line of its own for operation. KJRY is not proposing here to operate on another carrier's line. Thus, Mr. Dowd's conclusion that KJRY should not be allowed to operate on the line of another railroad is irrelevant. Finally, as Mr. Lofton points out, KJRY has operated on BNSF's high speed former Santa Fe main line between Lomax, Illinois and Fort Madison, Iowa for 4 years without incident. V.S. Lofton at 2.

B. TP&W's Attacks on KJRY's Financial Projections are Unsound

TP&W also attacks KJRY's financial responsibility through the testimony of Graham Claytor, former head of various international operations for RailAmerica. Mr. Claytor's statement levels a number of criticisms at KJRY's traffic and operating cost projections, despite displaying no familiarity with either TP&W's former operations on the Line or with KJRY, nor providing any basis for most of the "rules" on which most of his criticisms are based. Moreover, it is interesting to contrast Mr. Claytor's assumptions with TP&W's analysis of the profitability of its Mapleton operations where, for example TP&W projects its maintenance of way costs at about % of the "generally accepted minimum" postulated by Mr. Claytor.

There are a number of areas in which TP&W alleges that KJRY's projected costs are understated and KJRY's projected revenues are overstated. These criticisms are, for the most part, provided without any specific support except assertions that various costs are "general rules." For example, Mr. Claytor says that "a sustainable railway operation requires a generally accepted minimum of \$ per mile" for maintenance of way, yet TP&W states its costs to maintain the approximately 6 miles of line (MP 118.5 – 122, plus the 2.5-mile Mapleton Spur) that are essential to serve shippers at Mapleton were \$25,103 for 9 months (\$33,471 on an annualized basis). And in its August 15, 2003 filing in KJRY's alternative service proceeding, TP&W stated, "Average maintenance costs for a Class III railroad, which TP&W is, are about \$5,000 per mile per year." *See* Response of Toledo, Peoria and Western Railway Corporation, filed August 15, 2003, in *Keokuk Junction Railway Co.-Alternative Rail Service-Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397 at 13. This is significantly less than the amount per mile that Mr. Claytor says is normal and much less than he claims that KJRY's operation will cost. Similarly, Mr. Claytor says that it should be assumed

that KJRY would pay \$ per car mile to operate over lines of other carriers to access Hollis.

KJRY's operating pro formas, however, do not depend upon operating over other carriers.

Even if KJRY were able to operate from Hollis to Peoria via a UP grant of trackage rights (UP owns track between Hollis and Peoria and TP&W operates over that track to reach the Mapleton Spur -- *see* Comments at 70), KJRY's costs would be significantly less than the \$ per car/mile figure cited by Mr. Claytor. As the Board will recall, KJRY's initial application offered TP&W access to Mapleton at a charge of \$2.50 per car. Application at 25. TP&W responded that the proposed \$2.50 per car charge was, "TP&W believes . . . more than four times the industry average per car mile charge." TP&W April 24 Petition to Reject at 14. If KJRY's proposed charge of \$2.50/car for access over 6 miles (*i.e.*, approximately \$0.42/car/mile) was more than 4 times the industry average on a per car mile basis, as TP&W stated, then Mr. Claytor's proposed \$ /car/mile charge is times the industry average on a per car mile basis. These examples show clearly that Mr. Claytor's alleged "general rules" and alleged industry averages are not reliable, according to TP&W's own filings in this proceeding.

In recasting KJRY's pro formas, Mr. Claytor incorporates many errors, such as inflated maintenance of way expenses that are inconsistent with TP&W's own projections of the profitability of its Mapleton operation, inclusion of access fees that would not need to be paid, reduction in projected carloads without any direct knowledge of the shippers or their traffic, and the like. Also, he criticizes that the pro formas projected growth in traffic a mere two pages after he says that marketing efforts would be necessary to build a traffic base. And while he says that traffic levels become more difficult to project the further away in time they are being projected,

nothing he says precludes the possibility that KJRY's projections would be too low rather than too high.³⁵

With respect to Mr. Claytor's specific criticisms of its pro forma operating plan, KJRY responds as follows:

1. "The complete lack of costing for any supervisory personnel" indicates cross-subsidy:

Mr. Claytor criticizes KJRY's pro formas as involving cross subsidy of operations of the Line, as evidenced by a "complete lack of costing for any supervisory personnel." By comparison, however, TP&W's analysis of the profitability of its service to Mapleton includes costs only for crew, locomotive, fuel, track maintenance and car hire. TP&W Comments at 80. Thus, TP&W's analysis of the profitability of its Mapleton operation, like KJRY's pro forma analysis of its proposed operation of the entire Line, exhibits a "complete lack of costing for any supervisory personnel." Here, as in many other areas, TP&W's other testimony is at odds with Mr. Claytor's.

KJRY did not include overhead and supervisory costs in its pro formas because it does not anticipate that those costs will increase as a result of acquisition of this additional line. The bulk of the management and supervision of KJRY operations is performed by persons like Messrs. Brenkman and Carr and Ms. Busch, witnesses for KJRY herein. Their duties encompass not only KJRY, but also other Pioneer operating subsidiaries. This consolidated management

³⁵ Mr. Claytor's dismissal of KJRY's traffic projections also run contrary to claims by SF&L that its proposed abandonment of the Line west of Mapleton resulted from KJRY's withdrawal of its interchange traffic for the Line. While SF&L's claims were disingenuous, inasmuch as SF&L's poor-to-non-existent service, unreasonable rates and failure to provide adequate facilities for interchange with KJRY caused the loss of KJRY's interchange traffic, SF&L's abandonment filings do stress the importance to the success of this Line of a vigorous interchange with KJRY. KJRY's purchase of the Line would assure the soundness of that connection and solidify the traffic base necessary to maintain the Line.

structure allows Pioneer to minimize overhead costs to all of its subsidiaries. KJRY does not anticipate increasing supervisory personnel (other than operational personnel as specified below) or adding dispatchers in order to operate this single additional low-speed line. And Mr. Claytor's comparison of his projected administrative costs to the administrative costs of Pioneer is invalid because Pioneer operates primarily as an administrative unit for its subsidiary companies, relieving them of administrative costs. Therefore, added costs for additional supervisory personnel are not included.

2. "A three-day a week service plan" is not enough:

Without any indication that he has consulted any of the shippers using the Line, Mr. Claytor asserts that, "[a] large shipper . . . is generally not going to be happy sending and receiving its freight every other day." Such an assertion is irrelevant. Shippers using the Line have had no service for many months. Three day per week service is therefore a vast improvement above what is presently available. Moreover, the largest anticipated user of the Line, Roquette, testifies in the attached statement (Exhibit 15 hereto) that it will make significant use of the Lines projected by KJRY. Accordingly, what some unknown "large shipper" is "generally not going to be happy" about is irrelevant.

3. "There were no track access charges for Hollis used in the Pro Forma":

It is unclear exactly what 4.5 miles of track access to Hollis Mr. Claytor is referring to;³⁶ that is, whether he is talking about the 4.5 miles between Milepost 123.0 and Milepost 118.5 (which TP&W refers to as the Eastern Segment) or the approximately 4.5 miles between Milepost 118.5 at Hollis and Milepost 113.9, the junction between UP and the Peoria and Pekin

³⁶ Comments at 169.

Union Railway ("P&PU") at Iowa Junction.³⁷ In either case, though, the asserted cost is irrelevant.

KJRY would not incur charges for operating between Milepost 123.0 and Milepost 118.5 because that is part of the track that KJRY proposes to purchase. Without that segment, KJRY would be forced to interchange with TP&W for a 4.5-mile haul in order to connect to UP. As the Board recognized in *SF&L Revocation*, requiring the presence of an intermediate interchange with a carrier that operates only a short segment before turning freight over to another carrier is an intolerable impairment to efficiency and is inimical to the success of an operation. Particularly in light of past experience in interchange with TP&W, in connection with the SF&L sale and in other instances, KJRY does not believe that it would be feasible to operate the Line if it were forced to interchange traffic to TP&W at Mapleton for the short movement to interchange with UP. Therefore, the possibility of having to pay access charges over what TP&W calls the Eastern Segment was not included in the pro formas.³⁸

Likewise, TP&W does not seek in this proceeding to obtain access over UP between Hollis and Iowa Junction to reach the P&PU. Instead, the Application, if granted, would merely allow KJRY to connect with UP at Hollis. Indeed, as stated by UP's Warren Wilson, it cannot be assumed that UP would grant KJRY access. *See* Comments at 51. Moreover, pursuant to 49 U.S.C. §10742, rail carriers have a duty to establish reasonable and proper facilities for interchange of freight with the connecting line of another rail carrier. Therefore, while KJRY

³⁷ *See* Comments at 49.

³⁸ If Mr. Claytor is suggesting that \$ /car/mile is the access fee that TP&W would charge KJRY if TP&W retained the track east of Milepost 123.0 and granted TP&W trackage rights over it, KJRY suggests that this proposed charge which, according to TP&W's own statements, is approximately times the industry average cost on a per car-mile basis, amply demonstrates the difficulty that allowing TP&W to retain the line east of Milepost 123.0 would cause in KJRY's conducting a financially feasible operation over the remainder of the Line.

and UP, as owners of connecting lines (assuming KJRY acquires the Line) must work out arrangements for interchange of traffic, based on currently known facts there is no basis for including an access charge (particularly at the high level suggested by Mr. Claytor) in the pro formas.

4. “Fuel, labor and other costs were lower than normal”:

Here, again, Mr. Claytor enters into the realm of speculation. With respect to fuel, he states, “Fuel remaining at \$ per gallon for the full three years is unlikely. An increase to \$ and \$ per gallon in year three would be more realistic.”

Unfortunately, Mr. Claytor’s assumptions about fuel costs run contrary to those of the U.S. Department of Energy (“DOE”). DOE’s website states that world oil prices are expected to remain at their peak in 2003, and then decline somewhat through 2005.³⁹ Presumably Mr. Claytor does not know more about the prospective changes in oil prices than does the U.S. Department of Energy. Therefore, his projections of significant increases in the price of fuel should be disregarded.

The labor costs used in KJRY’s pro forma are not low; rather, they are the labor costs that KJRY pays to current employees to perform the type of work that KJRY employees will need to perform on the Line.

While Mr. Claytor suggests that \$ per mile is a “generally accepted minimum” maintenance of way cost and that KJRY’s projected maintenance of way cost, which he calculates at \$, is too low,⁴⁰ KJRY would note that (as shown above) its maintenance of

³⁹ See <http://www.eia.doe.gov/oiaf/aeo/index.html>.

⁴⁰ See generally *Central Michigan Railway Company-Abandonment Exemption-In Saginaw County, MI*, STB Docket No. AB-308 (Sub-No. 3X) (served Oct. 31, 2003) at 5, n.6 (stating that Board average maintenance cost for a line 1.77 miles in length would be \$8,850; *i.e.*, \$5,000 per mile).

way figure is generally comparable to that used by TP&W to calculate the profitability of its service at Mapleton. Moreover, as Mr. Claytor acknowledges, the costs he projects are higher than average for a Pioneer-owned property. Comments at 166. Finally, although he suggests that higher than average maintenance of way expenditures are needed “to make up for deficient maintenance in the past,” *id.*, this statement (which apparently was made without benefit of inspection of or other direct information about the condition of the Line) conflicts with TP&W’s previous assertions that the Line was in FRA Class 1 operating condition as of August. *See* Response of Toledo, Peoria and Western Railway Corporation, filed August 15, 2003, in *Keokuk Junction Railway Co.-Alternative Rail Service-Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397 at 6 and 13. Inasmuch as KJRY plans to operate the Line under Class 1 operating conditions, TP&W’s previous statements that the Line is in Class I operating condition should obviate the need for above-normal maintenance of way expenditures to make up for deficient track condition.

5. “The transportation expense appears low”:

Mr. Claytor makes a number of assumptions in reaching the conclusion that transportation expense “appears low.” Most of these assumptions are unfounded.

First, Mr. Claytor assumes that overtime will be incurred in order to operate the Line. KJRY intends, however, to assign this operation among its employees in such a way as to fill out schedules of existing employees as well as to add two employees primarily for this operation. In this manner, overtime will be avoided.

Mr. Claytor stated that fuel consumption should be increased from gallons per hour to gallons per hour because “train length could reach around 40 cars (loaded and empty),” necessitating a higher horsepower locomotive or two locomotives. Forty cars per day, six days

per week, 52 weeks per year is a total of 12,480 cars. Assuming a worst case scenario where half of the cars are empty, this would amount to 6,240 revenue loads per year, or

This indicates how little faith Mr. Claytor has in his statement that “I would limit myself to the 615 cars of local traffic.” Thus, Mr. Claytor’s testimony is not only inconsistent with other TP&W testimony but is also internally inconsistent.

Increased car hire costs based on Mr. Claytor’s opinion of what is a “fairer assessment” is unpersuasive. Mr. Claytor claims no knowledge of the shippers who use this Line, whereas Pioneer’s projections are based on years of familiarity with those shippers.

Mr. Claytor’s increase in real estate taxes is absolutely groundless and should be accorded no weight, particularly in light of the significant overstatement by TP&W of the quality of its title to the real estate underlying the Line.

6. “The problem of the absent capital”:

Mr. Claytor proposes \$ in start-up costs for “opening the track,” “restoring the track,” “cutting brush to allow sight distance at grade crossings,” and similar activities. Again, however, TP&W has recently testified that the Line is in Class 1 operating condition and that it could provide service on the line if requested. *See Keokuk Junction Railway Co.-Alternative Rail Service-Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397 (served Oct. 31, 2003) at 5. Accordingly, Mr. Claytor’s projection of these types of start up costs is inconsistent with TP&W’s other testimony before the Board.

Mr. Claytor’s projection of a capital reserve has no foundation. It is not required by any law or statute, nor is the amount he proposes – % of revenues – validated in any way except his statement that it is “one rule” that he has used. Neither does Mr. Claytor define the

“contingencies” sufficiently to distinguish them from the types of investment covered by the maintenance expenses projected by the KJRY. Without more information to validate his “one rule,” such as what his ‘other rules’ are, Mr. Claytor’s projection for a capital reserve is unfounded.

Another large error in Mr. Claytor’s projection of a capital shortfall is his assumption concerning what KJRY would be required to pay for the Line. His testimony on this issue is flawed in several respects, including (1) valuation of the Line at \$17,057,000, including a GCV for the eastern segment of the Line, while simultaneously assuming (*see* Schedules 1 and 2 to Mr. Claytor’s statement are described as “ ”) that KJRY will not acquire the Mapleton Spur, the only source of TP&W’s GCV estimates; (2) his alternative assumption of an NLV of \$9,218,000 which, as shown hereafter, is not justified due to mis-valuation of the real estate as an assembled corridor, erroneous claims concerning TP&W’s title to and the value of right-of-way real estate, overvaluation of rail and track materials; (3) his inclusion of track access charges under either of these scenarios (assuming those proposed charges relate to access between Milepost 123.0 and Hollis), and a number of other errors. His statement that “an NLV purchase at the KJRY proposed price would be “questionable” -- whatever “questionable” means -- is premised on the assumption that his unwarranted increases in KJRY’s projected costs are correct. In short, there is no capital shortfall.

7. Mr. Claytor’s criticisms of KJRY’s pro formas that are premised on KJRY acquiring the Mapleton Spur are also flawed, as KJRY has elaborated upon above. KJRY believes that all of the GCV scenarios discussed in the supplemented Application become immaterial in light of KJRY’s willingness to allow TP&W to retain exclusive access to that spur.

IV. THERE IS NO NEED FOR THE LABOR CONDITIONS REQUESTED BY UTU.

Finally, there is no need or justification to order KJRY to hire or otherwise protect any current employees of TP&W. The statute requires that the Board, “to the maximum extent practicable,” require the purchaser of a feeder line to use the seller’s employees “who would normally have performed work in connection with a railroad line subject to a sale.” 49 U.S.C. §10907(e). KJRY submits that there are no such employees.

KJRY proposes to purchase the Line without the Mapleton Spur. Except for perhaps an inspection and some track work to put the western part of the Line back into Class 1 condition (work that TP&W indicated was done with minimal expense), the only service that TP&W has performed on the Line since 2001 is service to shippers at Mapleton. Thus, for at least two years, there have been no TP&W employees normally performing service on the property that KJRY will purchase. Certainly, TP&W has not identified any such employees. Under Section 10907(e), therefore, there are no TP&W employees that the Board should require KJRY to use.

The foregoing makes the request by Joseph C. Szabo on behalf of UTU that KJRY be required to use TP&W employees for these operations completely inappropriate. For at least two years, TP&W has not conducted the operations that KJRY will conduct. Moreover, KJRY’s ability to control the activity of persons who were not its own employees would be severely limited.

To require KJRY, a non-union employer, to use TP&W unionized employees to perform this new work would effect a completely unjustifiable forced unionization of KJRY. UTU’s suggestion would force KJRY to use unionized employees for new work that those employees have not performed for at least two years. UTU has cited no authority for its extraordinary request other than a brief argument that the phrase “to the maximum extent practicable” would

justify virtually anything. To grant UTU's extraordinary and unprecedented request would turn the labor laws of the U.S. on their head by forcing a union on an employer without the employer's workers having sought the union.

CONCLUSION

The Board therefore has a responsibility under the feeder line statute to protect the shippers on the Line by ordering the Line (not including the Mapleton Spur) to be sold to KJRY for \$3,321,745. In addition, to ensure that TP&W will continue to have access to serve the Mapleton shippers, the Board should order KJRY to hold open for 30 days its offer to TP&W to enter a trackage rights agreement in the form contained in Exhibit C to the June 9 Supplement to the evidence. Because further negotiation of that agreement is not required, thirty days should be sufficient to allow the agreement to be completed.

In accord with procedures normally imposed by the Board in feeder line and offer of financial assistance sales, closing should be ordered within 90 days of issuance of the Board's order, with KJRY to make payment to TP&W in cash, or by certified check or electronic transfer to an account designated by TP&W at closing. TP&W should be ordered to turn over to KJRY within 30 days following closing all TP&W records concerning the property acquired by KJRY, including any and all deeds, valuation maps, easement records, engineering drawings, contracts, bridge inspection records, and all other records related to the property being purchased.

Granting this Application is the only means by which the Board can assure the preservation of service to shippers west of Mapleton, including overhead shippers who will use

the Line if through service is available. KJRY has carried its burden of proof in this matter, and the Board should grant this Application as soon as possible.

Respectfully submitted,



William A. Mullins
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Christine J. Sommer
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Washington, DC 20037
TEL: (202) 663-7820
FAX: (202) 663-7849

November 7, 2003

Attorneys for Keokuk Junction Railway Co.

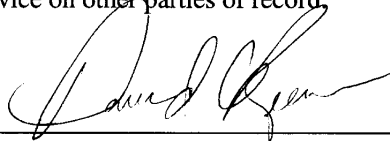
PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that November 7, 2003, I have caused the foregoing Reply of Keokuk Junction Railway Co., Supporting Feeder Railroad Development Application to be served by courier on:

Louis E. Gitomer
BALL JANIK LLP
1455 F Street, NW
Suite 225
Washington, DC 20005

and by first class mail or more expeditious service on other parties of record.

A handwritten signature in dark ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves
Attorney for Keokuk Junction Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34335



**KEOKUK JUNCTION RAILWAY CO.
--FEEDER RAILROAD DEVELOPMENT APPLICATION--
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

**REPLY OF KEOKUK JUNCTION RAILWAY CO.
SUPPORTING FEEDER RAILROAD DEVELOPMENT APPLICATION**

VOLUME 2 OF 2

EXHIBITS

ALL PUBLIC VERSION MATERIALS

**William A. Mullins
David C. Reeves
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2401 Pennsylvania Ave, NW
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Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

**Attorneys for Keokuk Junction
Railway Co.**

DATED: November 7, 2003

EXHIBIT 1

THE OFFICIAL RAILWAY GUIDE

FREIGHT SERVICE EDITION



BULK CONNECTION

SEPTEMBER/OCTOBER 2003

www.cbizmedia.com

REGION 15

IL

PIONEER INDUSTRIAL RAILWAY CO.

(A Subsidiary of Pioneer Railcorp)

1318 South Johanson Road, Peoria, IL 61607 (309) 697-1400; Fax: (309) 697-5387;
E-mail: allen@pioneer-railcorp.com; Web Site: www.pioneer-railcorp.com

GUY L. BRENNMAN, President & CEO

ILLINOIS

Peoria

CONNECTIONS

8.1 Miles Operated

BNSF, IAIS, CN, IMRR, NS, PPU, TPW, UP (via PPU)

RIVERPORT RAILROAD, LLC

2425 Graham Circle, Savannah, IL 61074

JOHN C. KOSTER, President & CEO

CONNECTION

ILLINOIS

Robinson's Spur

BNSF

SHAWNEE TERMINAL RAILWAY CO.

(A Subsidiary of Pioneer Railcorp)

1318 South Johanson Road, Peoria, IL 61607 (309) 697-1400; Fax: (309) 697-5387;
E-mail: allen@pioneer-railcorp.com; Web Site: www.pioneer-railcorp.com

GUY L. BRENNMAN, President & CEO

ILLINOIS

Cairo

CONNECTION

CN

7 Miles Operated

TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

(A RailAmerica Company)

1990 East Washington Street, East Peoria, IL 61611 (309) 698-2600; Fax: (309) 698-9607

11864 West U.S. 24, Remington, IN 47877 (219) 279-2051

ALAN J. SATUNAS, General Manager

CURT ELLISON, Asst. GM

DEREK McNEELY, Trainmaster

East Peoria, IL

Remington, IN (Hoosier Lift)

TOFC/COFC TERMINALS**CONNECTIONS**

ILLINOIS

Galesburg

Sommer

Peoria

East Peoria

Farndale

Chenoa

Chatsworth

Gilman

Watseka

Webster

UP

Peoria IAIS, IMRR, CN, BNSF, UP (via PPU)

NS, PPU

Farndale

UP

BLOL

CN

CSXT, UP

KBSR

KBSR

INDIANA

Reynolds

Logansport

LER, NS, WSRV

CERA

NS

VANDALIA RAILROAD CO.

(A Subsidiary of Pioneer Railcorp)

1318 South Johanson Road, Peoria, IL 61607 (309) 697-1400; Fax: (309) 697-5387;

E-mail: allen@pioneer-railcorp.com; Web Site: www.pioneer-railcorp.com

GUY L. BRENNMAN, President & CEO

2.54 Miles Operated

ILLINOIS

Vandalia

CONNECTION

CSXT

VERMILION VALLEY RAILROAD COMPANY INC.

916 Vine Street, Connersville, IN 47331 (765) 825-0316; Fax: (765) 825-1237

R. POWELL FELIX, President

CONNECTION

ILLINOIS

Danville

CSXT

WISCONSIN CHICAGO LINK LTD.

(See CN in B Section)

EXHIBIT 2

A detailed map of Illinois showing its geographical features and infrastructure. Major cities are labeled, including Chicago, Joliet, Peoria, Springfield, Decatur, and Indianapolis. The Mississippi River is shown flowing along the western border, while the Ohio River forms part of the southern boundary. A network of roads and highways is depicted, connecting various urban centers across the state. The map also shows smaller towns and villages, providing a comprehensive view of the state's layout.

EXHIBIT 3



Toledo, Peoria & Western Railway

A RailAmerica Company



FREIGHT TARIFF TPW 4400-F

SUPPLEMENT 1

(TPW 4400-F and Supplement 1 contain all changes)

NAMING

LOCAL & PROPORTIONAL RATES
ON CARLOADS OF FERTILIZERS BETWEEN STATIONS
OF
THE TOLEDO, PEORIA & WESTERN RAILWAY

This tariff applies on interstate traffic and intrastate traffic in the States of Illinois and Indiana

NOTICE

The provisions herein will, if effective, not have a negative impact on the quality of the human environment or energy consumption

Governed, except as otherwise noted, by the Uniform Freight Classification (UFC), as provided in Item 5

Issued: March 25, 2003

Effective: March 26, 2003

Issued By:

Toledo, Peoria & Western Railway
1990 East Washington Street
East Peoria, IL 61611

ITEM	STATION LIST		
300	Stations are listed alphabetically by state. .		
STATE			
IL		STATION	INTERCHANGE WITH
		Chatsworth	BLOL 2
		Chenoa	UP 2
		Crescent City	3
		Cruger	2
		East Peoria	NS 1
		El Paso	2
		Eureka	2
		Fairbury	2
		Farmdale	NS 1
		Forrest	2
		Gilman	CN 2
		Gridley	2
		La Hogue	2
		Mapleton	1
		Meadows	2
		Peoria	PPU, via PPU - IAIS, IMRR, BNSF, CN, NS, PRY UP 1
		Piper City	2
		Secor	2
		SFL Junction	SFLR 1
		Sheldon	KBSR 3
		Sommer	UP 1
		Washington	1
		Watseka	UP, CSX 3
		Webster	KBSR 3
		Weston	2

ITEM	STATION LIST																																																																																																		
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400	Unless otherwise provided, TPW will not absorb any switch charges at origin or destination.. All switch charges will be in addition to these rates. Railroad Rate applies to shipments in railroad supplied cars or shipper supplied full mileage cars. Private Rate applies to shipments in shipper owned or leased equipment, provided TPW pays no mileage allowance.																																																																																																		

The provisions herein will, if effective, not have a negative impact on the quality of the human environment or energy consumption

Toledo Peoria & Western Railway

FT TPW 4400-F Supp 1

ITEM	DRY FERTILIZER RATES		
	The rates in this Item apply to shipments of the commodities listed in Item 200 and the station zones listed in Item 300.		
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
1	1	\$400	\$350
	2	\$675	\$600
	3	\$750	\$675
	4	\$825	\$735
	5	\$1000	\$910
	6	\$1080	\$990
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
2	1	\$675	\$600
	2	\$400	\$350
	3	\$400	\$350
	4	\$750	\$675
	5	\$950	\$875
	6	\$1005	\$930
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
3	1	\$750	\$675
	2	\$400	\$350
	3	\$400	\$350
	4	\$500	\$450
	5	\$700	\$650
	6	\$755	\$705
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
4	1	\$825	\$735
	2	\$750	\$675
	3	\$500	\$450
	4	\$400	\$350
	5	\$625	\$575
	6	\$655	\$605
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
5 (Includes a CERA terminal switch charge)	1	\$1000	\$910
	2	\$950	\$875
	3	\$700	\$650
	4	\$625	\$575
	5	N/A	N/A
	6	N/A	N/A
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
6 (Includes a WSRV terminal switch charge)	1	\$1080	\$990
	2	\$1005	\$930
	3	\$755	\$705
	4	\$655	\$605
	5	N/A	N/A
	6	N/A	N/A

ITEM	LIQUID FERTILIZER RATES		
	The rates in this Item apply to shipments of the commodities listed in Item 205 and the station zones listed in Item 300.		
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
1	1	\$460	\$403
	2	\$776	\$690
	3	\$862	\$776
	4	\$949	\$845
	5	\$1124	\$1020
	6	\$1204	\$1100
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
2	1	\$776	\$690
	2	\$460	\$403
	3	\$460	\$403
	4	\$862	\$776
	5	\$1062	\$976
	6	\$1117	\$1031
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
3	1	\$862	\$776
	2	\$460	\$403
	3	\$460	\$403
	4	\$575	\$517
	5	\$775	\$717
	6	\$830	\$772
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
4	1	\$949	\$845
	2	\$862	\$776
	3	\$575	\$517
	4	\$460	\$403
	5	\$685	\$625
	6	\$715	\$658
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
5 (Includes a CERA terminal switch charge)	1	\$1124	\$1020
	2	\$1062	\$976
	3	\$775	\$717
	4	\$685	\$625
	5	N/A	N/A
	6	N/A	N/A
ORIGIN ZONE	DESTINATION ZONE	RAILROAD RATE	PRIVATE RATE
6 (Includes a WSRV terminal switch charge)	1	\$1204	\$1100
	2	\$1117	\$1031
	3	\$830	\$772
	4	\$715	\$658
	5	N/A	N/A
	6	N/A	N/A

ITEM 410	EXPLANATION OF ABBREVIATIONS
BLOL BNSF CERA CN CSX IAIS IL IMRR IN KBSR LER NEC NS PPU STCC UP WSRY	Bloomer Shippers Connecting Railroad Company Burlington Northern Santa Fe Railway Central Railroad Company of Indianapolis Canadian National Railway CSX Transportation Iowa Interstate Railroad, LTD. Illinois Illinois & Midland Railroad, Inc. Indiana Kankakee, Beaverville and Southern Railroad Company Logansport & Eel River Short-Line Co., Inc. Not Elsewhere Classified Norfolk Southern Peoria & Pekin Union Railway Company Standard Transportation Commodity Code Union Pacific Railroad Winamac Southern Railway

EXHIBIT 4

Freight Tariff TPW 4000-I (Cancels TPW 4000-H)

Toledo, Peoria & Western Railway

FREIGHT TARIFF TPW 4000-I

NAMING LOCAL, PROPORTIONAL, & THROUGH RATES
ON CARLOADS OF LUMBER, PLYWOOD, PARTICLE BOARD & GYPSUM WALLBOARD
BETWEEN STATIONS
OF
The TOLEDO, PEORIA & WESTERN Railway

TPW LUMBER TARIFF

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

Freight shipped under this tariff is subject to the following governing authorities:

Rail Car Demurrage, while on the TPW: TPW 6000 series.

Uniform Freight Classification: UFC 6000 series. Official Stations List: OPSL 6000 series.

ISSUED: February 7, 2003

EFFECTIVE: February 7, 2003

ISSUED BY:
Toledo, Peoria & Western Rwy.
1990 E. Washington St.
East Peoria, IL 61611

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

Item 100-A

FT TPW 4000-I

Commodity: Lumber, plywood, particleboard and gypsum wallboard

STCC: 24-211, 24-321, 24-996 and 32-754

Route: TPW direct (and when from or to rail beyond)

Application: Rates in dollars per car as described in Rate Tables 1 and 2.

- Prices apply in U.S. Funds
- Terminal switching charges will not be absorbed, and will be in addition to the rates quoted in Rate Tables 1 and 2. (Intermediate switching, where applicable, will be absorbed)
- The tariff authority and route must be shown on the Shipper's bill of lading.

RATE TABLE 1

Applicable in rail cars *not* exceeding 67 feet in length

FROM STATIONS	TO STATIONS			
	E.P./Peoria, IL	Forrest, IL	Morton, IL	Indiana stations
Farmdale, IL	570.	600.	570.	750.
Gilman, IL	690.	550.	690.	600.
Logansport, IN	750.	720.	750.	550.
Peoria, IL	570.	600.	570.	750.
Reynolds, IN	750.	600.	750.	550.
Sommer, IL	570.	600.	570.	750.
Watseka, IL	690.	550.	690.	600.

RATE TABLE 2
Applicable in rail cars exceeding 67 feet in length

FROM STATIONS	TO STATIONS			
	E.P./Peoria, IL	Forrest, IL	Morton, IL	Indiana stations
Farmdale, IL	627.	660.	627.	825.
Gilman, IL	759.	605.	759.	660.
Logansport, IN	825.	792.	825.	605.
Peoria, IL	627.	660.	627.	825.
Reynolds, IN	825.	660.	825.	605.
Sommer, IL	627.	660.	627.	825.
Watseka, IL	759.	605.	759.	660.

EXHIBIT 5

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2003

EFFECTIVE
MARCH 15, 2003

OPSL™ 6000-X
(Cancels OPSL 6000-W)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Intermodal facilities
- ◆ Junction Rule 260 and interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight handling facilities and restrictions

Anthony J. Will
Issuing Officer

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E-mail: OPSL@railinc.com



SKOL

GEOGRAPHICAL

JUNCTIONS & INTERSECTIONS

THE PUGET SOUND & PACIFIC RAILROAD COMPANY A
DIVISION OF THE ARIZONA & CALIFORNIA RAILROAD CO LP
(PSAP - 640)

OPSL	FSAC	TYPE	STATION (NOTE NUMBERS)
1	1	OR	Aberdeen Jct. WA (3200)
10	10	OR	Junction City, WA (3200)
13	6755	OR	Montesano, WA (3200)
14	6763	OR	Elma, WA (3200)
15	6704	OR	Whites, WA (3200)
16	6708	OR	McCleary, WA (3200-3500)
17	6710	OR	Stimson, WA (3200)
18	6715	OR	Marmac, WA (3200)
19	6725	OR	Shelton, WA (3200-3500)
20	6728	OR	Bay Shore, WA (3200)
21	6752	OR	South Belfair, WA (3200)
22	6754	OR	Belfair, WA (3200-3500)
23	6754	OR	Wasco, WA (3200)
24	6801	OR	Bremerton, WA (3200)
25	6805	OR	Nad Jct. WA (3200)
26	6762	OR	Silverdale, WA (3200)
27	6765	OR	Bangor, WA (3200)
28	6769	OR	Oakville, WA (3200)
29	6769	OR	Gale, WA (3200)
30	6761	OR	Rochester, WA (3200)
31	6809	OR	Brianwood, WA (3200)
32	6806	OR	Grand Mound, WA (3200)
33	6802	OR	Cenpark, WA (3200)
34	6805	OR	Centralia, WA (3200)
35	6805	HR	Raish, WA (3500)

THERMAL BELT RAILWAY
(TBRY - 751)

100	OR	Bostic, NC (1-3495)
103	OR	Forest City, NC (1-3495)
108	OR	Spindale, NC (1-3495)
110	OR	Rutherfordton, NC (1-3495)
114	OR	Gilkey, NC (1-3495)

THREE NOTCH RAILROAD CO INC
(TNHR - 102)

100	OR	Georgiana, AL (1-3495)
109	OR	McKenzie, AL (1-3495)
121	OR	Red Level, AL (1-3495)
129	OR	Cawthon, AL (1-3495)
133	OR	Andalusia, AL (3495)
134	OR	East Andalusia, AL (3495)

TIMBERROCK RAILROAD COMPANY INC
(TIBR - 756)

20624	OR	Rogersville, TX (3200)
20671	OR	Keithton, TX (3200)
20736	OR	Jasper, TX (3200)
20788	OR	Collins, TX (3200)
20842	OR	Horton, TX (3200)
20880	OR	Browndell, TX (3200)
20975	OR	Pineland, TX (3200)
21047	OR	Bronson, TX (3200)
21096	OR	Rebecca, TX (3200)
21149	OR	Venable, TX (3200)
21204	OR	San Augustine, TX (3200)
21270	OR	Calgary, TX (3200)
21311	OR	Nauville, TX (3200)
21398	OR	Center, TX (3200)
21499	OR	Rite Care, TX (3200)
21520	OR	Tanaha, TX (3200)
21500	OR	Silabee, TX (3200)
21500	OR	Kirbyville, TX (1-19-3200)
21500	OR	Blakwood, TX (1-3200)
21500	OR	Fawil, TX (1-3200)
21500	OR	Bon Wier, TX (1-3200)
21500	OR	Merryville, LA (1-3200)
21500	OR	Neale, LA (1-3200)
21500	OR	Boise Southern, LA (1-3200)
21500	OR	Shear, LA (1-3200)
21500	OR	De Ridder, LA (1-3200)

TISHOMINGO RAILROAD COMPANY INC
(TISH - 971)

OPSL	FSAC	TYPE	STATION (NOTE NUMBERS)
1	1	OR	Iuka, MS
10	10	OR	Tri State Commerce Park, MS

TOLEDO PEORIA & WESTERN RAILWAY CORPORATION
(TPW - 769)

1	1	OR	Logansport, IN (26-600-3114)
6	6	OR	Kenneth, IN (1-600-3114)
13	64755	OR	Burnettsville, IN (1-600-3114)
18	18	OR	Idaville, IN (1-600-3114)
20	20	OR	Luthy, IN (1-600-3114)
21	21	OR	Monicello, IN (1-600-3114)
27	27	OR	Reynolds, IN (1-600-3114)
31	31	OR	Seaford, IN (1-600-3114)
36	36	OR	Wolcott, IN (1-600-3114)
38	38	OR	Hoosier Lift, IN (1-600-3114)
42	42	OR	Remington, IN (1-600-3114)
49	49	OR	Goodland, IN (1-600-3114)
54	54	OR	Parkins, IN (1-600-3114)
57	57	OR	Kentland, IN (1-600-3114)
61	61	OR	Effner, IN (1-600-3114)
1000	1000	OR	Effner, IL (1-600-3114)
1002	1002	OR	Sheldon, IL (1-600-3114)
1004	1004	OR	Webster, IL (1-600-3114)
1007	1007	HOR	Danville, IL (1-600-3114)
1011	1011	OR	Watsaka, IL (1-600-3114)
1017	1017	OR	Crescent City, IL (1-600-3114)
1021	1021	OR	Leonard, IL (1-600-3114)
1025	1025	OR	Gilman, IL (1-600-3114)
1030	1030	OR	La Hogue, IL (1-600-3114)
1035	1035	OR	Piper City, IL (1-600-3114)
1040	1040	OR	Chatsworth, IL (1-600-3114)
1048	1048	OR	Forrest, IL (1-600-3114)
1052	1052	OR	Fairbury, IL (1-600-3114)
1054	1054	OR	Honegger, IL (1-600-3114)
1058	1058	OR	Weston, IL (1-600-3114)
1063	1063	OR	Chenoa, IL (1-600-3114)
1067	1067	OR	Meadows, IL (1-600-3114)
1071	1071	OR	Gridley, IL (1-600-3114)
1076	1076	OR	Enright, IL (1-600-3114)
1078	1078	OR	El Paso, IL (1-600-3114)
1085	1085	OR	Secor, IL (1-600-3114)
1092	1092	OR	Eureka, IL (1-600-3114)
1094	1094	OR	Cruger, IL (1-600-3114)
1098	1098	OR	Pekin Jct, IL (1-600-3114)
1100	1100	OR	Washington, IL (1-600-3114)
1105	1105	OR	Farmdale, IL (1-600-3114)
1108	1108	OR	East Peoria, IL (1-600-3114)
1110	1110	OR	Peoria, IL (1-600-3114)
1114	1114	OR	Iowa Jct, IL (1-600-3114)
1115	1115	OR	Keystone Switch, IL (1-600-3114)
1119	1119	OR	Sommer, IL (1-600-3114)
1122	1122	OR	Kolbe, IL (1-600-3114)
1123	1123	OR	Mapleton, IL (1-600-3114)
1124	1124	OR	S&I Junction, IL (1-600-3114)
1127	1127	OR	Glasford, IL (1-600-3114)
1129	1129	OR	Breeds, IL (1-600-3114)
1137	1137	OR	Rawlts, IL (1-600-3114)
1140	1140	OR	Canton, IL (1-600-3114)
1149	1149	OR	Cuba, IL (1-600-3114)
1155	1155	OR	Smithfield, IL (1-600-3114)
1158	1158	OR	Seville, IL (1-600-3114)
1161	1161	OR	Marietta, IL (1-600-3114)
1166	1166	OR	New Philadelphia, IL (1-600-3114)
1167	1167	OR	Blair Jct, IL (1-600-3114)
1171	1171	OR	Bushnell, IL (1-600-3114)
1180	1180	OR	Good Hope, IL (1-600-3114)
1183	1183	OR	Sciota, IL (1-600-3114)
1189	1189	OR	Blandinsville, IL (1-600-3114)
1194	1194	OR	West End Junction, IL (1-600-3114)
1343	1343	OR	Crandall, IL (1-600-3114)
1345	1345	OR	Morton, IL (1-600-3114)
1400	10000	OR	Frankfort, IN (274-600-3114)
1405	10077	OR	Michigantown, IN (274-600-3114)
1410	10122	OR	Forest, IN (274-600-3114)
1415	10168	OR	Russiasville, IN (274-600-3114)

TOLEDO PEORIA & WESTERN RAILWAY CORPORATION
(TPW - 769)

OPSL	FSAC	TYPE	STATION (NOTE NUMBERS)
1420	10201	OR	Middletons, IN (274-600-3114)
1430	10314	OR	Vermont, IN (274-600-3114)
1435	10350	OR	Greentown, IN (274-600-3114)
1440	10377	OR	Sycamore, IN (274-600-3114)
1445	10411	OR	Sims, IN (274-600-3114)
1450	10429	OR	Swayzee, IN (274-600-3114)
1455	10450	OR	Herbst, IN (274-600-3114)
1460	10481	OR	Roseburg, IN (274-600-3114)
1465	10532	OR	Marion, IN (274-600-3114)
1470	20051	OR	Cassville, IN (274-600-3114)
1475	20070	OR	Bennetts, IN (274-600-3114)
1480	20090	OR	Miami, IN (274-600-3114)
1485	20123	OR	Bunker Hill, IN (274-600-3114)
1490	20200	OR	Paru, IN (274-600-3114)
1495	20279	OR	Denver, IN (274-600-3114)
1500	20310	OR	Deeds, IN (274-600-3114)
1505	20350	OR	Macy, IN (274-600-3114)
1510	20437	OR	Rochester, IN (274-600-3114)
1515	20555	OR	Argos, IN (274-600-3114)
1520	30075	OR	Sharpville, IN (274-600-3114)
1525	30140	OR	Tipton, IN (274-600-3114)
1530	40065	OR	Sweetser, IN (274-600-3114)
1535	40124	OR	Converse, IN (274-600-3114)
1540	40153	OR	Amboy, IN (274-600-3114)
1550	70000	OR	Kokomo, IN (328-600-3114)
1555	70065	OR	Galveston, IN (328-600-3114)
1560	70094	OR	Lincoln, IN (328-600-3114)
1565	70128	OR	Walton, IN (328-600-3114)
1570	70224	OR	Logansport, IN (328-600-3114)
1575	80073	OR	Royal Center, IN (328-600-3114)
1580	80155	OR	Star City, IN (328-600-3114)
1585	80197	OR	Winamac, IN (328-600-3114)
1590	90053	OR	Clymers, IN (328-600-3114)
1595	90131	OR	Camden, IN (328-600-3114)
1600	90174	OR	Flora, IN (328-600-3114)
1605	90188	OR	Bringinghurst, IN (328-600-3114)
90190	90190	OR	North Judson, IN (1-600-3114)
90192	90192	OR	Monterey, IN (1-600-3114)

TOMAHAWK RAILWAY L P
(TR - 772)

5	5	OR	Tomahawk, WI (1-3100)
20	20	OR	Bradley, WI (1-3100)
45	45	OR	Wisconsin Dam, WI (1-3100)

TONAWANDA ISLAND RAILROAD INC
(TIRL - 743)

10000	10000	OR	North Tonawanda, NY
-------	-------	----	---------------------

TOPPENISH SIMCOE & WESTERN RAILROAD
(TSWR - 836)

100	65100	OR	Toppenish (westley Jct), WA (28)
120	65104	OR	Ashue, WA (1-3200)
140	65108	OR	Vanner, WA (1-3200)
200	65111	R	Hamah, WA (1-3200)
300	65120	R	White Swan, WA (1-3200)
400	65130	OR	Othello, WA (1-3100)
600	65150	OR	Smyrna, WA (1-3100)
700	65160	OR	Royal City, WA (1-3100)
2688	65110	OR	Farron, WA (1)

TOWANDA AND MONROETON SHIPPERS LIFELINE, INC.
(TMSS - 752)

85049	85049	OR	Towanda, PA (104-3100)
85069	85069	OR	Monroeton, PA (1-3100)

TRANSEKENTUCKY TRANSPORTATION RAILROAD CO INC
(TTIS - 773)

1	1	OR	Paris, KY (1-19-3100)
10	10	OR	Millersburg, KY (1-3100)
20	20	OR	Carlisle, KY (1-3100)
30	30	OR	Cowan, KY (1-3100)

SUPPLEMENT 12 - B

OFFICIAL RAILROAD STATION LIST™

OPSL™ 6000-X

Supplements 6 & 12
contain all changes.

**ISSUED SEPT. 1, 2003
EFFECTIVE SEPT. 15, 2003**

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Intermodal facilities
- ◆ Junction Rule 260 and interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
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Issued by Railinc

7001 Weston Parkway - Suite 200
Cary, NC 27513

(800) 544-7245

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REVENUE INTERCHANGE POINTS BY CARRIER

(Informational Only)

Replaces pages 21 to 59 of Supplement 6 and supersedes corresponding provisions therein.

Carriers are listed alphabetically. Below each carrier are listed all other carriers with which "revenue" interchanges are made. Below each interchanging carrier are shown the stations at which interchanges take place, listed alphabetically. To the right of each station appears the Rule 260 junction abbreviation (an up to 5 character alpha field) and the interchange type code.

Interchange type codes are as follows:

Type Code Description

C	Indirect haulage. An indirect interchange, rail to or from rail.
I	Joint Motor-Rail (Direct, Revenue only). Joint Motor-Rail Movements.
N	Normal (Direct). Direct rail to or from rail (covers both operating and revenue interchanges).
V	Revenue Only (Direct). Rail to or from rail interchange, for revenue only purposes.
W	Water (Direct). Rail-to-or-from Water Carrier.

The source for this data is the Master Junction Industry Reference File (JUNC) used in support of the Rate EDI Network (REN) and the InterLine Settlement System (ISS).

BE SURE TO CONSULT ALL EFFECTIVE SUPPLEMENTS.

<u>A & R LINE INC. (ARE)</u> NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Logansport, IN LOGPT N	<u>ALABAMA & GULF COAST RAILWAY LLC (AGR)</u> CANADIAN NATIONAL RAILWAYS (CN) Mobile, AL MOBIL N CG RAILWAY INC (CGR) Mobile, AL MOBIL N COLUMBUS AND GREENVILLE RAILWAY (CAGY) Columbus, MS CLMBM N CSX TRANSPORTATION (CSXT) Cantonment, FL CTNMT N Hybart, AL HYBRT N Mobile, AL MOBIL N Pensacola, FL PENSA V GOLDEN TRIANGLE RAILROAD (GTRA) Columbus, MS CLMBM N KANSAS CITY SOUTHERN RAILWAY COMPANY (KCS) Columbus, MS CLMBM N LUXAPALILA VALLEY RAILROAD INC (LXVR) Columbus, MS CLMBM N NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Boltge, AL BOLGE N Columbus, MS CLMBM N Demopolis, AL DEMOP N Kimbrugh, AL KIMBR N Mobile, AL MOBIL N TERMINAL RAILWAY ALABAMA STATE DOCKS (TASD) Mobile, AL MOBIL N	<u>ALASKA RAILROAD CORPORATION (ARR)</u> CANADIAN NATIONAL RAILWAYS (CN) Whittier, AK WHITT N UNION PACIFIC RAILROAD COMPANY (UP) Seattle, WA SEATL N <u>ALBANY & EASTERN RAILROAD COMPANY (AERC)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) Albany, OR ALBY N <u>ALEXANDER RAILROAD COMPANY (ARC)</u> NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Statesville, NC STAVL N <u>ALGERS WINSLOW AND WESTERN RAILWAY COMPANY (AWW)</u> CSX TRANSPORTATION (CSXT) Oakland City Jct, IN OACYJ N INDIANA SOUTHERN RAILROAD COMPANY INC (ISRR) Oakland City Jct, IN OACYJ N <u>ALGOMA CENTRAL RAILROAD INC (AC)</u> CANADIAN NATIONAL RAILWAYS (CN) Oba, ON OBA N CANADIAN PACIFIC RAILWAY (CPRS) Franz, ON FRANZ N Sault Ste Marie, ON SSTMA N ONTARIO NORTHLAND RAILWAY (ONTARIO NORTHLAND TRANS COMMISSION) (ONT) Hearst, ON HERST N WISCONSIN CENTRAL LIMITED (WC) Sault Ste Marie, ON SSTMA N <u>ALMAHOR RAILROAD COMPANY (AL)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) Clear Creek Jct, CA CLCRJ N <u>ALTON & SOUTHERN RAILWAY COMPANY (ALS)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) East St Louis, IL ESTL N Madison, IL MADIS N Mitchell, IL MITCH N St Louis, MO STLOU N
<u>ABERDEEN AND ROCKFISH RAILROAD COMPANY (AB)</u> CSX TRANSPORTATION (CSXT) Aberdeen, NC ABRDN N Fayetteville, NC FAYVL N LAURINBURG AND SOUTHERN RAILROAD COMPANY (LRS) Raeford, NC RAFO N NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Fayetteville, NC FAYVL N <u>ABERDEEN CAROLINA & WESTERN RAILWAY CO. (ACWR)</u> CSX TRANSPORTATION (CSXT) Aberdeen, NC ABRDN N Norwood, NC NORWO N NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Charlotte, NC CHLTE N Gulf, NC GULF N <u>ACADIANA RAILWAY COMPANY (AKDN)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) Crowley, LA CRWLY C <u>ADRIAN & BLISSFIELD (ADBF)</u> NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS) Adrian, MI ADRIA N <u>AKRON BARBERTON CLUSTER RAILWAY COMPANY (AB)</u> CSX TRANSPORTATION (CSXT) Akron, OH AKRON N Barberton, OH BARB N WHEELING & LAKE ERIE RAILWAY COMPANY (WE) Akron, OH AKRON N Kent, OH KENT N <u>ALABAMA & FLORIDA RAILWAY CO. (AF)</u> CSX TRANSPORTATION (CSXT) Georgiana, AL GERGN V THREE NOTCH RAILROAD CO INC (TNHR) East Andalus, AL EADLU N	<u>ALABAMA RAILROAD CO INC. (ALAB)</u> CSX TRANSPORTATION (CSXT) Flomaton, AL FLMTN N <u>ALAMEDA BELT LINE (ABL)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) Alameda, CA ALAME V UNION PACIFIC RAILROAD COMPANY (UP) Alameda, CA ALAME N <u>ALAMO GULF COAST RAILROAD COMPANY (AGCR)</u> UNION PACIFIC RAILROAD COMPANY (UP) Beckmann, TX BCKMN N <u>ALASKA RAILROAD CORPORATION (ARR)</u> BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) Seattle, WA SEATL N	

REVENUE INTERCHANGE POINTS BY CARRIER

TEXAS MEXICAN RAILWAY COMPANY, THE (TM)			THREE NOTCH RAILROAD CO INC (TNHR)			TRANSKENTUCKY TRANSPORTATION RAILROAD CO INC (TTIS)		
TFM S A DE C V (TFM)			CSX TRANSPORTATION (CSXT)			CSX TRANSPORTATION (CSXT)		
Laredo, TX	LARED	N	Georgiana, AL	GERGN	N	N/a, KY	MAYVL	N
UNION PACIFIC RAILROAD COMPANY (UP)			TIMBERLOCK RAILROAD COMPANY INC (TIBR)			Pans, KY	PARIK	N
Beaumont, TX	BMONT	N	KANSAS CITY SOUTHERN RAILWAY COMPANY (KCS)			TRANSMEXUSA INC (TMUS)		
Corpus Christi, TX	CORPU	N	Boise Southern, LA	BOSOU	N	UNION PACIFIC RAILROAD COMPANY (UP)		
Houston, TX	HUSTN	N	TISHOMINGO RAILROAD COMPANY INC (TISH)			Laredo, TX	LARED	V
Robstown, TX	ROBST	N	NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS)			TRI-CITY RAILROAD COMPANY (TCRY)		
TEXAS NORTH WESTERN RAILWAY COMPANY (TXNW)			Iuka, MS	IUKA	N	BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)		
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			TOLEDO PEORIA & WESTERN RAILWAY CORPORATION (TPW)			Richland Junction, WA	RLDJC	N
Etter, TX	ETTER	N	BLOOMER LINE, THE (BLOL)			TRINIDAD RAILWAY INC (TRIN)		
TEXAS NORTHEASTERN DIVISION MID-MICHIGAN RAILROAD INC (TNER)			Chatsworth, IL	CHTSW	N	BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)		
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			Jansen, CO	JANSE	N
Denison, TX	DEN	N	East Peoria, IL	EPEOR	N	TRONA RAILWAY COMPANY (TRC)		
Sherman, TX	SHRMN	N	Hoosier Lift, IN	HOOLI	N	UNION PACIFIC RAILROAD COMPANY (UP)		
KANSAS CITY SOUTHERN RAILWAY COMPANY (KCS)			Peoria, IL	PEORI	N	Searles, CA	SEARL	N
Texarkana, TX	TXRKA	V	Remington, IN	REMNG	N	TUCSON CORNELIA & GILA BEND RAILROAD COMPANY (TCG)		
KIAMICHI RAILROAD COMPANY LLC (KRR)			CANADIAN NATIONAL RAILWAYS (CN)			UNION PACIFIC RAILROAD COMPANY (UP)		
Pans, TX	PARIT	N	East Peoria, IL	EPEOR	N	Gila, AZ	GILA	N
TEXAS PACIFIC TRANSPORTATION LTD (TXPT)			Gilman, IL	GILMN	N	TULARE VALLEY RAILROAD COMPANY (TVRR)		
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			Peoria, IL	PEORI	N	SAN JOAQUIN VALLEY RAILROAD CO (SJV)		
San Angelo Jct, TX	SAANJ	N	CENTRAL RAILROAD COMPANY OF INDIANAPOLIS (CERA)			Ducor, CA	DUCCOR	N
FORT WORTH & WESTERN RAILROAD (FWWR)			Kokomo, IN	KOKOM	N	TULSA-SAPULPA UNION RAILWAY COMPANY L.L.C. (TSU)		
San Angelo Jct, TX	SAANJ	N	CENTRAL RAILROAD OF INDIANA (CIND)			BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)		
TEXAS ROCK CRUSHER RAILWAY COMPANY (TXR)			Kokomo, IN	KOKOM	N	Sapulpa, OK	SAPUL	N
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			CSX TRANSPORTATION (CSXT)			Tulsa, OK	TULSA	N
Brownwood, TX	BWOOD	N	Danville, IL	DANVL	N	TURTLE CREEK INDUSTRIAL RAILROAD INC (TCRI)		
TEXAS SOUTH-EASTERN RAILROAD COMPANY (TSE)			North Judson, IN	NJUDS	N	NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS)		
UNION PACIFIC RAILROAD COMPANY (UP)			Reynolds, IN	REYNO	N	Tratford, PA	TRAFF	N
Diboll, TX	DIBOL	N	Watseka, IL	WTSKA	N	TUSCOLA AND SAGINAW BAY RAILWAY COMPANY INC (TSBY)		
TFM S A DE C V (TFM)			ILLINOIS & MIDLAND RAILROAD INC (IMRR)			ANN ARBOR RAILROAD (AA)		
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			Peoria, IL	PEORI	N	Ann Arbor, MI	ANARB	N
Brownsville, TX	BRWNV	N	Sommer, IL	SOMER	N	Osmer, MI	OSMER	N
FERROCARRIL MEXICANO S A DE C V (FXE)			IOWA INTERSTATE RAILROAD LTD (IIS)			CANADIAN NATIONAL RAILWAYS (CN)		
Agua Calientes, AG	AGUAS	N	Peoria, IL	PEORI	V	Durand, MI	DURND	N
Ajuno, MH	AJUNO	N	KANKAKEE BEAVERVILLE AND SOUTHERN RAILROAD COMPANY (KBSR)			CENTRAL MICHIGAN RAILWAY CO (CMGN)		
Celaya, GJ	CELAY	N	Sheldon, IL	SHELD	N	Durand, MI	DURND	N
Dona Cecilia, TM	DOCEL	N	Webster, IL	WBSTR	N	CSX TRANSPORTATION (CSXT)		
Inspuato, GJ	IRAPT	N	LOGANSPOUT & EEL RIVER SHORT-LINE CO INC (LER)			Annapere, MI	APERE	N
Lachena, EM	LECHE	N	Logansport, IN	LOGPT	N	MID-MICHIGAN RAILROAD INC (MMRR)		
Monterrey, NL	MOTRL	N	NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS)			Aima, MI	ALMAM	N
Queretaro, GA	QURTR	N	Farmdale, IL	FMDLE	N	TWIN CITIES & WESTERN RAILROAD (TOWR)		
Saballo, CU	SALCU	N	Logansport, IN	LOGPT	N	BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)		
FERROSUR S A DE C V (FSRR)			Manon, IN	MARN	N	Appleton, MN	APLTN	N
Oriental, PU	ORIEN	N	Peoria, IL	PEORI	N	Minnesota Transfer, MN	MINTR	N
Puebla, PU	PUEBL	N	Peoria, IL	PEORI	N	St Paul, MN	STPAU	V
Veracruz, VL	VERAC	N	PIONEER INDUSTRIAL RAILWAY CO (PRI)			CANADIAN PACIFIC RAILWAY (CPRS)		
TEXAS MEXICAN RAILWAY COMPANY, THE (TM)			Peoria, IL	PEORI	V	St Paul, MN	STPAU	N
UNION PACIFIC RAILROAD COMPANY (UP)			Peoria, IL	PEORI	N	IOWA CHICAGO AND EASTERN RAILROAD CORPORATION (ICE)		
Laredo, TX	LARED	N	UNION PACIFIC RAILROAD COMPANY (UP)			St Paul Yard, MN	STPAU	N
Brownsville, TX	BRWNV	N	Bushnell, IL	BUSHN	N	MINNESOTA COMMERCIAL RAILWAY CO (MNNR)		
Laredo, TX	LARED	N	Chenoa, IL	CHNOA	N	Minnesota Tr, MN	MINTR	N
THE BLACKWELL AND NORTHERN RAILWAY COMPANY INC (BNR)			Peoria, IL	PEORI	N	St Paul, MN	STPAU	N
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			Sommer, IL	SOMER	N	Norwood, MN	NORWZ	N
Wellington, KS	WELLG	N	Watseka, IL	WTSKA	N	SISSETON MILBANK RAILROAD (SMRR)		
THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY (POHC)			WINAMAC SOUTHERN RAILWAY COMPANY (WSRY)			Milbank, SD	MILBA	N
CSX TRANSPORTATION (CSXT)			Logansport, IN	LOGPT	N	UNION PACIFIC RAILROAD COMPANY (UP)		
Pov Jct, PA	POVJC	N	TOMAHAWK RAILWAY L.P. (TR)			Minnesota Transfer, MN	MINTR	N
PITTSBURGH ALLEGHENY & MCKEES ROCKS RR CO (PAM)			WISCONSIN CENTRAL LIMITED (WC)			Port Cargill Savage, MN	PTCAR	N
McKees Rocks, PA	MCKRO	N	Bradley, WI	BRDLY	N	Savage, MN	SAVAG	N
THE PUGET SOUND & PACIFIC RAILROAD COMPANY & DIVISION OF THE ARIZONA & CALIFORNIA RAILROAD CO LP (PSAP)			Tomahawk, WI	TMHWK	N	South St Paul Up, MN	SSTPA	N
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			TONAWANDA ISLAND RAILROAD INC (TIRL)			WISCONSIN CENTRAL LIMITED (WC)		
Centrals, WA	CNTRA	N	CSX TRANSPORTATION (CSXT)			Minnesota Transfer, MN	MINTR	N
THERMAL BELT RAILWAY (TBRY)			North Tonawanda, NY	NTONA	N	New Brighton, MN	NBRIT	N
CSX TRANSPORTATION (CSXT)			TOPPENISH SHIMCOE & WESTERN RAILROAD (TSWR)			St Paul, MN	STPAU	V
Bozoc, NC	BOSTC	N	BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF)			TYBURN RAILROAD COMPANY (TYBR)		
THREE NOTCH RAILROAD CO INC (TNHR)			Othello, WA	OTHEL	N	CSX TRANSPORTATION (CSXT)		
ALABAMA & FLORIDA RAILWAY CO (AF)			Toppenish, WA	TPNSH	N	Farless, PA	FARLS	N
East Andalusia, AL	EADLU	N	UNION PACIFIC RAILROAD COMPANY (UP)			NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS)		
			Othello, WA	OTHEL	C	Farless, PA	FARLS	N
			Toppenish (weasley Jct), WA	TPNSH	C			
			TONAWANDA AND MONROETON SHIPPERS LIFELINE INC. (TMSS)					
			NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) (NS)					
			Towanda, PA	TOWAN	N			

EXHIBIT 6

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Press Releases



RailAmerica, Inc. (ticker: RRA, exchange: New York Stock Exchange) News Release - 6-Feb-2003

RailAmerica Announces \$100 Million Asset Rationalization Plan; Proceeds to be Used to Reduce Debt to Industry Benchmark Levels

BOCA RATON, Fla., Feb. 6, 2003 /PRNewswire-FirstCall via COMTEX/ -- RailAmerica, Inc. (NYSE: RRA) today, as part of its long-term strategic plan to reduce debt, improve margins and enhance earnings, announced its plan to sell more than \$100 million in non-strategic/non-core/non-operating assets by year-end 2004.

The Company stated that its target is to reduce net debt-to-capital levels to the current railroad industry average of approximately 50% by year-end 2004.

(Photo: NewsCom: <http://www.newscom.com/cgi-bin/prnh/20020524/RAILLOGO>)

RailAmerica's \$100 million asset rationalization plan includes the previously announced proposed sale of its 55% interest in its Chilean railroad, as well as the sale of several small non-strategic railroads, non-operating real estate and other non-core assets in North America and Australia. The Company recently announced that it has executed an engagement letter with the investment banking group of Credit Lyonnais Securities (USA) Inc. to complete the Chilean sale.

Anticipated benefits of the Company's plan include:

- * Reduced balance sheet leverage
- * Greater financial liquidity
- * Enhanced free cash flow
- * Focus on core North American and Australian railroad operations
- * Increased corporate/operational flexibility

- * Improved return on invested capital
- * Stronger credit statistics
- * Accretion to shareholders

"This strategic plan puts us on track to further reduce leverage, enhance our capital structure, increase free cash flow and focus on maximizing the performance of our core rail portfolio," said Gary O. Marino, Chairman, President & CEO of RailAmerica. "Although we have made great strides in reducing financial leverage over the past few years, in these uncertain economic times we feel that it is prudent to operate with a conservative capital structure. We have identified more than \$100 million in assets for potential sale, the proceeds of which will be used to pay down long-term institutional debt. We believe that the market for completing these transactions is robust. This new plan is similar to our highly successful asset rationalization plan of 2000/2001, where we were able to significantly reduce acquisition debt related to our purchase of RailTex, Inc. in early 2000. In that plan, we exceeded our then-stated goal of \$100 million in sales by more than \$25 million. Of course, there is no assurance that we will achieve the same kind of results in the current plan."

Mike Howe, Senior Vice President & CFO, added, "Our plan to divest our Chilean operation, which accounts for only five percent of our total revenue, will allow us to focus on growing our core North American and Australian operations. We expect that the proceeds from this divestiture, combined with the additional asset sale proceeds, will be used to significantly improve our capital structure, including reducing our net debt-to-capital ratio from 63% currently to approximately 50%. This lower leverage, which should be viewed favorably by the capital markets, is expected to provide enhanced liquidity and increased financial flexibility for future growth, including accomplishing accretive acquisitions in a non-leveraged manner. Further, we anticipate that our shareholders should benefit from an improved equity value."

RailAmerica, Inc. (NYSE: RRA) is the world's largest short line and regional railroad operator with 49 railroads operating over 12,800 miles in the United States, Canada, Australia and Chile. In Australia and Argentina, an additional 4,300 miles are operated under track access arrangements. The Company is a member of the Russell 2000(R) Index. www.railamerica.com

DISCLAIMER REGARDING FORWARD-LOOKING STATEMENTS: This press release contains forward-looking statements regarding future events and the performance of RailAmerica that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, fuel costs, foreign currency risks, failure to successfully integrate acquisitions, failure to service debt, failure to successfully market and sell non-operating/non-strategic/non-core properties and assets when scheduled or at all, failure to accomplish new marketing initiatives, economic conditions, customer demand, increased competition in the relevant market, and others. In particular, forward-looking statements regarding earnings and EBITDA of the Company are subject to inherent economic, financial and operating uncertainties, including changes in economic conditions, realization of operating and personnel synergies, the ability to retain key customers and the impact of unforeseen costs and liabilities. Forward-looking statements speak only as of the date the statement was made. The Company assumes no obligation to update forward-looking information to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information. If the Company does update any forward-looking statement, no inference should be drawn that the Company will make additional updates with respect to that statement or any other forward-looking statements. We refer you

to the documents that RailAmerica files from time to time with the Securities and Exchange Commission, such as Form 10-K, Form 10-Q and Form 8-K, which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-looking statements contained in this press release.

SOURCE RailAmerica, Inc.

CONTACT: Wayne A. August, Vice President Investor Relations &
Administration, RailAmerica, Inc., +1-561-994-6015
/Photo: NewsCom: <http://www.newscom.com/cgi-bin/prnh/20020524/RAILLOGO>
AP Archive: <http://photoarchive.ap.org>
PRN Photo Desk, 888-776-6555 or 212-782-2840

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<http://www.prnewswire.com>

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EXHIBIT 7



Toledo, Peoria & Western Railway

A RailAmerica Company



Freight Tariff TPW 5000-A

(Cancels TPW 3030 Items 500 & 510 & TPW 5002)

NAMING
LOCAL & PROPORTIONAL RATES
ON CARLOADS OF IRON & STEEL SCRAP BETWEEN STATIONS
.OF
THE TOLEDO, PEORIA & WESTERN RAILWAY

This tariff applies on interstate traffic and intrastate traffic in the States of Illinois and Indiana

NOTICE

The provisions herein will, if effective, not have a negative impact on the quality of the human environment or energy consumption

Governed, except as otherwise noted, by the Uniform Freight Classification (UFC), as provided in Item 5

Issued: August 31, 2002

Effective: June 1, 2002

Issued By:
Toledo, Peoria & Western Railway
1990 East Washington Street
East Peoria, IL 61611

The provisions herein will, if effective, not have a negative impact on the quality of the human environment or energy consumption

Toledo Peoria & Western Railway

FT TPW 5000-A

ITEM 10	APPLICATION OF RULES AND ACCESSORIAL CHARGES	
	This Tariff, unless otherwise noted, is governed by all rules and charges of TPW T 9300 Series, TPW T 6000 Series and TPW T 8000 Series	
ITEM 200	LIST OF COMMODITIES	
	Rates named in this Tariff apply on the following commodities as described in STCC 6001 Series	
	STCC	COMMODITY
	40-211-XX Series	Iron or steel scrap, waste or tailings
ITEM 400	RATE INDEX	
	Unless otherwise provided, TPW will not absorb any switch charges at origin or destination. All switch charges will be in addition to these rates. Reverse application applies on all rates	
	ORIGIN	DESTINATION
	SFL Junction, IL Sommer, IL Peoria, IL* Peoria, IL** Farmdale, IL Chatsworth, IL Gilman, IL Watseka, IL Sheldon or Webster, IL Reynolds, IN Logansport, IN	Mapleton, IL
		RATE \$350 per car \$350 per car \$400 per car \$685 per car \$355 per car \$579 per car \$612 per car \$642 per car \$660 per car \$732 per car \$782 per car
	*TPW absorbs one PPU intermediate switch charge with this rate	
	**TPW absorbs a PPU terminal switch charge with this rate	

ITEM	RATE INDEX	
405	TPW will absorb a WSRV terminal switch at origin. Unless otherwise noted all other switch charges will be in addition to these rates. Reverse application applies on all rates	
ORIGIN	DESTINATION	RATE
Kokomo, IN	SFL Junction, IL	\$1,007 per car
	Sommer, IL	\$1,007 per car
	Peoria, IL *	\$1,066 per car
	Peoria, IL **	\$1,251 per car
	Farmdale, IL	\$980 per car
	Chatsworth, IL	\$834 per car
	Gilman, IL	\$802 per car
	Watseka, IL	\$776 per car
	Sheldon or Webster, IL	\$758 per car
Reynolds, IN	\$685 per car	
*TPW absorbs one PPU intermediate switch charge with this rate		
**TPW absorbs a PPU terminal switch charge with this rate		
ITEM	RATE INDEX	
410	TPW will absorb a PPU terminal switch at origin. Unless otherwise noted all other switch charges will be in addition to these rates. Reverse application applies on all rates	
ORIGIN	DESTINATION	RATE
Peoria, IL *	SFL Junction, IL	\$571 per car
	Sommer, IL	\$571 per car
	Chatsworth, IL	\$680 per car
	Gilman, IL	\$710 per car
	Watseka, IL	\$738 per car
	Sheldon or Webster, IL	\$756 per car
	Reynolds, IN	\$829 per car
	Logansport, IN	\$881 per car
*Peoria, IL includes all PPU served customer in the Peoria Switching District		

ITEM 600	EXPLANATION OF ABBREVIATIONS
BLOL BNSF CERA CN CSX IAIS IL IMRR IN KBSR LER NEC NS PPU SFLR STCC UP WSRY	Bloomer Shippers Connecting Railroad Company Burlington Northern Santa Fe Railway Central Railroad Company of Indianapolis Canadian National Railway CSX Transportation Iowa Interstate Railroad, LTD. Illinois Illinois & Midland Railroad, Inc. Indiana Kankakee, Beaverville and Southern Railroad Company Logansport & Eel River Short-Line Co., Inc. Not Elsewhere Classified Norfolk Southern Peoria & Pekin Union Railway Company SF & L Railway Inc. Standard Transportation Commodity Code Union Pacific Railroad Winamac Southern Railway

EXHIBIT 8

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

FINANCE DOCKET NO. 34335

**KEOKUK JUNCTION RAILWAY CO.
-- FEEDER RAILROAD DEVELOPMENT APPLICATION --
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

**RESPONSE OF JOHN W. GOHMANN
TO VERIFIED STATEMENT OF RAILAMERICA'S MARK D. GARVIN**

I have read and thoroughly reviewed Mark D. Garvin's statement ("Statement") that comments on the valuation study that I submitted in this proceeding as part of the application filed by Keokuk Junction Railway Co. ("KJRY"). I have also taken into consideration comments given to me by Mr. Richard J. Lane, who participated in our original evaluation study. Mr. Lane and I are in agreement that Mr. Garvin's Statement greatly overvalues the rail line at issue as discussed herein, principally by assigning retail-type prices to materials that could only be sold at wholesale. .

PREFACE

Before responding to the Statement, however, I must first note that access to this property by hyrail and requests to produce updated track charts newer than those provided in 1998, have been consistently denied by Toledo, Peoria and Western Railway Corporation ("TP&W") and RailAmerica ("RA"). This greatly impeded our review of everything that Mr. Garvin alleges about changes, content, etc. on the line, and prevents proper verification of his assertions. This is especially noteworthy because none of the charts and data that Mr. Garvin referred to were

included as evidence in his Statement so that they could, if true, be effectively reviewed and commented upon. While the materials that we used were available to RailAmerica, the materials they used were not available to us. These are material pieces of evidence -- no inspection from grade crossings or bridges, often times miles apart, could begin to detect any or all of the items which are alleged by Garvin. In essence, Mr. Garvin asks the Board to take his word for all of the changes on which his valuation depends.

THE DETERMINATION OF NET LIQUIDATION VALUE

As a prelude to this discussion, it is important to review the fundamental concepts of what a "net liquidation valuation" study actually is and has been in this industry for as long as I and my colleague Richard J. Lane, who also reviewed the Statement, have been in the industry -- now pressing 39 years for me, and over 50 years for Mr. Lane.

A "Net Liquidation Value" is a study, based on realistic assumptions, of the value that a party buying such a line for salvage value will pay the owner for the property. It takes into consideration many factors (not addressed by Mr. Garvin), such as:

1. The valuation and price of rail, Other Track Material ("OTM") and Ties is at wholesale -- because no rail purchaser of salvaged material will pay the "retail" or "resale" market price for such materials. Removal contractors must make a profit, which they attempt in each case to be a minimum of 15% and as high as 30% on each such project. The bids they offer the seller are thus reflective of wholesale pricing. Retail prices include, in addition to what the buyer pays the abandoning carrier, the cost of carrying the material in inventory, cropping, processing, (and interest of capital which may be used in a line of credit to do so), and, most importantly, a profit for the contractor.
2. In most states, grade crossing signals are installed at the expense of the state or

local municipalities. Grade crossing surfaces are likewise done at the expense of the taxpayer, and, remain the property of the funding authority in the event of an abandonment.

3. Bridges over major highways, waterways or streets have often been constructed at taxpayer expense, and must be removed at the expense of the railroad if the line is abandoned. Removal is not inexpensive, including the cost of transporting the structure away by truck (sometimes requiring special high-wide load road permits and escorts at an expense of a couple hundred dollars per hour). Even bridges installed by the railroad sometimes fall under this category.
4. In today's environmentally demanding society, it is not enough for the property owner to leave scrap ties on the property or to merely transport them away. Rather, the owner also has to pay for disposition by chipping and then burning in an environmentally acceptable furnace that has a burner that separates and contains the creosote content of such ties.
5. Using 20% of the rail tonnage as the quantity and weight of OTM is a time-tested approach, consistently used in net liquidation value studies.

THE MAJOR FLAWS OF THE GARVIN VALUATION

There are many flaws in the Garvin valuation, but the most blatant is his pricing of rail and OTM at "retail" rather than "wholesale" values which a rail salvage contractor would pay a railroad for the material on a "picked up" basis. No entity engages in work to not make a profit, and, that is so with track contractors and salvaged material companies, as well.

The statements used consistently by Garvin to back his valuations are to the effect "these are prices TP&W would pay for such materials" or "these are prices we obtained recently from contractors in the area". This is extremely deceptive. The correct approach would have been to

ask such contractors how much they would pay for such rail, other track material, or ties “in place” on the line.

While the Garvin study does reflect costs of removal and about \$15.00 a ton in transportation costs (which Garvin states would get the material “to Chicago”), what his valuation wrongfully ignores is the fundamental “P” word -- the profit word. He would seem to suggest a contractor or seller would first pay TP&W the market retail price, then pick up the entire line, and material, transport it to Chicago, incur interest, carrying expense, management and overhead and selling expense, and, then sell it back to TP&W or to someone else for the same price they paid for it before they incurred removal and relocation and inventorying expenses. That’s not the way track removal contractors work, or, they would not stay in business. For example, I am aware that SF&L Railway, Inc. (“SF&L”), which is affiliated with a large rail materials dealer, purchased most of this line in late 2000, and then fought against selling it back to TP&W for the same price in 2003, claiming that they would lose the profit they expected from salvaging the line. As noted above, companies such as SF&L’s affiliate price so that they receive a margin of between 15% and 30%,. They need to do this because the interest or carrying expense, alone, on say \$2.0 million of track material -- that is the cost to inventory at 8% interest for one year is \$160,000.00 -- which is another carrying cost that is a “cost” before profit. Thus, while Mr. Garvin’s pricing and valuation may be what RA may expect to pay for such materials to install, they are not representative of the prices that others would pay TP&W at wholesale. In determining the value of the line to TP&W, the right question to ask is what TP&W would be paid for selling the materials, not what TP&W would pay someone else to buy the same materials.

The second major flaw is tie valuation. Mr. Garvin suggests a zero value for ties -- we think, based on our experience, it is negative. Costs to transport them are not just a dollar or two,

but, more frequently, up to \$5.00 a tie if transported just four hours via truck and then disposed of in an environmentally approved manner by a government approved tie disposal facility. As for pricing relay quality ties, current prices for new ties, FOB most Midwest tie plants, according to the most recent publication of the Railway Tie Association, are about \$17.50 to \$18.50 for tangent track mainline ties. The fact that RA has placed the line in FRA Class I indicates that the line has been maintained in the lowest possible accepted category for 10 mph operation -- which would indicate that at least half, if not 60% to 65% of the ties are "scrap only," not even suitable for landscaping purposes. (See Exhibit II, an excerpt from FRA regulations on criteria for Class I lines.) This is nearly two thirds of the ties in the entire line, each of which generates a negative net liquidation value of \$4.00 to \$6.00, including transportation if properly disposed of. The remainder, which would be landscape or relay quality, could produce anywhere from a net positive of \$2.00 to \$4.00 a tie. With new ties deliverable for Class I and II operation at \$20.00 to \$22.00 delivered, the most such relay quality ties could reap wholesale would be around \$6.00 to \$8.00 per tie, and those would in this case only be about 20% of the ties, at most. With new ties available around \$20.00 each with a useful life of about 30 to 35 years in this area, no one is going to pay more than \$12.00 at retail for a relay tie that will have less than one third the life of a new tie, particularly considering the significant expense that must be invested to install a tie, whether new or relay.

Assume \$8.00 per tie yield for 20% of the ties -- or 600 ties per mile x \$8.00 per tie = \$4,800.00; a \$5.00 per tie landscape price x 600 ties per mile = \$3,000.00 -- producing a positive \$7,800.00 per mile, which is offset by 1,800 ties per mile at a loss or cost of \$5.00 per tie, or \$9,000.00 --for a net loss of \$1,200.00 per mile of line of railroad.

Similarly, Mr. Garvin suggests that the grade crossings have a cumulative positive value of \$20,000 plus. We previously noted that a normal, accepted NLV puts zero value to negative

value on these and bridges. Mr. Garvin only assumes they will produce this -- without referring to substantive evidence for this except his recent hi-rail trips and experience. He did not comment on the statements we made in the initial study about zero to negative values for these as well as bridges nor refer to, research or produce copies of or summaries of crossing or bridge agreements which outline ownership of and disposition of same should an abandonment or cessation of service occur. (I understand, however, that TP&W's counsel produced a small number of such agreements to KJRY's counsel after I drafted this statement and shortly before KJRY's filing in this case was due.)

Further, it would seem that RA, in the conduct of making prudent decisions about seeking the abandonment, must have received some tentative bids which could have been produced -- bids from track pick up contractors, for this property. The only price that I am aware of anyone having offered for the property, other than the price offered by KJRY, was the approximately \$2.18 million paid by SF&L's salvage affiliate.

In summary, the primary error of the Garvin Statement is to report valuations at prices that TP&W would pay someone else for such rail, not what someone else would pay TP&W for those same materials. To use the prices Mr. Garvin uses as a starting point, the proper, accepted, true and honest method is to take such prices, and subtract:

1. Reasonable profit for the contractor - usually 15 to 30% of the retail price, if not a little more; and,
2. Inventory, overhead and handling costs that are usually about 5% to 10% of the retail price. Just as an example, the Garvin Statement suggests that we estimated 131 pound jointed rail to have a higher value than continuous welded rail. That is true. Continuous welded rail -- in quarter or half mile sections, must be handled and removed by special welded rail unit trains -- made up of special cars equipped

with rollers and rail racks and placed on or off through a threader -- all at considerable handling expense with a dedicated work train or a self propelled track crane on the abandoned line. The rail then must move in this continuous form on this multiple car consist, and, then either kept on this train, or unloaded through the threader and then later reloaded onto the unit train for distribution after sale. Because of this handling method, the value for relay CWR is less UNLESS a very specific market can be located for it and the special transportation then arranged which adds cost.

Conversely, jointed 131 pound rail in 39-foot conventional sections can easily be placed on trucks or in railcars for removal from the site, stockpiling and storage, and, then moved to resale in the same non-extraordinary, normal method. As a result, it is not uncommon for rail resellers to first try and find markets for welded rail, but, oftentimes, cutting it into 39-foot sections for resale after waiting a reasonable period of time and finding no takers, especially among shortlines or rail customers building or upgrading their sidings, who comprise a large part of their markets.

CONCLUSION

We are precluded from any further effective review due to the failure of RA to produce the agreements and documents we have asked for and to allow us reasonable access to the property for inspection. But, ours is the tried, accepted, true and time-tested method of appraisal which, absent firm evidence of a basis to vary (which has not been provided by Garvin or RA), should be applied and used by the Board.

We note, in closing, that since the outset in discussions with RA and before this Board, we have noted such items as normal considerations in this valuation approach and, RA has failed

to produce them despite all our efforts and requests. While the value of ballast section is not in contention, we have done some informal checking in the western Illinois area and are not aware of any acute shortage of new quarry rock or high demand for second hand railroad ballast -- which has extremely limited application and most often, has to be run through a cleaning device prior to any road construction use (if it is of the kind which can be used in road construction) or for general road or other commercial applications. The cost of this cleaning (separating dirt, vegetation, weeds, and loose rail materials from the rock) costs several dollars a ton which oftentimes brings the price of such rock very close to what the price is for new rock FOB at local quarries -- which ranges from \$4.00 (limestone grades) to about \$9.00 a ton (granite grade) at quarries in the Midwest, in general.

A final comment -- the Garvin Statement admits that his inspections prior to making the Statement were done on the line -- which had no vegetation control application applied this year. The absence of vegetation control of course, fosters weed and brush growth, which in turn exacerbates deterioration of the rail line by reducing or eliminating drainage off the ties from rain and snow and thus, more quickly ruins any good tie life remaining. It is probable that a good amount of tie deterioration occurred just this past year alone. The uncontrolled vegetation growth will also increase the cost of salvage operations.

**FRA TRACK CONDITION CLASSIFICATIONS
CLASS I**

FRA Class I track is the minimally approved FRA "safe track" - which permits a maximum speed of only 10 mph and as a review of the standards will disclose, indicates only about 20% to 30% good tie (relay) condition, poor ballast, and, rail section:

PART 213--TRACK SAFETY STANDARDS

"Subpart D--Track Structure

"Sec. 213.109 Crossties.

"(a) Crossties shall be made of a material to which rail can be securely fastened.

"(b) Each 39 foot segment of track shall have--

"(1) A sufficient number of crossties which in combination provide effective support that will--

"(i) Hold gage within the limits prescribed in Sec. 213.53(b);

"(ii) Maintain surface within the limits prescribed in Sec. 213.63; and

"(iii) Maintain alinement within the limits prescribed in Sec. 213.55.

"(2) The minimum number and type of crossties specified in paragraphs (c) and (d) of this section effectively distributed to support the entire segment; and

"(3) At least one crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (f) of this section.

"(c) Each 39 foot segment of: Class 1 track shall have five crossties; Classes 2 and 3 track shall have eight crossties; and Classes 4 and 5 track shall have 12 crossties, which are not:

"(1) Broken through;

"(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

"(3) So deteriorated that the tie plate or base of rail can move laterally more than 1/2 inch relative to the crossties; or

"(4) Cut by the tie plate through more than 40 percent of a ties' thickness.

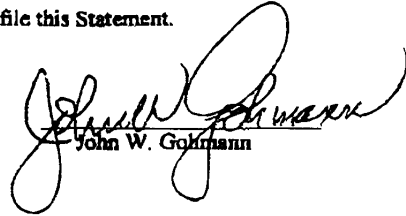
"(d) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table (this paragraph (d) is applicable September 21, 2000).

Class of track	Tangent track and curves [1e]2 degrees	Turnouts and curved track over 2 degrees
Class 1 track.....	5	6
Class 2 track.....	8	9
Class 3 track.....	8	10
Class 4 and 5 track.....	12	14

VERIFICATION

I, John W. Gohmann, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement.

Dated November 6, 2003



John W. Gohmann

EXHIBIT 9

Contract No. 100-1001

Secretary, The A. T. & P. CO. Topeka

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Public Works and Buildings, hereinafter referred to as the "STATE", Party of the First Part, and the TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY, hereinafter referred to as the "COMPANY", Party of the Second Part,

W I T N E S S E T H:

WHEREAS, State Bond Issue Route 95 (marked Illinois Route 9) as located and constructed about 1/2 of a mile west of LaHarpe in Hancock County, Illinois, there crosses at grade the COMPANY'S single main line track and the crossing thus formed is surfaced with bituminous material and is protected by flashing light signals, all substantially as shown on the print of the plan and profile sheet marked "Exhibit 1", attached hereto and made a part hereof; and

WHEREAS, in the vicinity of the grade crossing, the STATE proposes to widen and resurface the existing 18-foot pavement by the construction of a base pavement on each side thereof up to the ends of the track ties, and the resurfacing of the entire pavement width with bituminous concrete, Sub-class I-11; and

WHEREAS, in the interest of public safety, the parties hereto desire (1) to relocate the existing flashing light signals, (2) to raise the track approximately three inches at the crossing, and (3) to renew and extend the existing grade crossing proper; and

WHEREAS, the proposed changes in the railroad facilities shall be financed without the use of Federal funds.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. The parties hereto shall construct, or cause to be constructed, the following items:

(1). WORK BY THE COMPANY. The COMPANY shall furnish or cause to be furnished, with the expense divided as hereinafter set forth, and with the understanding that the terms, stipulations and conditions as contained in the Bureau of Public Roads' Policy and Procedure Memorandum No-3, issued October 15, 1960, and supplements, will apply and govern even though no Federal funds will actually be used, all of the labor, materials and work equipment required to perform and complete,

(I). WITH 100% OF THE EXPENSE BORNE BY THE STATE,

- (a). The removal of the existing bituminous crossing proper.
- (b). The raising of the track approximately three inches to meet the proposed grade of the widened and resurfaced highway as shown on Exhibit 1.
- (c). The relocation of the existing flashing light signal units to points that are six (6) feet outside the widened pavement edges, all as shown on Exhibit 1.
- (d). Incidental work necessary to complete the items hereinabove specified.

(II). WITH THE EXPENSE FOR THE MATERIALS BORNE BY THE STATE, AND THE EXPENSE FOR THE LABOR, WORK EQUIPMENT AND TOOLS BORNE BY THE COMPANY,

- (a). The installation of a new grade crossing proper over the track, consisting of prefabricated full-depth treated timber plank material, extending six (6) feet outside the edges of the widened and resurfaced pavement, or a length of approximately 36 feet measured at right angles to the highway centerline.
- (b). Incidental work necessary to complete the items hereinabove specified.

(2). WORK BY THE STATE. The STATE shall furnish or cause to be furnished, at its expense, all of the labor, materials and work equipment required to perform and complete,

(a). The widening and resurfacing of the existing 18-foot pavement to 24 feet by the construction of a base pavement on each side thereof up to the ends of the track ties, and the resurfacing of the entire pavement width with a bituminous concrete binder and surface course, Sub-class I-11, all as shown on Exhibit 1.

(b). Incidental work necessary to complete the item hereinabove specified.

SECTION 2. The COMPANY, upon the completion of its work, shall send the STATE a detailed statement (in sets of eight) of its actual expense as incurred and prorated in accordance with the division of cost hereinbefore set forth. After the STATE'S representatives have checked the statement, and they have agreed with the COMPANY'S representatives that the expenses are reasonable and proper, insofar as they are able to ascertain, the STATE shall reimburse the COMPANY for ninety-five (95) per cent of the amount as agreed upon. The estimated total cost of the work to be performed by the COMPANY at the expense of the STATE is 100,000.00

\$ 100,000.00 Dollars

(b) (\$100,000.00), contemplated by the approved detailed estimate of cost dated June 1, 1911 hereto attached. After the STATE auditors have audited the expenses as incurred by the COMPANY including such items of expense as may have been suspended from the previous payment, the STATE shall reimburse the COMPANY for the retained percentage and the suspended items of expense, less the deduction of any item (or items) of expense found by the STATE

- (g). The letting of a separate contract for the resurfacing of the approaches to the renewed grade crossing proper using hot-mix bituminous concrete binder and surface course material, sub-class I.
- (h). The replacement of the existing 8-inch flashing light signal heads and lenses with 12-inch signal heads and lenses.
- (i). Incidental work necessary to complete the items hereinabove specified.

The estimated total cost of the work to be performed hereunder by the COMPANY at the expense of the STATE as outlined above is \$ 46,137.00 , contemplated by the approved detailed estimate of cost attached hereto.

- (2) WORK BY THE STATE. No work by the STATE is contemplated except engineering and construction inspection and the marking of the detour for use during the period of crossing reconstruction.

SECTION 3. If at any time subsequent to this improvement, the track in the area of the crossing is eliminated for any reason whatsoever, the crossing proper and the track material through the crossing shall be removed by the COMPANY, at its expense, and the rubber crossing panels turned over to the STATE. The STATE, at its expense, shall fill the gap through the roadway caused by the track removal.

The COMPANY will not remove or replace any of the rubber crossing material without first having obtained concurrence from the STATE. Any removal or replacement of the rubber crossing material shall be completed by the COMPANY, at its expense, and the rubber crossing panels turned over to the STATE.

SECTION 4. Upon the completion of the work herein contemplated, the COMPANY shall maintain, at its expense, the warning devices and the grade crossing proper, and the STATE shall maintain, at its expense, the highway up to the ends of the track ties.

SECTION 5. This Agreement shall be binding upon the parties hereto, their successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterparts, each of which shall be considered as an original by their duly authorized officials, as of the dates below indicated.

Executed by the STATE, this 4th
day of February, 1983.

STATE OF ILLINOIS, acting by and through
its Department of Transportation,

By [Signature]
Director of Highways

Executed by the COMPANY, this 1st
day of February, 1983.
Attest:

TOLEDO, PEORIA & WESTERN
RAILROAD COMPANY,

By R.E. McMiller

STANDARD PROVISIONS FOR STATE-RAILROAD GRADE CROSSING AGREEMENTS

All of the COMPANY's work shall be performed in accordance with the terms, stipulations, and conditions as contained in the Federal-Aid Highway Program Manual, Volume 1, Chapter 6, Section 3, dated April 25, 1975, and any supplements thereto.

The COMPANY, the performance of its work, may bill the STATE monthly (in bills of 6) for the STATE's share of the actual costs and expenses incurred. These progressive invoices may be rendered on the basis of the estimated percentage of the work completed. The STATE, after verifying that the bill is reasonable and proper, shall promptly reimburse the COMPANY for 95 percent of the amount billed, but not to exceed the amount agreed upon.

The COMPANY, upon the completion of its work, shall send the STATE a detailed final statement (in bills of 6) of its actual expenses as incurred, including all eligible deductions. After the STATE's representatives have reviewed the final statement and have agreed that the bills are reasonable and proper, insofar as they are able to ascertain, the STATE shall reimburse the COMPANY in an amount, less previous payments, if any, equal to 95 percent of the amount agreed upon of the amount billed, whichever is the lesser.

After the Federal or State representatives have audited the expenses as incurred, by the COMPANY, and final inspection of the installation has been made, the STATE shall reimburse the COMPANY for the remaining percentage and the suspended items of expense less the deductions of any items (if items) of expense found by Federal or State representatives to not being eligible for reimbursement.

3. It is understood that the project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contracts, appearance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment.
4. In compliance with the Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 3, Subsection 1 dated April 25, 1975, and supplements which defines the Railroad benefit and liability, the proposed grade crossing improvement meets classification 1 of Paragraph 6(b), a category not considered as a benefit to the COMPANY, and no contribution by the COMPANY is required.

Standard Provisions for State-Railroad Grade Crossing Agreements (Cont'd)

5. When the roadway is to be closed to vehicular traffic while the Railroad work is being performed, the STATE at its expense shall furnish, erect, maintain and remove the traffic control devices necessary to detour highway traffic after the COMPANY gives two weeks advance notice to the STATE'S District Engineer.

When the COMPANY is to perform its work while maintaining highway traffic, the STATE shall furnish or cause to be furnished, at its expense, the signs, barricades and traffic control devices for erection by the COMPANY after two weeks advance notice is given the STATE'S District Engineer. The COMPANY, at the expense of the STATE, shall erect, maintain, relocate, and remove the signs, barricades, and other traffic control devices, including the furnishing of flagmen, as required to maintain highway traffic throughout the time the railroad work is being performed.

6. The COMPANY may bill the STATE (in sets of 6) for the STATE'S share of the cost of materials purchased, delivered and stored on the COMPANY'S property but not yet installed. The materials will become the property of the STATE and must be designated for exclusive use on the project designated in this Agreement. In the event of any loss of material after payment, the COMPANY will replace the material at no cost to the STATE. The storage area of such materials shall be available for STATE inspection upon 24-hours notice. The bill shall be accompanied by a voucher from the material supplier indicating payment by the COMPANY. Payment under this paragraph shall not be claimed for any single pay item less than \$500.

In the event the COMPANY fails to install the stored material during a one-year period subsequent to payment to the COMPANY, the STATE may enter the property of the COMPANY and take possession of said material for the STATE'S own use. The taking possession of the material by the STATE shall in no way serve to terminate this Agreement or affect the other provisions of this Agreement.

7. Paragraph 12 of Volume 1, Chapter 4, Section 3 of the Federal Aid Highway Program Manual requires that the STATE certify that the work at the job site is complete, acceptable and in accordance with the terms of this Agreement. A representative of the STATE shall be present at the job site during construction to certify the work. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this Agreement. This notice may be given by writing the STATE'S District Engineer, *Mr. W. E. Burns* 126 East Ash Street, Springfield, Ill. 62706 or by telephoning *Mr. Donald G. Fuhs* at 217-782-4501. The cost of any construction work performed by the COMPANY at the job site prior to the expiration of the 48-hour notice shall be borne by the COMPANY. The 48-hour notice shall begin upon receipt of the 48-hour notice by the State's District Engineer.

Standard Provisions for State-Railroad Grade Crossing Agreements (Cont'd)

8. It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in 49 Code of Federal Regulations (CFR) Part 23, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this agreement.

The COMPANY agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of this agreement. In this regard, the COMPANY shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of this agreement. The COMPANY shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of contractors, including procurement of materials and leases of equipment.

The COMPANY shall include this provision in every subagreement, including procurement of materials and leases of equipment.

Failure to carry out the requirements set forth above shall constitute a breach of agreement and may result in termination of the agreement or such remedy as deemed appropriate.

CROSSING ESTIMATE
Route 9 - La Harpe

Page 2

OTHER

Personal Expenses

90 man days x \$26.69 \$ 2,402

Equipment Rental

Backhoe	6 days x \$63.00	377
Speed Swing	6 days x \$218.00	1,308
Dump truck	6 days x \$35.00	210
Pickup	6 days x \$25.00	150
Hyrail pickup	3 days x \$40.00	120
Welder truck	3 days x \$63.00	189
B&B truck	3 days x \$25.00	75
Air Compressor	3 days x \$11.00	33
Tamper	3 days x \$459.00	1,377

Total Other----- \$6,242

Outside Contracts

Asphalt Approach Work (including saw cuts, if necessary) \$4,000

Total Contracts----- \$4,000

Salvage

115# rail - 156 LF	2.98 NT @ \$ 45.00	(\$ 134)
Misc. Track Material	.75 NT @ \$ 50.00	(\$ 38)
Total Salvage-----		(\$ 172)

TOTAL CROSSING WORK \$39,017

CROSSING ESTIMATE
111. Route 9 - La Harpe

Remove existing grade crossing and rebuild with new ballast, ties, rail, OTM, geotextile, underdrains and rubber surface. Replace existing pipe culvert to the west of the railroad with 10 LF of 30 inch corrugated metal pipe.

LABOR

Section Foreman	1 man x 3 days x 8 hr./day x \$12.67	\$ 304
Section Laborer	3 men x 3 days x 8 hr./day x \$11.45	824
Extra Gang Foreman	1 man x 6 days x 10 hr./day x \$12.79	767
Extra Gang Laborers	7 men x 6 days x 10 hr./day x \$11.34	4,763
Machine Operator	3 men x 6 days x 10 hr./day x \$12.31	2,216
Welder	1 man x 3 days x 8 hr./day x \$13.44	323
B&B Foreman	1 man x 3 days x 8 hr./day x \$13.07	314
B&B Carpenters	2 men x 3 days x 8 hr./day x \$12.33	592

Additives 4,647

Total Labor----- \$14,750

MATERIAL

115# rail - 156 LF	2.98 NT	\$495.00	\$ 1,475
Tie Plates	100 ea.	5.38	538
Welds	6 ea.	45.00	270
Anchors	200 ea.	1.05	210
Spikes	2 Kegs	71.38	143
Ties - 7"x9"x9'	25 ea.	22.21	555
Ties - 7"x8"x9'	25 ea.	16.43	411
Filter Fabric	80 sy	2.05	164
30" CMP culvert	10 LF	18.00	180
6" CMP underdrains	120 LF	3.01	361
Rubber crossing	36 LF	215.00	7,740
Cam Screw - 10 1/2"	152 ea.	2.42	368
Header Boards 2"x8"	72 LF	.70	50
Ballast	80 NT	4.75	380
115# Mudrail for shoulders - 72 LF	1.38 NT	44.64	62
115 # Plates for mudrail	22 ea.	5.38	118

4% tax 521

5% handling 651

Total Material----- \$14,197

SIGNAL ESTIMATE
111 Route 2 - La Harpe

Relocate flashing light signals to conform to current standards and replace existing 8 inch flashing light heads with 12 inch signal heads.

LABOR

Signal Foreman	1 man x 6 days x 10 hr./day x \$13.73	\$ 824
Signal Maintainer	2 men x 6 days x 10 hr./day x \$13.38	1,606
	Additives	<u>1,118</u>
	Total Labor	<u>\$3,548</u>

MATERIAL

FLA-12 lights	2 ea x \$788.40	\$1,577
Track wire - 1 conductor #9	550 LF x \$.15	83
Light wire - 3 conductor #9	150 LF x \$ 1.35	203
Track Connection Kits	8 ea. x \$ 7.25	58
	4% tax	77
	5% handling	<u>96</u>
	Total Material	<u>\$2,094</u>

OTHER

Equipment Rental

Line truck	6 days x \$63	\$ 378
Pickup	6 days x \$25	150
Ditch witch	4 days x \$35	140

Personal Expenses

18 man days x \$45	810
Total Other	<u>\$1,478</u>

TOTAL SIGNAL WORK	<u><u>\$7,120</u></u>
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LEV 97.70

48A

138

37. 

33.95

10 D ASPHALT CRO

F.A.P. ROUTE 685

SECTION 82R-6-C8

PROJECT RRS - 685(6)

Job No. C-96-037-82

HANCOCK COUNTY

TOLEDO, PEORIA AND WESTERN RAILROAD CO.

SCALE 1" = 20'

[illegible]

SECTION 4. This agreement shall be binding upon the parties hereto,
their successors or assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be
executed in duplicate counterparts, each of which shall be considered as
an original, by their duly authorized officers, as of the dates below
indicated.

Executed by the STATE, this 10th
day of August, 1971.
Attest:

Richard H. Hoffman
Chief Highway Engineer

STATE OF ILLINOIS, acting by
and through its Department of
Public Works and Buildings,

By *William F. C.*
Director

Executed by the COMPANY, this 30th
day of July, 1971.
Attest:

J. H. Hernandez
Asst. Secretary

TOLEDO, PEORIA AND WESTERN RAIL
COMPANY

By: *[Signature]*
President

IN TRAFFIC
FA

TRAFFIC

N

SIGNAL UNIT.

Table no. 1100 to 11000000

EXHIBIT - I

Contract No. 1774-1771 A
RETURN TO
Secretary, The A.T. & S.P. RY. CO. Topeka

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", Party of the First Part, and the TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, hereinafter referred to as the "COMPANY", Party of the Second Part,

W I T N E S S E T H:

THAT, WHEREAS, Federal-Aid Primary Route 685 (marked Illinois Route 9), as located and constructed at LaHarpe in Hancock County, Illinois, there crosses at grade the single mainline track of the COMPANY, and the crossing thus formed is constructed of full-depth treated timber plank material and is protected by flashing light signals automatically controlled by track circuits; and

WHEREAS, the existing crossing proper is nearing the end of its service life and is in need of replacement; and

WHEREAS, in the interest of public safety the parties hereto desire (1) to remove and to subsequently renew and extend the existing grade crossings proper; and (2) to improve drainage by replacing the existing pipe culvert located 29 feet left of Station 1013+26 with a 30-inch pipe culvert, all substantially as shown on the general plan sheet marked Exhibit 1 attached hereto and made a part hereof; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements as hereinafter contained, the parties hereto agree as follows:

SECTION 1. The "Standard Provisions for State-Railroad Grade Cross Agreements" attached hereto are hereby made a part of this Agreement. Paragraph 1 of Provision 5 shall apply.

SECTION 2. The parties hereto shall construct or cause to be constructed the following items of work,

- (1). WORK BY THE COMPANY. The COMPANY shall furnish, or cause to be furnished, at the expense of the STATE, all of the labor, materials and work equipment required to perform and complete.
 - (a). The removal of the existing grade crossing proper.
 - (b). The removal and replacement of ballast, ties, rails and fastenings through the limits of the pavement.
 - (c). The raising of the track approximately one and one-half feet to meet the proposed grade of the highway as shown on Exhibit A.
 - (d). The placing of a suitable geotextile fabric under the ballast.
 - (e). The placing of sub-surface pipe underdrains.
 - (f). The installation of a new grade crossing surface over the track using prefabricated rubber slab material to extend a minimum distance of one foot beyond the edges of the pavement on each side; overall length of approximately 36 feet, thence extended with hot-mix bituminous concrete material, sub-class I material, to points located 8 feet beyond the edges of pavement.



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois/62764

RECEIVED
FEB 01 1993
JLT

January 26, 1993

SUBJECT: PRELIMINARY ENGINEERING
Grade Crossing Agreement
FA Route 310 (US 67)
Section 37-2,(37B)BR-3
Job No. C-94-338-90
McDonough County

LA#
TP&W Ry. Corp. File 180156
Good Hope (Monmouth Street)
DOT/AAR No. 801 468U

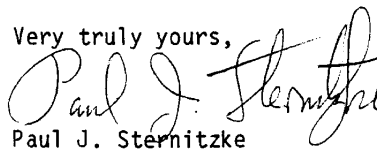
Mr. E. Kenneth Furst
Chief Financial Officer
T.P.&W. Ry. Corp.
1661 Route 22 West
Bound Brook, NJ 08805

Dear Mr. Furst

Attached is your Company's original copy of the fully-executed Supplemental Agreement for the subject project.

Do not perform any work until your Company is authorized by our District Office.

Very truly yours,


Paul J. Sternitzke
Chief of Preliminary Engineering

MP/mac/1605L

cc: B. G. Sykes - TP&W

THIS SUPPLEMENTAL AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and the TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION, hereinafter referred to as the "COMPANY".

W I T N E S S E T H:

THAT, WHEREAS, the COMPANY and the STATE have entered into an AGREEMENT effectively dated September 3, 1992 covering adjustments to the grade crossing and warning devices at the COMPANY'S grade crossing (DOT/AAR No. 801 468U) over Federal-Aid Route 310 (U.S. Route 67, Monmouth Street) as located and constructed at the Village of Good Hope, McDonough County, Illinois; and

WHEREAS, in addition to the improvements covered by the September 3, 1992 AGREEMENT, it is necessary to install a storm sewer under the COMPANY'S track in the vicinity of the grade crossing, all as shown on the plan sheets marked Exhibits 1, 2 and 3 attached hereto and made a part hereof; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. The "Standard Provisions for State-Railroad Grade Crossing Agreements" attached to and made part of the September 3, 1992 AGREEMENT are replaced by the revised "Standard Provisions for Standard-Railroad Grade Crossing Agreements" attached hereto and made a part hereof.

SECTION 2. The following additional item of work to be performed by the STATE is included under Section 3(II) of the September 3, 1992 AGREEMENT:

- (a). The installation, by jacking, of a 36-inch storm sewer and casing pipe under the COMPANY'S track as indicated on Exhibits 1, 2 and 3

SECTION 3. Section 8 of the September 3, 1992 AGREEMENT is revised to read:

"Upon completion of the work herein completed, the COMPANY shall operate and maintain, at its expense, the warning devices and the grade crossing proper, and the STATE shall maintain or cause to be maintained, the highway up to the curbs of the track ties, including the 36-inch storm sewer and crossing under the COMPANY'S track.

SECTION 4. All portions of the September 3, 1992 AGREEMENT not revised by this SUPPLEMENTAL AGREEMENT shall remain in full force and effect, and the terms and conditions of it shall apply equally to this SUPPLEMENTAL AGREEMENT.

SECTION 5. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 22-2814670 and the COMPANY is doing business as a corporation.

SECTION 6. This SUPPLEMENTAL AGREEMENT shall be binding upon the parties hereto, their successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this SUPPLEMENTAL AGREEMENT to be executed in duplicate counterparts, each of which shall be considered as an original by their duly authorized officials, as of the dates below indicated.

Executed by the STATE, this 22nd
day of January, 1993.

STATE OF ILLINOIS, acting by and through
its Department of Transportation,

By Ralph C. Wehner
Director of Highways *he*

Executed by the COMPANY, this 14
day of January, 1993.

TOLEDO, PEORIA & WESTERN
RAILWAY CORPORATION,

Attest:

James P. Kasilian

By *E. Kenneth*

STANDARD PROVISIONS FOR STATE-RAILROAD GRADE CROSSING AGREEMENTS

1. All of the COMPANY'S work shall be performed in accordance with the terms, stipulations, and conditions as contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, and any supplements thereto.
2. The COMPANY, for performance of its work, may bill the STATE monthly (in sets of 4) for the STATE'S share of the actual costs and expenses incurred. These progressive invoices may be rendered on the basis of the estimated percentage of the work completed. The STATE, after verifying that the bill is reasonable and proper, shall promptly reimburse the COMPANY for 95 percent of the amount billed, but not to exceed the amount agreed upon.

The COMPANY, upon the completion of its work, shall send the STATE a detailed final statement (in sets of 4) of its actual expense as incurred, including allowable additives. After the STATE'S representatives have checked the final statement and have agreed that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall reimburse the COMPANY in an amount, less previous payments, if any, equal to 95 percent of the amount agreed upon or the amount billed, whichever is less.

The COMPANY shall maintain, for a minimum of 5 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the STATE; and the COMPANY agrees to cooperate fully with any audit conducted by the STATE and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

After the Federal or STATE representatives have audited the expenses as incurred by the COMPANY, and final inspection of the installation has been made, the STATE shall reimburse the COMPANY for the retained percentage and the suspended items of expense less the deductions of any item (or items) of expense found by Federal or STATE representatives as not being eligible for reimbursement.

3. The project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contracts, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment.

Standard Provisions for State-Railroad Grade Crossing Agreements (Cont'd)

4. In compliance with the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart B, and supplements, which determines the railroad benefit and liability, the proposed grade crossing improvement meets Classification (1) of Section 646.210(b), a category not considered as a benefit to the COMPANY, and no contribution by the COMPANY is required.
5. When the roadway is to be closed to vehicular traffic while the railroad work is being performed, the STATE at its expense shall furnish, erect, maintain and remove the traffic control devices necessary to detour highway traffic after the COMPANY gives two weeks advance notice to the STATE'S District Engineer.

When the COMPANY is to perform its work while maintaining highway traffic, the STATE shall furnish or cause to be furnished, at its expense, the signs, barricades and traffic control devices for erection by the COMPANY after two weeks advance notice is given the STATE'S District Engineer. The COMPANY, at the expense of the STATE, shall erect, maintain, relocate, and remove the signs, barricades, and other traffic control devices, including the furnishing of flagmen, as required to maintain highway traffic throughout the time the railroad work is being performed.

6. The COMPANY may bill the STATE (in sets of 4) for the STATE'S share of the cost of materials purchased, delivered and stored on the COMPANY'S property but not yet installed. The materials will become the property of the STATE and must be designated for exclusive use on the project designated in this Agreement. In the event of any loss of material after payment, the COMPANY will replace the material at no cost to the STATE. The storage area of such materials shall be available for STATE inspection upon 24-hours notice. The bill shall be accompanied by a voucher from the material supplier indicating payment by the COMPANY. Payment under this paragraph shall not be claimed for any single pay item less than \$500.

In the event the COMPANY fails to install the stored material during a one-year period subsequent to payment to the COMPANY, the STATE may enter the property of the COMPANY and take possession of said material for the STATE'S own use. The taking possession of the material by the STATE shall in no way serve to terminate this Agreement or affect the other provisions of this Agreement.

7. Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, Section 140.922(b) requires that the STATE certify that the work at the job site is complete, acceptable and in accordance with the terms of this Agreement. A representative of the STATE shall be present at the job site during construction to certify the work and to assure that all highway approach work and materials meet the requirements as set forth in the STATE'S Standard Specifications for Road and Bridge Construction and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this Agreement.

Standard Provisions for State-Railroad Grade Crossing Agreements (Cont'd)

This notice may be given by writing the STATE'S District Engineer, Mr. D.E. Risinger, 401 Main Street,

Peoria, IL 61602-1111 or by telephoning

Mr. Les Gawnitz at 309/671-3398. The cost of any construction work performed by the COMPANY at the job site prior to the expiration of the 48-hour notice shall be borne by the COMPANY. The 48-hour notice shall begin upon receipt of the 48-hour notice by the State's District Engineer.

8. It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in 49 Code of Federal Regulations (CFR) Part 23, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this agreement.

The COMPANY agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of this agreement. In this regard, the COMPANY shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of this agreement. The COMPANY shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of contractors, including procurement of materials and leases of equipment.

The COMPANY shall include this provision in every subagreement, including procurement of materials and leases of equipment.

Failure to carry out the requirements set forth above shall constitute a breach of agreement and may result in termination of the agreement or such remedy as deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by any one under contract for public works" (Illinois Revised Statutes, Chapter 48, paragraph 39s-1 et seq.) shall apply.



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois/62764

April 24, 1992

SUBJECT: DESIGN OPERATIONS
FAP Route 685 (Ill-9)
Section 92R-6-C6
Project RRS-STPRRS-000S(296)
Job No. C-96-042-92
Hancock County

TP&W File 180113
LaHarpe
DOT/AAR No. 801 499T

Mr. B. G. Sykes
Chief Engineer
Toledo Peoria & Western Ry. Corp.
1990 E. Washington Street
East Peoria, Illinois 61611-2961

Dear Mr. Sykes:

Attached is your Company's original of the fully-executed Agreement for the above captioned location.

You are hereby authorized to assemble your materials and to proceed with your work as outlined under the terms of our Agreement.

It will be necessary to obtain any prefabricated crossing materials on the basis of competitive bidding among the suppliers. At present, the following prefabricated crossings have been accepted by the department for use: Fab-Ra-Cast, Goodyear (Super-Cushion and Super-Cushion MLT), Hi-Rail, Omni Standard (full depth), Omni Steel Reinforced (Redhawk), Omni Heavy Duty (full depth, Redhawk), Parkco II, and Saf & Dri (Model 'S', Model 'C' and precast concrete). A minimum of three bids is required. In the event your Company desires to install an approved crossing other than the low bid, the state will participate in the amount of the low bid. Please provide this office with copies of the bids received and advise which material will be installed.

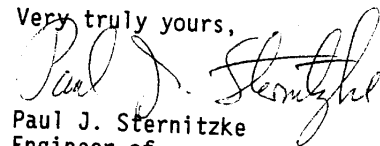
Prior to scheduling actual construction, you are required to notify Mr. Dale Grieser/Mr. Pat Gietl at telephone 217/782-4501, as specified in the Agreement.

B. G. Sykes/Toledo Peoria & Western Ry. Corp.
Page 2
April 24, 1992

This authorization to proceed is given with the condition that the NATIONAL GRADE CROSSING INVENTORY UPDATE FORM OMB-2130-0011 (FRA F-6180.71) be filed with the Director of Processing, Transportation Division of the Illinois Commerce Commission within 5 days of the completion of the improvement at the crossing. Please notify this office when your work is completed.

All bills for work performed at this location are to be forwarded to this office for payment. We request that the bills include all identification as included in the subject of this letter.

Very truly yours,



Paul J. Sternitzke
Engineer of
Design Operations

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and the TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION, hereinafter referred to as the "COMPANY",

W I T N E S S E T H:

THAT, WHEREAS, FAP Route 685 (Ill. Route 9), as located and constructed west of the City of LaHarpe, Hancock County, Illinois, there crosses at grade the single mainline track of the COMPANY, and the crossing thus formed (DOT/AAR No. 801 499T) is constructed of prefabricated rubber materials and protected with flashing light signal units automatically controlled by track circuitry; and

WHEREAS, in the interest of public safety and convenience, the parties hereto propose to remove and repair the existing grade crossing proper, all as shown on Exhibit 1 (4 sheets) attached hereto and made a part hereof; and

WHEREAS, the crossing renewal herein proposed to be performed by the COMPANY shall be completed with the highway closed to traffic; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements as hereinafter contained, the parties hereto agree as follows:

SECTION 1. The "Standard Provisions for State-Railroad Grade Crossing Agreements" attached hereto are hereby made a part of this Agreement, except that Provision 5 shall not be applicable.

SECTION 2. The COMPANY shall furnish, or cause to be furnished, at the expense of the STATE, all of the labor, materials and work equipment required to perform and complete:

(a). The removal of the existing grade crossing proper.

with (b). The ~~repairs and~~ installation of ~~the existing~~ prefabricated ~~rubber~~ grade crossing proper (including the installation of

engineering filter fabric and pipe underdrains) over the track to extend between points located one (1) foot outside the edges of pavement thence extended with treated timber and/or bituminous materials to points located eight (8) feet outside the edges of pavement, all as shown on Exhibit 1.

- (c). The removal, replacement and resurfacing of the pavement approaches with bituminous concrete, Class I, all as shown on Exhibit 1.
- (d). The furnishing, erection, maintenance, and removal of signs, barricades, and traffic control devices as required to perform the work herein proposed.
- (e). Incidental work necessary to complete the items hereinabove specified.

The estimated total cost of the work to be performed hereunder by the COMPANY at the expense of the STATE as outlined above is ~~\$38,997~~ ^{#44,241⁰⁰}, contemplated by the approved detailed estimate of cost attached hereto.

- (II). WORK BY THE STATE. The STATE shall furnish or cause to be furnished, at its expense, all of the labor, materials and work equipment required to perform and complete;
- (a). The furnishing of a traffic control plan to the COMPANY.
 - (b). Incidental work necessary to complete the items hereinabove specified.

SECTION 3. Upon the completion of the work herein contemplated, the COMPANY shall operate and maintain, at its expense, the warning devices and the grade crossing proper, and the STATE shall maintain, or cause to be maintained, the highway up to the ends of the track ties.

SECTION 4. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 22-2814670 and the COMPANY is doing business as a corporation.

SECTION 5. This Agreement shall be binding upon the parties hereto, their successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterparts, each of which shall be considered as an original by their duly authorized officials, as of the dates below indicated.

Executed by the STATE, this 23rd
day of April, 1992

STATE OF ILLINOIS, acting by and through
its Department of Transportation,

By Ralph C. Weber
Director of Highways ar

Executed by the COMPANY, this _____
day of _____, 19__.

Attest:

TOLEDO, PEORIA & WESTERN
RAILWAY CORPORATION,

By E. Kenneth [Signature]

State of New Jersey } ss:
County of Somerset }
SUBSCRIBED AND SWORN to BEFORE ME
THIS 15th DAY OF July 1991

Joseph Markowitz

JOSEPH MARKOWITZ
Notary Public of New Jersey
My Commission Expires July 15, 1996
11/13/1995

2487N

ADDENDUM TO PROJECT NOTICE

It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in 49 Code of Federal Regulations (CFR) Part 23, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this agreement.

The COMPANY agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of this agreement. In this regard, the COMPANY shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of this agreement. The COMPANY shall not discriminate on the basis of race, color, national origin or sex in the selection and retention of contractors, including procurement of materials and leases of equipment.

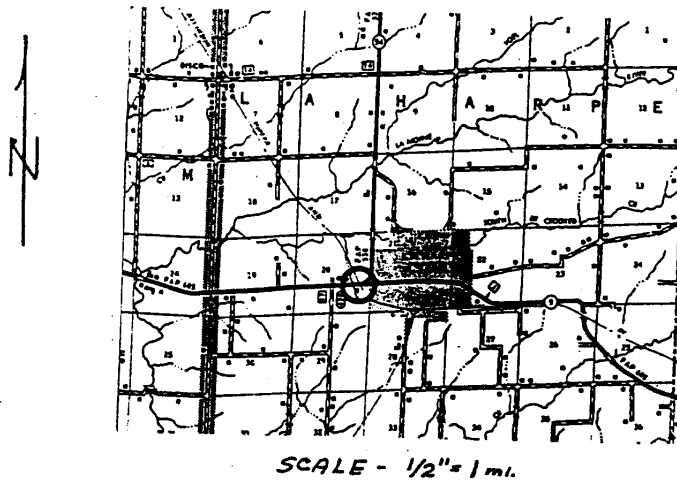
The COMPANY shall include this provision in every subagreement, including procurement of materials and leases of equipment.

Failure to carry out the requirements set forth above shall constitute a breach of agreement and may result in termination of the agreement or such remedy as deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by any one under contract for public works" (Illinois Revised Statutes, Chapter 48, paragraph 39s-1 et seq.) shall apply.

1 of 4

D96-011-91
C96-054-91



GRADE CROSSING IMPROVEMENT

FAPROUTE 685 (IL Rte 9)
● La Harpe

SECTION 92 R-6-C6

PROJECT

JOB NO. C-96-054-91

COUNTY HANCOCK

RAILROAD TP&W

NATIONAL CROSSING NO. 801-499 T

R.R. M.P. 196.46

JOINT UTILITY LOCATING
INFORMATION FOR EXCAVATORS
1-800-892-0123

EXHIBIT 1

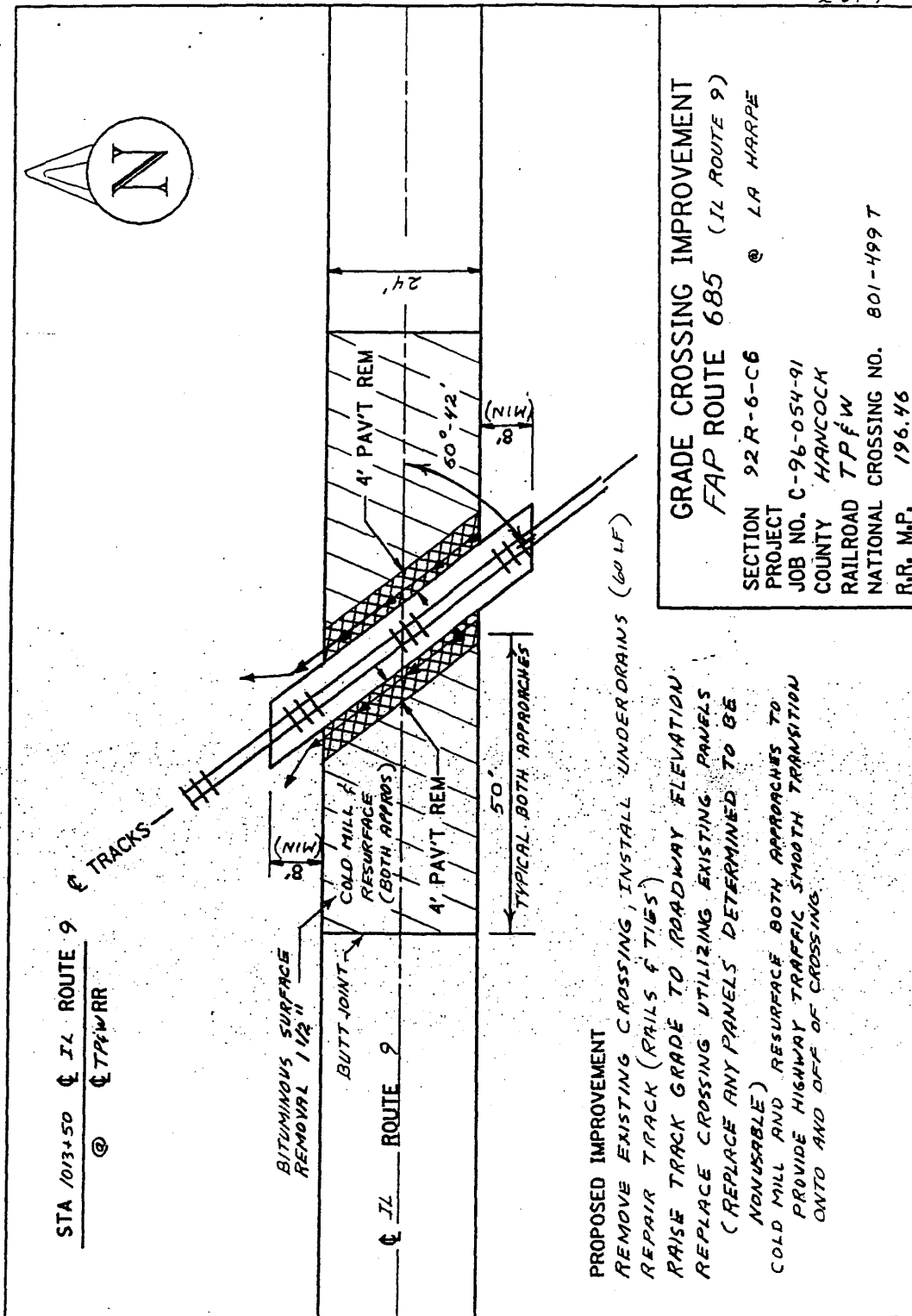
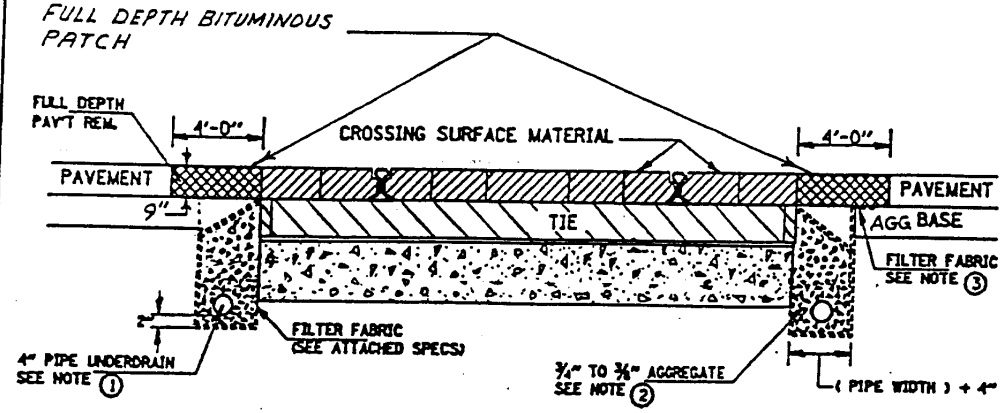


EXHIBIT 1
(2024)

PIPE UNDERDRAIN INSTALLATION

SECTION A-A



- ① 4" PIPE UNDERDRAINS SHALL MEET OR EXCEED AASHTO M278, AASHTO M252 OR AASHTO F 949 (SEE SECTION 707 OF IDOT STANDARD SPECIFICATIONS)
- ② 4" PIPE UNDERDRAINS SHALL BE SURROUNDED BY COURSE AGGREGATE FREE OF FINES MEETING IDOT SPECIFICATIONS SECTION 704 FOR CA 13, 14, 15 OR 16
- ③ FILTER FABRIC SHALL BE FIRMLY HELD IN PLACE AT THE EDGES DURING PLACEMENT OF AGGREGATE AND LAPPED OVER AGGREGATE BEFORE PLACING BASE COURSE.

JOINT UTILITY LOCATING
INFORMATION FOR EXCAVATORS
1-800-892-0123

GRADE CROSSING IMPROVEMENT
ROUTE FAP 685
COUNTY HANCOCK
SECTION 92R-6-C 6
RAILROAD TPFW
DOT/AAR 801-499 T
RR MILEPOST 196.46

EXHIBIT 1

State of Illinois
Department of Transportation

SPECIAL PROVISION
FOR
USE OF GEOTECHNICAL FABRIC
FOR FRENCH DRAINS

Effective April 15, 1982
Revised July 1, 1988

Description. This work shall consist of furnishing all materials, equipment, and labor and performance of all required operations for the installation of geotechnical fabric in lining trenches (French Drains).

Material. Fabric considered for use under this provision shall consist of woven or nonwoven filaments of polypropylene, polyester or polyethylene. Nonwoven fabric may be needle punched, heat-bonded, resin-bonded or combinations thereof. The filaments must be dimensionally stable (i.e., filaments must maintain their relative position with respect to each other) and resistant to delamination. The filaments must be free from any chemical treatment or coating that might significantly reduce porosity and permeability.

The fabric shall comply with the following physical properties:

Weight (oz./sq. yd.)	- 3.5 min	- ASTM D 3776
Grab tensile strength (lbs.)	- 100 min ^{1/}	- ASTM D 4632
Grab elongation @ break (%)	- 20 min ^{1/}	- ASTM D 4632
Equivalent opening size (EOS NO.)	- 30 min nonwoven ^{2/}	- CW-02215-77
	- 50 min woven ^{2/}	Corps of Engineers

1/ For woven fabric, test results shall be referenced to orientation with warp or fill, whichever case may be. Both woven and nonwoven fabrics shall be tested wet.

2/ Manufacturer's certification of fabric to meet requirement.

Handling and Storage. Fabric shall be delivered to the job site in such a manner to facilitate handling and incorporation into the work without damage. In no case shall the fabric be stored and exposed to direct sunlight that might significantly diminish its strength or toughness. Torn or punctured fabric shall not be used.

Installation. After all the necessary excavations of the trench to the required depth, leveled and smoothed as shown in the plans, the fabric shall be loosely rolled out in such a manner that the center of the fabric is at the centerline of the excavated trench.

The fabric should not be stretched so that it will tear when the aggregate is placed. When several sections of fabric are used, the fabric shall overlay a minimum of 2 feet to assure continuity of the filter. Enough fabric shall remain uncovered to provide for fabric overlap at the top.

During backfilling with angular aggregates, carefully place a minimum 6-inch cushion of the aggregate over the lined trench before and dumping larger aggregates out of trucks or other equipment. Following the backfilling operation, the fabric shall be lapped over the top and covered with another specified material.

Method of Measurement and Payment. Geotechnical fabric will be measured in-place and the area computed in square yards. This work will be paid for at the contract unit price per square yard in-place for GEOTECHNICAL FABRIC FOR FRENCH DRAINS. French Drains will be measured for payment in accordance with Article 301.12 of the Standard Specifications. All excavation and disposal of surplus material shall be included in the cost of French Drains.

EXHIBIT 1
(4 OF 4)



TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION

1990 E. Washington Street • East Peoria, Illinois 61611-2961

Telephone (309) 698-2600 • Fax (309) 698-2679

FORCE ACCOUNT ESTIMATE FOR THE STATE OF ILLINOIS

To remove and reconstruct (1) 24 ft. shimmed rubber crossing and to construct two (2) 8 ft. solid timber extensions at ILL-9, MP 196.5, D.O.T. No. 801-499T, La Harpe, Illinois.

Labor:	Quantity	Units	Subtotal	Total
--------	----------	-------	----------	-------

Assemble Material	1	day	890	
Remove 54' shimmed rubber xing and old ballast	1	day	890	
Change out (4) 115# Rails and (53) ties	1	day	890	
Boutet Welds - 115#	1	day	126	
Place Filter Cloth, Drain Pipe, Unload ballast and surface	1/2	day	445	
Place 24 ft. shimmed rubber xing and 16' solid timber	1	day	890	
Preliminary Engineering	1/2	day	277	
Construction Engineering	5	day	695	
Incidental and Clean-up	1/2	day	445	
Payroll Associated Costs			5,663	
TOTAL LABOR				

11,211
\$11,161
Addition Error

Material:

7 x 9 x 9 ft. xing ties	27	ea	891	
6 x 8 x 8'6" grade ties	26	ea	572	
39 ft. 115# SH Rail	4	ea	1,268	
Boutet Welds	2	ea	100	
Filter Fabric	100	ft.	184	
Drain Pipe	150	ft.	36	
Replacement Parts for	1	ls	(-) 2,306	
24 ft. SAF and DRY	30 @ 208		6,240	
Model C shimmed rubber		21%	1,310	
xing				
16' solid timber extensions	1	ls	1,140	
Spikes	2	kg	120	
Rail Anchors (SH 115#)	300	ea	225	
Ins. Joints	4	pr	1,400	
Ballast	80	ton	360	
Tie Plates (SH)	54	ea	200	
Cam Screws	152	ea	266	
Fuel & Supplies	1	ls	150	
Transportation & Handling			1,936	
TOTAL MATERIAL				

~~\$11,154~~

Other:	Quantity	Units	Subtotal	Total
Equipment Rental			2,675	
Subsistence Allowance			2,120	
TOTAL OTHER				4,795
Billing & Accounting				271
Contingencies				2,711
Less Salvage				-145
TOTAL ESTIMATED COST - TRACK				29,947
Approach Paving, removal and replacement, pavement cut				6,000
Traffic Control				3,000
GRAND TOTAL				\$ 38,947
				\$ 38,947
				44,241

EXHIBIT 10

KAVANAGH,
SCULLY,
SUDOW, &
WHITE
FREDERICK, P.C.
Attorneys & Counselors at Law

October 28, 2003

Telephone: 309-676-1381
Fax: 309-676-0324
Web Site:
www.ksswf.com

JOSEPH Z. SUDOW

JULIAN E. CANNELL

DAVID J. WALVOORD

CHARLES G. ROTH

PHILLIP B. LENZINI

KAREN M. STUMPE

BRIAN D. MOOTY

JAMES W. SPRINGER

GARY E. SCHMIDT

DEXTER R. GRUBER

LINDA S. FICHT

BETH M. WELLENRAITER

Founded in 1883 as
Worthington & Page

RICHARD J. KAVANAGH
(1894-1963)

J. CHASE SCULLY, JR.
(1907-1969)

WILLIAM McD. FREDERICK
(1907-1991)

DONALD G. BESTE
(1906-1996)

OF COUNSEL

JORDAN A. FIFIELD
JULIAN B. VENEZKY
EUGENE L. WHITE

Mr. Daniel A. LaKemper
General Counsel
Keokuk Junction Railway Co.
1318 S. Johanson Road
Peoria, IL 61607

Re: Opinion Letter Regarding Title Conveyed by Deeds Contained in the Addendum of the Verified Statement of Todd N. Cecil regarding the matter before the Surface Transportation Board, Finance Docket No. 34335

Our file No: 16442.1

Dear Mr. LaKemper,

You have requested that I provide you an opinion regarding the type of ownership interest conveyed by the deeds contained in an Addendum to the verified statement of Todd N. Cecil (hereinafter referred to as the Addendum) regarding the above referenced matter.

I have analyzed all of the deeds contained in the Addendum. My opinion is limited to the type of ownership interest conveyed based on the language contained in each of the deeds as governed by relevant Illinois case law interpreting railroad deeds and relevant Illinois statutes and the Illinois Constitution. I have not attempted to determine if the deeds set forth in the Addendum reflect all of the deeds necessary or affecting the rail line property in question, the chain of title regarding the deeds in the Addendum and whether the deeds in fact are the documents indicating the current record title ownership in the rail line. My opinion is limited to what title or ownership interest was granted by the deeds to the grantee of each of the deeds contained in the Addendum.

I am a member of the law firm of Kavanagh, Scully, Sudow, White and Frederick P.C.. I was admitted to the practice of law in Illinois in 1986. I concentrate my practice in real estate law and represent both buyers and sellers of residential and commercial real estate. I assist many clients with commercial real estate issues including sales and acquisitions, leasing, development, zoning, environmental problems and status of title and title insurance. My real estate practice also includes public, affordable housing, and local government law. My firm is an agent of the Attorneys Title Guarantee Fund and I



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have personally acted as title agent on numerous transactions and I have issued many real estate title commitments and title policies as a title agent. I am admitted to practice before the U.S. District Court, Central District of Illinois; and the U.S. Court of Appeals, Seventh Circuit. Education: Bachelor of Arts degree in Political Science from Eastern Illinois University (B.A., 1983); and J.D. degree from The Southern Illinois University School of Law (with honors, 1986). I am a member: the Peoria County Bar Association (Member: Real Estate Committee (Chairman, Real Estate Committee, 1994-95 and 2002-03), and the Continuing Legal Education Committee 1990-present), I am a member of the joint PCBA Peoria Area Realtors Association Contract Committee. I am also a member of the Illinois State Bar Association (Member: Real Estate Section Council 1998-present), the Illinois Real Estate Lawyers Association and the National Apartment Association (NAA attorney for review of the NAA lease forms for compliance with Illinois law). I am the author of Chapter 18, Easements and Licenses, in *Residential Real Estate* (ICLE 2003) and Chapter 8, The Illinois Responsible Property Transfer Act, in *Environmental Law for Transactional Attorneys* (ICLE 2001).

Neither I nor my firm has provided legal services to the Keokuk Junction Railway Company or Pioneer Railcorp prior to this letter.

Opinions as to the Property Interest Conveyed by the Deeds in the Addendum.

The Addendum contains over two hundred separate deeds. I have individually reviewed each deed and determined that many of the deeds contain the same language or were the same preprinted form deeds. Accompanying this letter is Exhibit A which is incorporated herein by reference. Exhibit A sets forth the different forms of deed and at which page they appear in the Addendum. Some deeds were repeated in the Addendum and the repeated deeds are noted on Exhibit A. I have also set forth my opinion on Exhibit A (as well as in this letter) the type of ownership interest conveyed by each type of deed. For instance Row 1 of Exhibit A lists all of the copies of deeds to the Toledo, Peoria and Warsaw Railway Company (TP & W RR) that are handwritten into the tract index as opposed to copies of actual deeds. The language of the deeds listed under Row 1 have the same language as the deed forms listed under Row 2 of Exhibit A.

This letter will now address each of the types of deed found in the Addendum in the order set forth in Exhibit A.

I. Deeds Listed in Rows One and Two of Exhibit A: the TP & W RR Form Deeds.

The Toledo Peoria and Warsaw Railway Company deeds listed under Rows 1 and 2 of Exhibit A all contain the same form language. The deeds noted in Row 1 are copies of the deeds as recorded in the tract index. The deeds listed in Row 2 are actual copies of the preprinted deed form that were filled in for each transaction. The language of the deeds recorded by hand in the Tract index in Row 1 are the same as the printed deed forms listed in Row 2 of Exhibit A.



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The deeds in Rows 1 and 2 provide for the grantor to "grant, bargain and sell unto" the TP & W RR "all that part of the of the following described Real Estate ... which is occupied and used by the said Railway of the width of _____ feet on each side of the main Track of the Railway Company, to wit, ..." The legal description is then inserted.

The deeds then read in their *habendum* clause: "To Have and to Hold the Same, together with all the rights privileges, and appurtenances thereunto belonging or proper to the operation of said Railway, to the said Railway Company, its successors and assigns Forever."

The language of the deeds in question indicate that the ownership interest conveyed was for an easement allowing the grantee rail road the exclusive right to use the property included in the conveyance for railroad purposes. See *Walker v. Illinois Central Rail Road Co.*, 215 Ill. 610, 74 N.E. 812 (1905). In *Walker* the Illinois Supreme Court interpreted similar language in a deed to indicate that the grant was exclusive for the use of the railroad but for less than a complete grant of a fee interest. The grant was valid for so long as the property was used for railroad purposes.

The language of the deeds set forth in Rows 1 and 2 of exhibit A state a similar intention; there is a grant of an interest, but it is qualified by "all that part occupied and used by the Railway." When a deed conveys land to a railroad with no language in the deed limiting the estate conveyed, the deed will be construed to convey a fee simple title. *Keen v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.*, 392 Ill. 362, 64 N.E.2d 499 (1945). See also *Penn Central Corp. v. Commonwealth Edison Co.*, 159 Ill. App. 3d 419, 512 N.E.2d 118 (3rd Dist. 1987). "The words of grant, 'convey and warrant,' convey the fee unless they are limited to a lesser estate by words found in the granting clause or in the *habendum* of the deed, if it contains an *habendum*. Limiting words may be used, however, in conveying a life estate or an estate for years, and words limiting the estate conveyed to an estate of the character of either of the two last mentioned are not inconsistent with such words of grant; and where there is language, either in the granting clause or in the *habendum* of the deed, limiting the estate conveyed by such granting words to one less in extent than a fee, such words of limitation will be given effect." *Tallman v. Eastern Illinois and Peoria Railroad Co.*, 379 Ill. 441, 453, 41 N.E.2d 537, 543 (1942). Therefore, there was not a complete grant of a fee interest in the land described in the TP & W form deeds because the granting clause language was specifically limited to the land "occupied and used by the Railway." If part of the property described in the deed was not used and occupied by the railway then rights in the land were not conveyed to the railroad despite the fact that it may be described in the deed. In addition, the words "used and occupied" indicate that if the land ceases to be used and occupied by the railroad then the easement ownership interest ceases.

Moreover, the grantee railroad's use of the property and the rights granted were further restricted by the *habendum* language "To Have and to Hold the Same, together with all the rights privileges, and appurtenances thereunto belonging or proper to the operation of said Railway...." As a consequence this language limits the grantee railroad's use of the property where the rail

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road was using and occupying the property described in the deed to only those rights in the land necessary to the proper operation of the railway. If a fee simple conveyance was intended then the limiting language in the granting clause of occupancy and use is not necessary as well as the "To Have and to Hold" language of the *habendum*. If a fee simple grant is determined to be the effect of the deed then the "Have and to Hold" language would have to be disregarded and rendered as mere surplusage which is not permitted under Illinois law. See, *Tallman v. Eastern Illinois and Peoria Railroad Co.*, 379 Ill. 441, 41 N.E.2d 537 (1942).

The language of the deeds in rows 1 and 2 of Exhibit A do not constitute a fee simple grant of ownership to the grantee railroad. If such a fee simple grant of ownership to the property was intended then the language limiting the grant to where property was occupied and used by the railway would not be necessary and further the language stating that the property was held for the purposes of the railroad would be unnecessary. Instead, the express language of the deeds noted in rows 1 and 2 of Exhibit A state that the ownership interest conveyed are grants of exclusive easements to the grantee railroad which shall exist as long as the property is used for railroad purposes.

II. Deed Listed in Row 3

The deed noted in Row three of Exhibit A is a Warranty Deed with no language or restriction or limitation other than an easement reserved to the Grantor. The deed conveys a fee simple ownership in the grantee.

III. Deed Listed in Row 4

This deed contains the same language as the form deeds noted in Rows 1 and 2 and therefore is grant of an easement. However, the property described is in the City of Peoria and does not appear to be a part of the rail line in question.

IV. Deeds Listed in Row 5

The form deeds with grantee being the TP & W RR noted in Row 5 are form quitclaim deeds with out language of limitation in the granting clause or elsewhere in the deeds. It is noteworthy that the TP & W RR did use a separate form of quit claim deed without limiting language. The ownership interest granted is a fee simple interest of whatever interest, if any, held by the grantor.

V. Deed Listed in Row 6

The deed noted in Row 6 (the same deed was included three times in the Addendum) has somewhat different granting language but contains the same limiting language of the deeds in Rows 1 and 2 of Exhibit A, and, therefore, convey an easement to the grantee railroad of the same nature as the deeds in Rows 1 and 2.

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VI. Deeds Listed in Row 7

These deeds are the same form of deed used in Rows 1 and 2 but contain express references to the land described in the deeds as having been part of a condemnation action. Railroad condemnation actions prior to August 8, 1870 provided for the railroads to obtain fee simple title to the property. Therefore, the title to the property held by the railroad described in these two deeds may be in fee simple, however, additional research regarding the condemnation would be necessary to confirm the status of title and intent of the deeds.

VII. Deeds Listed in Rows 8 and 9: The Mississippi and Wabash Railroad Grants of Right of Way

The deeds in Row 8 and 9 are grants of right of way to the Mississippi and Wabash Railroad Company. The deeds in the Appendix noted in Row 8 are copies of preprinted form deeds. The deeds noted in Row 9 are tract index entries indicating deeds with the same language as the deeds listed in Row 8 of Exhibit A. Therefore the same analysis applies to the deeds listed in Rows 8 and 9 of Exhibit A.

The deeds in Rows 8 and 9 state that the railroad company "is about to construct a railroad over and across the premises hereinafter described:" The deeds then state after identifying the grantor that the grantor "give, grant, confirm, and release unto said railroad company, for and during the full term of the existence of said corporation, the right privilege and authority, to build, erect, construct, re-construct, and keep in repair, a railroad of the kind and character that said company are by their charter authorized to construct, over, upon an across the following described parcel of land...."

After the legal description the form document contains an additional space after the words "Wherever said company may locate the same: Provided:" This space was used on the deed to insert additional terms or conditions such as railroad crossings or fences to be constructed by the grantee.

The document then states, "The RIGHT OF WAY above granted to be ONE HUNDRED FEET WIDE. And the said company are hereby authorized and empowered to take and use for the purpose of said road, all and any GRAVEL, ROCK, or TIMBER, being on the ground over which the RIGHT OF WAY for said road is above granted, and within the limits of said one hundred feet in width...."

The *habendum* of the document then states: "To have and to hold the RIGHT OF WAY above granted, and the rights conveyed, to said [railroad company], for and during the full term of the existence of said corporation."

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The language of this deed clearly conveys only an easement interest in the properties described in these deeds. The granting clause does not contain the statutory "convey and warrant" or "grant bargain and sell" language used, if not otherwise limited in a deed, to indicate conveyance of a fee interest.

Also the grant is limited to the existence of the corporation which clearly indicates a conveyance of less than a fee interest.

The language in the documents: "the right privilege and authority, to build, erect, construct, reconstruct, and keep in repair, a railroad of the kind and character that said company are by their charter authorized to construct, over, upon an across the following described parcel of land..." is language typically found in easement agreements used to describe the scope of the easement granted. This language would be unnecessary if a fee simple interest had been conveyed.

The language "The RIGHT OF WAY above granted to be ONE HUNDRED FEET WIDE. And the said company are hereby authorized and empowered to take and use for the purpose of said road, all and any GRAVEL, ROCK, or TIMBER, being on the ground over which the RIGHT OF WAY for said road is above granted, and within the limits of said one hundred feet in width..." is also language of an easement grant indicating that the railroad had the right to use gravel, rock and timber located on the described property, but only for railroad purposes. Thus, there is an easement grant to use the property but once again only for railroad purposes.

In addition the document refers several times in bold letters to a grant of a right of way. A grant of a right of way has been held under Illinois case law to be a grant of an easement. The deeds noted in Rows 8 and 9 both state that there is a grant of a right of way and that the property is to be held as a right of way. See *Tallman v. Eastern Illinois and Peoria Railroad Co.*, 379 Ill. 441, 41 N.E.2d 537 (1942). In *Talman*, the court found, citing other Illinois cases interpreting the words right of way in deeds to railroads, that the words right of way indicated an intention to create an easement rather than a fee simple conveyance. The words right of way could limit the granting language of "convey and warrant" and cause a deed to be construed to be fee simple grant of a limited easement interest rather than a complete fee simple grant. Here, for the deeds noted in Rows 8 and 9 the deeds lack the statutory granting language of "convey and warrant" or "grant, bargain and sell" and therefore the repeated use of the words right of way do not even have to limit what would otherwise possibly be a fee simple conveyance. As a consequence a limited, non-exclusive easement right was conveyed to the railroad by these easement deeds.

VII. Deeds Listed at Row 10

The deeds listed at Row 10 are warranty deeds with out limiting language. The deeds contain a reverter clause if the property ceases to be used for railroad purposes. Pursuant to 765 ILCS 330/4 neither a right of re-entry or possibility of reverter is now valid for more than forty years from the date of the creation of the condition. As a consequence the interest conveyed was a fee simple interest and the possibility of reverter is no longer valid.

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VII. Deeds Listed in Rows 11 and 12

The deeds listed in Rows 11 and 12 are either warranty deeds or quitclaim deeds that have no language of limitation of the grant. Therefore a fee simple interest was granted.

VIII. Deeds Listed in Row 13

The deeds noted in Row 13 of Exhibit A are forms containing the granting language "Convey__ and Quitclaim__." This language without more would indicate a fee simple grant. However, in each of the noted deeds under Row 13 the same or very similar language appears handwritten in after the legal description of the property: "It is understood between the parties hereto that this deed is a settlement of the right of way over the above described land...." As a consequence the deeds indicate that the intent of the parties was to settle the railroads claim of a right of way. Therefore, based on the expressed intent of the parties only an easement for a right of way was conveyed by these deeds.

IX. Deeds Listed in Rows 14 and 15

The deeds are the TP & W RR forms noted in Rows 1 and 2. The same analysis applies with additional language regarding the grant of an easement. An easement was granted.

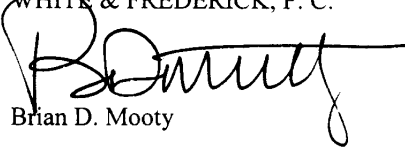
X. Deeds Listed in Rows 16, 17 and 18

Each of these deeds contain language granting a fee interest but then indicate an intent to grant a right of way. The deed at page 333 was incomplete but appears to grant an easement. All three appear to grant an easement.

If you have any questions please call.

Very truly yours,

KAVANAGH, SCULLY, SUDOW,
WHITE & FREDERICK, P. C.



Brian D. Mooty

BDM:mjg
Enclosure

**Exhibit A to Opinion Letter of Brian D. Mooty as to Classification of Deeds
Before the Surface Transportation Board
Finance Docket No. 34335**

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
1.	Handwritten Tract Index Toledo, Peoria and Warsaw RR Company – Contains language Accepted and used Have and Hold proper to operation of the Railway	2, (same deed as shown on page 4), 5, 7, 8, 9, 10, 11, (Same deed shown on page 14, and page 16), 12, 15, (same deed repeated on page 36), 17, 19, 23, 25 (same deed shown on page 26), 27, (same deed shown on page 29), 32, 33, (same deed repeated on page 34 and 35), 37, 38 (same deed repeated at pages 40 and 44), 39 (same deed repeated at pages 41 and 45) 42, 46 (same deed repeated at page 54), 48 (same deed repeated at 60), 50, 52 (presumed a grant same as deeds under #1 but illegible), 53, 56, 58, 60, 62, 66, 90, 94, 97, 99, 103, 105, 107, 143, 238, 272, 278, 287, 297, 308	Easement	

Exhibit A to Opinion Letter of Brian D. Mooty

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
2.	Printed "Know all Men by these Presents" Toledo Peoria and Warsaw RR Company Grant Bargain and Sell Deeds Uses Language: Accepted and used Have and Hold proper to operation of the Railway	68, 74, 76 (same deed shown at page 80), 78 (same deed shown at page 82), 84, 86, 88, 101, 118, 126, 134, 141, 145, 151 (same deed shown on page 158), 160, 162, 164, 170, 171, 187, 200, 225, 232, 243, 245, 247, 253, 257, 261, 263, 265, 267, 269, 276, 279, 281, 283, 285, 289, 291, 293, 295, 298, 300, 302, 304, 306, 309, 321, 323, 360, 362, 364, 366, 368, 370, 372, 374	Easement	
3.	Typewritten tract index showing deed to TP&W Warranty Deed showing easement reserved to Grantor for mining	21	Fee	
4.	Handwritten tract index showing deed to TP & W RR with same language as 1 and 2 But shows conveyance in city of Peoria. Does not appear to be part or rail line in question	24	Easement	Does not appear to be part of rail line in question

Exhibit A to Opinion Letter of Brian D. Mooty

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
5.	Printed form of quit claim to TP&W.	31, 130, 271	Fee	
6.	Similar language to #1 TP&W deeds but states grants, sells, remises and quit claims. Has "occupied and used" language and "proper operation" language	64 (same deed shown at pages 70 and 72)	Easement	
7.	Printed "Know all Men by these Presents" Toledo Peoria and Warsaw RR Company Grant Bargain and Sell Deeds Accepted and used Have and Hold proper to operation of the Railway	92, 95	Fee?	Contains language stating that deed was issued as a result of a condemnation action Condemnation Occurred prior to August 8, 1870 so condemnation was for probably for a fee

Exhibit A to Opinion Letter of Brian D. Mooty

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
8.	Printed Mississippi and Wabash Railroad Company Right of Way Form	109, 111, 113, 119, 124, 127, 132, 136, 137, 147, 149, 152, 153, 173, 175, 178, 181, 185, 195, 196, 197, 204, 205, 210, 212, 216, 223, 227, 234, 236, 249, 259, 311, 313, 315, 317, 319, 325, 327, 329, 335, 337, 340, 342, 344, 346, 348, 350, 354, 356, 358, 376, 378, 380	Easement	
9.	Handwritten Tract Index form of Mississippi and Wabash RR form	114, 116, 120, 123 (122 is second page to page shown on 123), 155, 165, 167, 176, 177, 179, 231, 239, 241	Easement	
10.	Warranty Deed to TP & W	139, 352	Fee	With Reverter
11.	Warranty Deed to Wabash, St. Louis and Pacific RR,	183, 193	Fee	
12.	Quit Claim to Wabash, St. Louis and Pacific RR,	189 (same deed appears on page 191), 206	Fee	
13.	Quit Claim to Wabash, St. Louis and Pacific RR, language stating that deed was issued as settlement for a right of way	198, 203, 208, 214, 218, 220, 222, 229	Easement	

Exhibit A to Opinion Letter of Brian D. Mooty

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
14.	Printed "Know all Men by these Presents" Toledo Peoria and Warsaw RR Company Grant Bargain and Sell Deeds Contained language: Accepted and used Have and Hold proper to operation of the Railway	251, 255	Easement	Contains Restriction and payment for damages to grantor if damaged by RR
15.	Printed "Know all Men by these Presents" Toledo Peoria and Warsaw RR Company Grant Bargain and Sell Deeds	274	Easement	Contains language grant for so long as used for railway purposes
16.	Warranty Deed to Wabash, St Louis and Pacific RR. Containing language stating intent was to convey a right of way	331	Easement	
17.	Copy of part of Deed missing conveyancing language and grantee. Refers to grant of right of way claimed by "Said Company"	333	Easement	

Exhibit A to Opinion Letter of Brian D. Mooty

Row	Type of Deed	Page Type of Deed found in Addendum to Verified Statement of Todd N. Cecil	Classification	Comments
18.	Warranty deed to TP & W RR with language indicating conveyance of right of way	339	Easement	

EXHIBIT 11

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

FINANCE DOCKET NO. 34335

**KEOKUK JUNCTION RAILWAY CO.
--FEEDER RAILROAD DEVELOPMENT APPLICATION--
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

VERIFIED STATEMENT OF L. ARLEN HIGGS

My name is L. Arlen Higgs. I am an Illinois-certified residential real estate appraiser, and have been licensed for over ten years. I have also been a licensed real estate broker since 1971. My office is located in Canton, IL (which is located on the rail line in question). Over the past 10 ½ years, I have completed 17 real estate appraisal courses, the most recent being appraisal of non-residential properties. I do appraisals of residential, commercial, and agricultural property for various banks and attorneys in west central Illinois, including Wells Fargo Bank, Bank of Farmington, Mid America National Bank, Farmers and Merchants State Bank (in Bushnell), Bank of Yates City, and Heritage Bank of Central Illinois. A copy of my qualifications is appended to this statement.

I was approached by Keokuk Junction Railway Co. ("KJRY") and its parent, Pioneer Railcorp, about two weeks ago, and was asked to review the rail corridor valuation study prepared by Todd N. Cecil, an employee of RailAmerica, Inc., based in Texas. The study concerns a railroad right of way extending from railroad Milepost 118.5 at Hollis to Milepost 194.5 at LaHarpe, and assigns alternative values based on alternative uses, including liquidation

through sale of parcels to adjoining landowners. Although I have not done work for KJRY or Pioneer before, they asked me to review Mr. Cecil's report and to evaluate it for them based on my knowledge of the local real estate market.

My engagement in this assignment was not contingent upon developing or reporting predetermined results. I have no bias with respect to the property that is the subject of this report or the parties involved with this proceeding.

I have thoroughly read Mr. Cecil's report. I have also conducted my own study of the rail corridor, including viewing it from the ground and from the air, photographing it and studying maps of the line and the local area. I have also done my own research on comparable sales. Though, as I understand it, KJRY may not be free to submit a complete appraisal report at this stage of this proceeding, I can say that if I were submitting an appraisal, it would show a much lower value than Mr. Cecil's report.

There are two particular errors in Mr. Cecil's report that clearly are inconsistent with the local real estate market in this area. Those errors concern projected time of sale and the degree of discount from across-the-fence value that should be applied to sales of abandoned railroad right of way. This statement addresses those two issues.

Mr. Cecil projected that the right of way could be sold off in parcels to adjoining landowners over the course of three years, with 65% of the property selling in the first year, 25% in the second year and 5% in the third year. Based on my experience in real estate sales in the communities along this rail line, the parcels of the right of way would not sell that quickly. Prime properties in these communities often take five to six months to sell. Most of this right of way would not be considered prime property in that context. I would estimate that perhaps 50% of the property could be sold in the first year, the next 45% over the course of the second and

third years, with the final 5% taking an undetermined longer period. Mr. Cecil's more aggressive sales projections are, in my experience and opinion, unrealistically rapid.

The second issue is the degree of discount from across-the-fence value assigned by Mr. Cecil. His report does not specifically quantify his adjustment for this factor. In my experience and based on my research, however, he has not realistically discounted for sales of right of way property.

Through research, I identified records of six sales in Illinois of abandoned rail rights of way to neighboring or nearby landowners over the past 15 years. The data I obtained on those sales is as follows:

Sale #1

In December, 1988, Illinois Central Gulf Railroad Company sold a strip of abandoned railroad right of way to Walter Allen (Bk. 185, page 202). This is a uniform 100 foot wide strip which cuts diagonally across the Southwest Quarter Section 14, T17N, R8W, in Menard County. The strip is 2,160 feet long, indicating an area of 216,000 square feet, or 4.96 acres. Sale price was \$3,000 or approximately \$605/acre.

This property is located two miles southwest of Tallula, Illinois. Land surrounding this sale was all used for agricultural purposes. The surrounding land is level to gently rolling and all is highly productive upland prairie soils. Land surrounding this sale, in the same quarter section, sold in November 1987, at \$1,995/acre. Similar land in the area sold in December, 1988 at \$2,150/acre. Viewing similar land, unaffected by shape and ballast of a railroad at \$2,150, and the sale at \$605/acre, would indicate a loss of \$1,545/acre for these factors. This \$1,545/acre loss reflects a discount of 71.9%. The railroad right of way in this sale was near the grade of adjacent lands and had access to a township road at the north line.

Sale #2

In March 1990, Illinois Central Gulf Railroad sold a 100 foot wide strip of rural Menard County land to Melvin A. Schoneweis (Bk. 205, page 1). This strip, being 1,780 feet long, contained approximately 4.0 acres. This strip sold for \$2,000, or \$500/acre, and is located just ½ mile southwest of Sale #1.

The strip in this sale is near the grade of adjacent lands. The adjacent lands are nearly level and all used as highly productive upland prairie farm land. This strip is not, therefore, in a

large cut or fill section. Surrounding land has a value near \$2,300/acre in March 1990, indicating a \$1,800/acre discount (78.3%). It is noted that this 100 foot x 1,780 foot strip had no road frontage. This lack of access is considered to be a detrimental element, along with the shape of the sale and the ballast thereon. On the other hand, by purchasing this strip, the adjacent owner was able to correct internal field shape deterioration which had been caused by the diagonal nature of the railroad right of way.

Sale #3

Sangamon, Inc. sold an unimproved 2.83 acre parcel of rural Sangamon County land to Patricia K. Rudolph on February 10, 1992 (Date of Deed) (Doc. #92012933 Warranty Deed, Recorded March 31, 1992). This 60 foot wide, 1,650 foot strip of former railroad right of way also includes a small 0.33 acre triangular shaped tract along the south side at the west end of the sale. This tract has no frontage along a public roadway. However, a small township road (4.5 East) dead ends just north of the west end of the property. The property was acquired by the owners of adjacent agricultural land to the north and south of the sale. This sale is situated in Section 5, T15N, R4W, Sangamon County, Illinois, one mile northeast of the southeastern edge of the City of Springfield.

This sale ranges from nearly level to gently rolling ground with some sloping in the central part of the tract where a small draw cuts across the property. Soils on this tract are a mixture of Tama (36) silt loam, Sawmills silty clay loam (107), Elco silt loam (119) and a small amount of Lawson silt loam (451). Tama and Lawson are highly productive soils, although Lawson is a bottomland soil susceptible to overflow. The other soils are more moderately productive. The productivity index under high management would be near 142.

The indicated sale price was \$3,396, resulting in a unit value of \$1,200 per acre. Land value in the area of this sale in more typical size/shape was in the \$2,400 - \$2,500/acre range, a discount of 51%.

Sale #4

In June 1989, the Norfolk and Western Railway Company conveyed an irregular shaped, 36,200 square foot parcel of abandoned railroad right of way to Nudo Products, Inc. This property is a uniform 50 foot wide strip running diagonally NE-SW from the south line of South Grand (Springfield, Illinois) Avenue (1500 block east). With the diagonal nature of this parcel, there is some 59.45 feet of South Grand frontage. The parcel is about 724 feet in length.

This property is adjacent to lands zoned B-2 and used for modest commercial to light industrial purposes. The adjacent owner needing this specific area for expansion acquired this property. Sale price was \$8,000 or \$0.22/square foot. Adjacent land value was estimated at \$0.75/square foot at the time of sale, reflecting a \$0.53 or 70.7% discount.

In January 1992, the Norfolk and Western Railway Company conveyed abandoned railroad right of way located southerly and adjacent to the above, to Nudo Products, Inc. This was a 50 foot wide by 689 foot long parcel containing 34,456 square feet. This parcel extended southward and fronted onto Laurel Street at the south. Again, this was property acquired by an adjacent owner with expansion plans for the existing facility. The sale price of this tract with only Laurel Street frontage was \$6,700 or \$0.19/square foot.

Sale #5 (Doc. #95-21276)

In July 1995, the Norfolk and Western Railway Company conveyed a rectangular shaped, 22,387 square foot parcel of vacated railroad right of way to Billy's Tumbleweed Lounge, Inc. This land is located to the west (rear) and adjacent to land operated as a lounge in the 2900 block of Dirksen Parkway (northwest corner Dirksen/Mayden).

This tract of nearly level land has 66.04 feet of frontage along the north line of Mayden Road. This area along Dirksen Parkway is used for light industrial and modest commercial. Land along Dirksen, with realistic depth has a value of \$1.50 to \$2.00/square foot. Land along Mayden Road has a lesser value, in the \$0.50 to \$0.75/square foot range. Realistically, adjacent land with both Mayden and Dirksen Parkway influence would have a value near the low end of this range, say \$0.60/square foot.

This property sold for \$2,500 or \$0.11/square foot, reflecting a discount of \$0.49 (\$0.60 - \$0.11)/square foot, or 81.7%.

Sale #6 (Doc. #95-10640)

In April 1995, Dennis Dixon sold a rectangular shaped parcel of abandoned railroad right of way to J.W. Maddox, for \$11,500. This is a uniform 66 foot wide strip of land in the northeastern part of Springfield, fronting Griffith Avenue 66 feet at the northern line and extending southwesterly 1,100 feet. Total land area is considered to be 72,600 square feet, reflecting a sale price of \$0.16/square foot.

This strip of abandoned railroad right of way is bounded on either side (east-west) by moderately priced single family residences, which are situated on R-2, and R-3 zoned land. There are 10 improved residential lots along the west line of this sale and 14 lots along the east. Land sales in the area, of typical size/shape, are in the range of \$0.85 to \$1.25/square foot, say \$1.00/square foot. This sale at \$0.16/square foot reflects a discount of \$0.84 (\$1.00 - \$0.16) or 84%.

The above sales are presented here in chart form:

Sale	Area	Sale Price \$/Unit	FMV \$/Unit	Discount	Remarks
1	4.96 Acres	\$605/Acre	\$2,150	71.9%	Agricultural Use
2	4 Acres	\$500/Acre	\$2,300	78.3%	Agricultural Use
3	2.83 Acres	\$1,200/Acre	\$2,450	51.0%	Agricultural Use
4a	36,200 sq. ft.	\$0.22/sq. ft.	\$0.75	70.7%	Modest commercial, Adj. Owner
4b	34,456 sq. ft.	\$0.19/sq. ft.	\$0.60	68.3%	Light Industrial
5	22,387 sq. ft.	\$0.11/sq. ft.	\$0.75	81.7%	Modest commercial, Adj. Owner
6	72,600 sq. ft.	\$0.16/sq. ft.	\$1.00	84.0%	Residential

The charted sales of abandoned railroad right of way reflect discounts over values of land with similar location and highest and best use, but without the unusual shape (long/narrow) and ballast found on the subject. The discounts in value vary from 50.8% to 84.0%. The greatest discount appears to be (#6) adjacent to residential land.

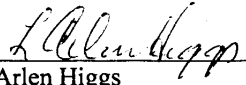
It is important to contrast this with the sales of railroad real estate that Mr. Cecil uses in his list of comparables. Each of those sales listed by Mr. Cecil apparently was a sale not of abandoned right of way but of rail property adjoining an active line, usually for industrial purposes. As the sales of abandoned right of way that my research disclosed show, sales of abandoned right of way will occur at deep discounts from across-the-fence values. Mr. Cecil's adjusted per acre values in his Exhibit D, which only show discounts of 10% to 20% from across-the fence values (compare "ATF Value Per Acre" column with "Adjusted Value Per Acre" column in Mr. Cecil's Exhibit D) are not nearly adequate to account for the deeply-discounted values that sales of abandoned rail rights of way actually experience in Illinois.

VERIFICATION

I, L. Arlen Higgs, 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.

Dated: November 4, 2003


L. Arlen Higgs

QUALIFICATIONS OF THE APPRAISER
L. ARLEN HIGGS

State Certified Residential Real Estate Appraiser – Since September, 2003

Licensed Real Estate Appraiser - State of Illinois - as of July 1993

Licensed Real Estate Broker – Since 1970; President, Fulton County Board of Realtors 1998;
MLS Chairman 1999-01

Sauk Valley College, Instructor, Part Time, Real Estate Courses, 1977-1979. Real Estate Transactions, Real Estate Finance and Farm Property Management Classes.

University of Illinois, College of Agriculture, B. S. Degree, General Agriculture, 1961.

Various senior banking responsibilities - 21 years experience, 1971-93; CEO of Polo National Bank, 1979-85 and President of Farmers State Bank of Camp Point, 1986-91.

Advisory Committee, Independent Bankers Bank of Illinois, 1987-1991

State Advisory Committee Member, University of Illinois Cooperative Extension Service, 1991-1994 and member Fulton county Cooperative Extension Service Unit Council, 1993-97; University of Illinois Connection Ambassador 1998-03

Canton Chamber of Commerce – Board of Directors, 1995-99; President 1998; Business Person of the Year, 2000.

United Way for Spoon River Country, Inc., Board – 1999 - 2003; President, 2001

Real Estate Appraisal Courses Completed:

- IL I Standards of Professional Appraisal Practice; 5/93
- IL II Appraisal Principles; 5/93
- IL III Residential Appraisal Procedures; 5/93
- ASFMRA Code of Ethics; 3/95
- Standards of Professional appraisal Practice; 3/95
- Uniform Standards of Professional Appraisal Practice 10/96
- AEF 150B (General Applications) 4/97
- 5.2 Fair Lending Requirements 4/99
- Real Estate Law I 4/99
- U.S. P.A.P 5/99
- At Home with Diversity 2/01
- Bare Land Appraisal 2/01
- Tough Residential Appraisal Assignments 3/01
- Adjustments, The Appraiser and the Underwriter 3/01
- 2002 Illinois Appraisers Update 7/02
- IL-6 Residential Report Writing 9/02
- IL-4 Basic Valuation Procedures: Non-Residential Properties 12/02

REFERENCES

Scott Hedden, President
Heritage Bank of Central Illinois
P. O. Box 98
Trivoli, Illinois 61569
Phone: 309-647-2155

Don Swartzbaugh
Farmers and Merchants State Bank
484 East Main Street
P. O. Box 149
Bushnell, IL 61422
Phone:

Bruce Edwards
Wells Fargo Bank, NA
225 North Main Street
P. O. Box 280
Canton, IL 61520
Phone: 309-647-5380

Jim Morgan
MidAmerica National Bank
100 West Elm
Canton, IL 61520
Phone: 309-647-5000

Kent R. Kowal, President
Bank of Farmington
16 North Main Street
P.O. Box C
Farmington, IL 61531
Phone: 309-245-2441

Bank of Yates City
C/O Wayne Wrage
P. O. Box 246
Yates City, IL 61572
Phone: 309-358-1415

EXHIBIT 12

Spur, Sarnia, between milepost 59.20=0.0 and milepost 1.41 to a connection with CSXT's track at Sarnia, a total distance of approximately 6.3 miles.

The transaction is scheduled to be consummated on August 27, 2001. The trackage rights will allow CSXT to achieve greater operating efficiencies by allowing it to reach its lines in Sarnia.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34083 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Natalie S. Rosenberg, Esq., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: August 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-21947 Filed 8-29-01; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34085]

Keokuk Junction Railway Co.— Acquisition and Operation Exemption—West End of Toledo, Peoria and Western Railway Corporation

Keokuk Junction Railway Co. (KJRY), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 98 miles of rail line owned by the Toledo, Peoria and Western Railway Corporation (TP&W). The line to be acquired and operated extends between

milepost 108.0 near East Peoria, IL, and milepost 206.0L, near Lomax, IL, including trackage rights over (1) Union Pacific Railroad Company between Hollis milepost 119.28 and Iowa Junction milepost 113.9, and (2) the Peoria and Pekin Union Railway Company between Iowa Junction milepost 113.9 and milepost 109.49. KJRY states that it has exercised an option it held with TP&W to buy the assets referenced in this proceeding. KJRY further states that it has also tendered to TP&W a check to satisfy its payment for these assets. Although KJRY has not yet reached a written agreement with TP&W for this transaction, KJRY anticipates that one will ultimately be entered into between it and TP&W. KJRY certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

The transaction was scheduled to be consummated on or shortly after August 22, 2001, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.¹ The filing of a petition to revoke does not automatically stay the transaction.²

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34085, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Esq., Troutman Sanders LLP, 401 Ninth Street, NW, Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: August 24, 2001.

¹ On August 20, 2001, SF&L Railway, Inc. filed a petition to reject the notice of exemption and TP&W filed a petition to reject and revoke the notice. These petitions will be addressed and resolved in a subsequent decision to be issued by the Board.

² TP&W also filed a petition on August 20, 2001, to stay the effectiveness of this exemption pending consideration of its petition to reject or revoke. The petition for stay was denied by the Board in *Keokuk Junction Railway Co.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34085 (STB served Aug. 23, 2001). That decision indicated that TP&W's petition to stay was filed on August 21, 2001, although it was actually filed on August 20, 2001.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-21946 Filed 8-29-01; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Market Room within the Department of the Treasury is soliciting comments concerning Revisions to Foreign Currency Forms FC-1 (OMB No. 1505-0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, FC-2 (OMB No. 1505-0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and FC-3 (OMB No. 1505-0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before October 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Director, Market Room, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 2405, Washington, DC 20220, Telephone (202) 622-2650.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms(s) and instructions should be directed to Director, Market Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 2405, Washington, DC 20220, Telephone (202) 622-2650, Fax 622-2021.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC-1.

OMB Number: 1505-0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC-2.

OMB Number: 1505-0010.

EXHIBIT 13

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY CO. – FEEDER RAILROAD
DEVELOPMENT APPLICATION – LINE OF TOLEDO, PEORIA & WESTERN
RAILWAY CORP. BETWEEN LaHARPE AND HOLLIS, ILLINOIS

VERIFIED STATEMENT OF PAUL LOFTON, SR.

My name is Paul Lofton, Sr. I have 35 years of railroad experience, and have been the General Manager of Keokuk Junction Railway Co. ("KJRY") since October, 1996. Prior to coming to KJRY, I was the General Manager of the Alabama Railroad from 1992 to 1996; the Superintendent of Operations for the Natchez Trace Railroad from 1990-1992; an Engineer/Conductor for Natchez Trace from 1982-1990; an Engineer/Conductor for the East Camden & Highland Railroad from 1977-1982; and I worked in railroad construction from 1968-1977.

I have reviewed the verified statement of Arthur F. Dowd, and believe it is false and materially misleading in numerous respects.

Mr. Dowd's discussion of the incident that occurred on or about August 23, 2001, in particular is materially misleading. I am informed and believe that KJRY had operating authority on the track in question from the Surface Transportation Board. KJRY reasonably believed it had the right to operate the track, and had a request for service from a customer on the line (one of the customers that is currently not being served by the TP&W). I personally called the TP&W and confirmed that they had no trains running west of Mapleton that day. Our train was operated by a certified engineer and experienced conductor who regularly ran from Keokuk to LaHarpe, a line substantially similar to the seven miles between LaHarpe and Blandinsville. A hi-rail truck, in which I rode, preceded the train, as an added safety measure, since we had not operated this track segment before.

I never received any notice of any TP&W investigation, and am not aware of the result thereof.

I did attend a meeting with representatives of the Federal Railroad Administration ("FRA") and the Illinois Commerce Commission. I am informed and believe that the report issued after this meeting did not find specific fault, and was in the nature of a warning only. I am informed and believe that neither the Commerce Commission, nor the FRA either threatened, nor has the authority to, divest KJRY assets, and I am informed and believe that neither made any statement about the overall safety of KJRY operations.

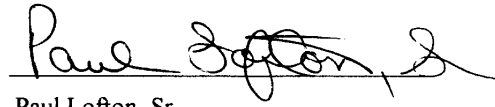
Since I have been with KJRY, the railroad has been a very safety-conscious railroad. In the seven years I have been here KJRY has averaged less than two injuries per year, despite the fact that KJRY does 24-hour-a-day, 7-day-a-week switching in a difficult industrial environment. We have not had any reportable injuries during calendar 2003. Of the injuries we have suffered over the last seven years, most have been relatively minor. There have been no fatalities, and no amputations. Of the eight reportable injuries in 1996, all of which, to my knowledge, occurred prior to my becoming General Manager, I am informed and believe that most were minor, and that the most serious involved an amputation of a finger. For the last couple years we have had trackage rights over, and operated trains 4-5 days a week on the BNSF mainline between Lomax, Illinois and Fort Madison, Iowa. There has been no incidents involving those trains.

KJRY uses the General Code of Operating Rules, and conducts regular safety training programs. I regularly monitor the performance of my employees, and insist on the highest standards of safety and efficiency. To my knowledge, KJRY meets or exceeds all FRA requirements as to safety programs and training.

Mr. Dowd's assertion that KJRY has a lack of concern for safety is absolutely false, and the allegation that there are escalating accidents on KJRY is also false. In my opinion, KJRY personnel operate safely and are fully capable of so operating in any environment.

VERIFICATION

I, Paul Lofton, Sr., declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 6th day of November, 2003.

A handwritten signature in black ink, appearing to read "Paul Lofton, Sr.", written over a horizontal line.

Paul Lofton, Sr.

EXHIBIT 14

EXHIBIT 15



November 3, 2003

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Suite 715
Washington, DC 20423-0001

SUBJECT: Keokuk Junction Railway

Dear Secretary Williams:

On April 1, 2003, Roquette America was notified by Keokuk Junction Railway of their desire to acquire the west end of the TPW line via the feeder line application process. Roquette America, Inc. supports Keokuk Junction Railway's efforts to acquire this portion of tract.

As noted in a previous letters to you dated January 13, 2003, April 4, 2003 and August 1, 2003 since October 18, 2002 we have not received any rail service over this line. The STB's decision of 2/14/03 to deny KJRY's petition to provide alternate rail service was based on the fact that TPW stated it was "ready, willing and able to resume operations over the Line" and that it "plans to restore service to the Line once it is reacquired from SF&L". TPW has not resumed operations or restored service.

TPW has not responded in a timely manner to requests for rates and when they have replied, rates have not been competitive. One example was a rate quote of \$705 for a move that SF&L charges \$275 which is \$75 higher than the rate we had received from the TPW prior to the SF&L's purchase of this portion of track. This is almost a 400% increase per car since 12/01.

Since reacquiring the line, TPW has never made any effort to negotiate with us, solicit our business, or shown any interest in providing service to us. Roquette America, Inc. needs this line re-opened in order to access interchange with railroads at Peoria to provide competitive rail access to eastern markets for our outbound products.

Sincerely,

A handwritten signature in cursive script that reads "Wanda J. Carlson".

Wanda J. Carlson
Manager, Rail

EXHIBIT 16

EXHIBIT 17

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

COPY - Filed 11/7/03

OMB Approval No. 2150-0509

Inspector's Name WAGONER, ROBERT		Inspector's Signature		Inspector's ID P1701	Report No. 44	Date 27 Nov 2001 9 13		
Railroad/Company Name & Address KEOKUK JUNCTION RAILWAY C/O 1218 SOUTH JOHANSON ROAD PEORIA, IL 61607				R/C R	Division SYSTEM	FRA's Representative (Please Acknowledge) Name GUY BRENNKMAN Title PRESIDENT - CEO Signature		
From City LA HARPE	Order 4600	Destination City & County		Order	From Latitude			
State IL	17	City			From Longitude			
County HANCOCK	C067	County			To Latitude			
Mile Post: From _____ To _____		Inspection Point: PEORIA OFFICE				To Longitude		
Activity Code 240	209							
Class 1	1							
Item	Initials/Report	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subcode	Speed	Class
1			209	(0405)	A			
Description Defect Taken: Future violation, for individual action taken, by Guy Brenkman Chairman-CEO of Pioneer Railcorp and owner of Keokuk Junction Railway under the CFR 49 Part 209.405(a) for instructing (continue line 2)								
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:								
Write Notification to FRA of Railroad Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐								
Item	Initials/Report	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subcode	Speed	Class
2								
Description ** Comment to Railroad/Company ** General Manager Paul Lofgren to instruct employees of the Keokuk Junction Railway to occupy main track or segment of main track without proper authority or permission and such instructions from yourself in the future will (continue line 3)								
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:								
Write Notification to FRA of Railroad Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐								
Item	Initials/Report	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subcode	Speed	Class
3								
Description ** Comment to Railroad/Company ** result in Civil Penalties against yourself (Guy Brenkman) and/or employees of the Pioneer Railcorp. and Keokuk Junction Railway.								
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:								
Write Notification to FRA of Railroad Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐								

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

Copy - Faxed 11/7/03

OMB Approval No. 2133-0509

Inspector's ID No.		Report No.		Report Date	
P1701		44		9/18/01	

Item	Initials/Station	Equipment/Track #	Type/Defect	49 CFR USC	Defect Code	Statute	Speed	Class	Train #/Mile	SNR**	RCL**	# of Occ.***	Activity Code
4				240	0117	EA				N	N	1	240

Description
Defect Taken: On August 23, 2001 on or at approximately 2:15 p.m. Engineer Peggy Bedford was instructed by General Manager Paul Lofton of the Kookuk Junction Railway to occupy the mainline of the Toledo, Peoria and Western. (continue line 2)

Violation Recommended		Yes	☐	No	☒	Latitude	Longitude
Written Notification to FRA of Remedial Action is:		Required	☐	Optional	☒	Railroad Action Code	Date (mm/dd/yyyy)
							Comments on back?

Item	Initials/Station	Equipment/Track #	Type/Defect	49 CFR USC	Defect Code	Statute	Speed	Class	Train #/Mile	SNR**	RCL**	# of Occ.***	Activity Code
5										N	N	1	

Description
** Comment to Railroad/Company **
Railway between LaHarpe IL and Blandinsville IL without authority or permission. Engineer Peggy Bedford violated the CFR 49 Part 240.117(e)4 by occupying main track or segment of main track without proper authority or permission. (continue line 6)

Violation Recommended		Yes	☐	No	☒	Latitude	Longitude
Written Notification to FRA of Remedial Action is:		Required	☐	Optional	☒	Railroad Action Code	Date (mm/dd/yyyy)
							Comments on back?

Item	Initials/Station	Equipment/Track #	Type/Defect	49 CFR USC	Defect Code	Statute	Speed	Class	Train #/Mile	SNR**	RCL**	# of Occ.***	Activity Code
6										N	N	1	

Description
** Comment to Railroad/Company **
while employed by the Kookuk Junction Railway. Engineer Peggy Bedford was not qualified on that segment of track and no pilot provided while operating on mainline between LaHarpe IL and Blandinsville IL.

Violation Recommended		Yes	☐	No	☒	Latitude	Longitude
Written Notification to FRA of Remedial Action is:		Required	☐	Optional	☒	Railroad Action Code	Date (mm/dd/yyyy)
							Comments on back?

EXHIBIT 18

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

FINANCE DOCKET NO. 34335

**KEOKUK JUNCTION RAILWAY CO.
--FEEDER RAILROAD DEVELOPMENT APPLICATION--
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL**

VERIFIED STATEMENT OF DANIEL A. LaKEMPER

My name is Daniel A. LaKemper. I am an attorney, currently licensed to practice in Illinois, Iowa and Wisconsin. I have been practicing law for over twenty years, with the last fifteen concentrated in railroad and railroad-related work. I act as General Counsel for Keokuk Junction Railway Co., and several other Class III railroads, including Pioneer Railcorp-affiliated and non-Pioneer-affiliated railroads.

I reviewed the Verified Statement of Mr. Todd N. Cecil and the Opinion of Mr. Brian Mooty. I located and reviewed each of the deeds that Mr. Mooty identified in his opinion as possibly conveying fee interests to TP&W. I also reviewed the Valuation Maps provided by TP&W, and other deeds contained in the Verified Statement of Mr. Todd N. Cecil. I came to the following conclusions with regard to each deed identified by Mr. Mooty:

1. Page 21 Deed – conveys 6.0 acres of ROW west of Hollis, Illinois.
2. Page 31 Deed – conveys .86 acres in the village of Mapleton, Illinois.
3. Page 130 Deed – conveys 5.733 acres of ROW west of Canton, Illinois.

4. Page 271 Deed – Quit Claim from the City of Bushnell. Appears to be vacation of street or similar transfer of land not owned by the City. No acreage specified.
5. Page 92 Deed – conveys .825 acres of ROW in the City of Canton, Illinois.
6. Page 95 Deed – conveys 3.307 acres of ROW and adjoining property in the City of Canton. I am informed and believe that TP&W has sold, or is in the process of selling the adjoining non-ROW property.
7. Page 139 Deed – conveys 2.5 acres of ROW west of Canton, Illinois.
8. Page 352 Deed – conveys .07 acres of adjoining property in Blandinsville, Illinois.
9. Page 189 Deed (same Deed at Page 191) – This is a Quit Claim Deed to 3.417 acres of ROW which was previously conveyed to TP&W by easement. Mr. Mooty did not check the title held by the grantor, and, since the grantor cannot convey that which he does not own, it is my opinion, based upon the evidence I have that (although I did not do a complete title search) this was a “clean-up” Deed and actually conveyed nothing.
10. Page 193 Deed – conveys 1.477 acres of ROW west of Cuba, Illinois.
11. Page 183 Deed – conveys 7.46 acres of ROW, then west of Cuba, Illinois.
12. Page 206 Deed – conveys .005 acres of ROW east of Smithfield, Illinois.

My opinion of each of the above-identified deeds is limited by the fact that I did not conduct a title search. I do not know if the Grantors of the deeds listed above had fee simple title at the time of the conveyance, or if subsequent conveyances of the property have been made by TP&W, or its predecessors. My opinion is also subject to the possibility that the materials I reviewed may contain errors, and the fact that the deeds and maps were copies of hand written documents, and were, in places, difficult to read. I reasonably believe, however, that my conclusions are substantially accurate.

The above statement is the result of my personal examination of the stated materials. No officer, employee, or representative of KJRY played any part in such work.

VERIFICATION

I, Daniel A. LaKemper, 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.

Dated: November 7, 2003


Daniel A. LaKemper