

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

211812



Finance Docket No. 34509

KAW RIVER RAILROAD, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

SUPPLEMENTAL PETITION TO REVOKE

ENTERED
Office of Proceedings

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Due Date: August 16, 2004

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Samuel W. Parker (Verified Statement	
Kenneth M. Rogers (Verified Statement)	

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Preliminary Statement

Petitioner, Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), submits this supplemental petition to revoke application of the non-carrier line acquisition class exemption, to the transaction or transactions covered by the notice of exemption, filed May 25, 2004, by Kaw River Railroad, Inc. (KRR).

This petition supplements the earlier petition to revoke, filed June 4, 2004. This petition also incorporates and restates the June 4, 2004 petition, thus eliminating any confusion, and making unnecessary further reference to the earlier and now superseded June 4, 2004 petition.

The Surface Transportation Board (STB) should revoke the exemption invoked by KRR on May 25, 2004, or reject the KRR notice of exemption, on the ground the noticed transaction(s) are not within the scope of 49 U.S.C. §10901, inasmuch as the operations

are excepted pursuant to 49 U.S.C. §10906.^{1/} If, to the contrary, the transactions are found within the scope of §10901, in whole or in part, the class exemption nevertheless should be revoked, pursuant to 49 U.S.C. §10502(d), in order to carry out the rail transportation policy, primarily the provision concerning employee wages and safety and suitable working conditions, 49 U.S.C. §10101(11). Employee concerns are, of course, part of the "public convenience and necessity" for an application for operating authority under 49 U.S.C. §10901.

Background

1. By notice filed May 25, 2004, in Finance Docket No. 34509, pursuant to the non-carrier line acquisition class exemption, 49 CFR 1150.31, KRR, a non-carrier affiliate of Watco Companies, Inc. (Watco), sought to lease and operate 7.5 miles of trackage in Kansas City, KS, from The Kansas City Southern Railway Company (KCS),^{2/} and to sublease from KCS and operate approximately 4.5 miles of trackage in Kansas City, KS/MO that are owned

^{1/} Ordinarily, when a class exemption is revoked for a particular transaction, the applicant is free to institute an individual exemption petition, or to file an application. However, where the transaction is outside the Board's authority under the involved statute (here, §10901), there would not be an option for an exemption petition or an application. The proceeding would be at an end.

^{2/} The Board's May 28, 2004 decision states KCS owns this trackage; however, the ownership claim was not carried forward in subsequent notices or decisions.

by Kansas City Terminal Railway Company (KCT).^{3/} KRR also would be assigned operating rights over approximately 6.2 miles of trackage owned by KCT,^{4/} in order to access the leased KCS and KCT trackage. (KRR Notice, 5/25/04, 3). The KRR notice, and its suggested Federal Register notice, were captioned, "Kaw River Railroad, Inc.--Lease Exemption--The Kansas City Southern Railway Company." (ibid., 1, 9). The Board changed the caption, so as to substitute "Acquisition and Operation Exemption" in lieu of "Lease Exemption," which change in the caption has been continued in subsequent notices and decisions. The Board gave public notice of the KRR filing, 69 Fed. Reg. 35424-25 (June 24, 2004).

2. Simultaneous with KRR's notice of exemption, Watco, in Finance Docket No. 34510, filed a notice of exemption, pursuant to the non-connecting carrier class exemption, 49 CFR 1180.2(d)(2), for Watco to continue to control KRR, upon KRR becoming class III railroad. Watco is a non-carrier holding company, directly controlling some 8 other rail carriers, none of which connect with KRR. (Watco Notice, 5/25/04, 4 & Ex. 1). The Board gave public notice of the Watco filing. 69 Fed. Reg. 35423-24 (June 24, 2004).

3. BLET on May 27, 2004, petitioned for stay of the transaction, to which KCS and KRR filed separate replies on May 28, 2004. The Board's Chairman, on May 28, 2004, denied BLET's petition for stay. The Chairman stated the record indicates that some of the

^{3/} The May 28, 2004 decision states these 4.5 miles are currently leased and operated by KCS. However, this claim is not carried forward in subsequent Board notices or decisions.

^{4/} The Board's May 28, 2004 decision states KCS currently possesses operating authority over this trackage, but this claim is not carried forward in subsequent Board notices or decisions.

trackage over which KRR would operate is KCS main line trackage, and therefore is line of railroad. Moreover, even if termed excepted yard or switching trackage, the Chairman opined KRR would still need authority under 49 U.S.C. §10901, citing Effingham. (Decision, 5/28/04, 2).

Moreover, even if BLET could establish, as it asserts here, that some or all of the trackage over which KRR would operate could currently meet the definition of excepted yard or switching trackage under 49 U.S.C. 10906, that would not change the fact that KRR would become a common carrier by virtue of the transaction. As proposed by KRR, the transaction would entail a new operation by a new carrier. Because the new operation would constitute KRR's entire line of railroad, and KRR would be holding out service to the public, it must seek authority under 49 U.S.C. 10901 to provide it. See Effingham Railroad Company--Petition for Declaratory Order--Construction at Effingham, IL, STB Finance Docket No. 41986 (STB served Sept. 12, 1997), aff'd sub nom. United Transportation Union-Illinois Legislative Board v. STB, 183 F.3d 606 (7th Cir. 1999).

4. BLET on June 4, 2004, filed its petition to revoke, along with its discovery requests. United Transportation Union (UTU) on June 14, 2004, filed its petition to revoke. KRR on June 24, 2004, replied to the BLET and UTU petitions to revoke. The Board on July 16, and July 30, 2004, extended the times for filing supplemental petitions to revoke, and replies thereto.^{5/}

Attachments

This petition to revoke includes the verified statements of Samuel W. Parker, BLET General Chairman (Parker); William J. Martin, BLET Local Chairman (Martin); and Kenneth M. Rogers, BLET

^{5/} BLET on June 25, 2004, petitioned to compel discovery, to which KRR replied on June 28, 2004. The matters were resolved as indicated by BLET letter to the Board, filed July 8, 2004.

Local Chairman (Rogers). In addition, this petition includes materials issued by KCS or KRR, and evidence derived through discovery:^{6/}

Exhibit 1. KCS Press Release, KAW River Railroad to provide some local switching in Kansas City, dated June 1, 2004.

Exhibit 2. TRACK LEASE (KCS and KRR), dated May 27, 2004.

Exhibit 3. TRACK SUB-LEASE AND SWITCHING AND MAINTENANCE AGREEMENT KCT TRACKAGE (KCS and KRR), dated May 27, 2004.

Exhibit 4. SUBLEASE AND ASSIGNMENT AGREEMENT (KCT, KCS, KRR), dated May 27, 2004.

ARGUMENT

KRR does not need a franchise from the Board to perform contract switching in the Kansas City terminal for KCS. The contract switching does not come under 49 U.S.C. §10901; rather, such switching is excepted pursuant to 49 U.S.C. §10906. The KRR filing is a scam with KCS, to attempt to utilize the process of the Surface Transportation Board, arguably to change its collective bargaining agreements with organized labor without following the procedures of the Railway Labor Act, 45 U.S.C. 151, et seq. Indeed, KCS does not hide its efforts in this regard. (KCS Reply, 5/28/04, 3-4). The effect is to deprive KCS employees of work, and to adversely affect railroad wages, safety, and working condition, contrary to the goals of the rail transportation policy. The Board should not permit its process to serve as a shelter for such purposes.

^{6/} The highly Confidential copies of Exhibits 2, 3, and 4, have been lodged with the Secretary.

I. THE NOTICE/EXEMPTION SHOULD BE REJECTED/REVOKED
AS THE TRANSACTION IS EXCEPTED FROM THE SCOPE
OF 49 U.S.C. §10901, AND THUS NOT WITHIN THE
NON-CARRIER LINE ACQUISITION CLASS EXEMPTION.

KCS has chosen to contract out a significant part of its Kansas City, KS/MO terminal switching operations to KRR, a newly-created affiliate of Watco Companies. KRR does not operate outside of the Kansas City terminal; indeed, its operations are limited to merely one section of the terminal, set forth in the KRR sketch map, filed with its notice of exemption. (KRR Notice, 5/25/04, Ex. A). The sketch map is also included in BLET's William J. Martin, Appendix 2.^{7/} The KRR operations are confined to switching, and thus are excepted from §10901, by the terms of §10906; accordingly, the non-carrier line acquisition class exemption is inapplicable, as it is confined to §10901 transactions. The exemption should be revoked, and/or the KRR notice rejected.

A. KRR is Operating Trackage Excepted from §10901. The non-carrier line acquisition class exemption, under which KRR filed its notice of exemption, is restricted to exemptions from the provisions of 49 U.S.C. §10901. Section 10901, in the case of a person other than a rail carrier, is confined to acquisition of a railroad line, or to acquire or to operate an extended or additional railroad line. 49 U.S.C. 10901(a)(4).^{8/} A necessary

^{7/} The sketch map does not give a description of neighboring trackage. (Martin, 2). For an earlier sketch map, which may be helpful, see: Missouri-Kansas-Texas R.R. Co. v. K.C.T. Ry. Co., 104 I.C.C. 203, 212-13 (1925).

^{8/} Not all §10901 transactions are within the class exemption; for example, construction is not included. Class Exemption-Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 n.2 (1985).

element to a §10901 acquisition or operation is that the trackage be a "line of railroad."

§10901(a): A person may-

.....
(4) in the case of a person other
a rail carrier, acquire a railroad line or
acquire or operate an extended or additional
railroad line.

However, the acquisition or operation of all railroad track age is not subject to prior Board approval under §10901. Five categories of trackage are excepted from Board approval requirements. These are the acquisition or operation of spur, industrial, team, switching, or side tracks.

§10906. Exception.

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks. (emphasis supp.)

1. Operation of Switching Trackage. The operation of switching trackage is excepted from §10901, by the express language of §10906. KRR's operation of the KCS terminal trackage is intended to substitute KRR switching for KCS switching. This is clear from the KCS press release, dated June 1, 2004, entitled "KAW River Railroad to provide some local switching in Kansas City." The KCS announcement stated that "Switching schedules, frequency of service and contact phone numbers will remain the same..."

(Exhibit 1).

KCS does not need a Board franchise to contract out switching work to KRR--such operation is not subject to prior Board approval. Of course, KCS and KRR (contrary to announced railroad industry policy in favor of de-regulation) desire that the KRR operation be subject to regulation. We suggest the purpose of such regulatory effort is to assert Board pre-emption of the status quo and other provisions of the Railway Labor Act, 45 U.S.C. 151, et seq. In the case of KCS, that carrier points to its national agreement with BLET, claiming this transaction can go forward without bargaining, if the transaction is covered by §10901. (KCS Reply, 5/28/04, 3-4).

The attached statements of Martin, Parker, and Rogers amply demonstrate that the KRR operations are switching, and thus the KRR acquisition and operation of such trackage is excepted from the provisions of §10901.

2. Character of the Trackage-Switching-"Use" Test. KRR and KCS assert that not all of the trackage operated by KRR is switching track, but that some of the trackage is mainline, which mainline trackage on occasion also will handle through trains. (KRR Reply, 5/28/04, 4-7; KRR Reply, 6/24/04, 3-4; KCS Reply, 5/28/04, 4). KRR and KCS are wrong. To the contrary, the KCS trackage, and the KCT switching trackage (by definition), clearly are not mainline. (Martin, 2-3). More importantly, the character of the trackage is determined by KRR's use, not from the use of KCS or other carriers.^{9/} Of course, KRR has no "through trains" of any sort; and the involved KCS trackage is not mainline, and is

^{9/} KCT does not operate trains in the Kansas City terminal. (Martin, 2).

not used by through trains; rather, the KCS trackage is used for switching. (Martin, 3). See also: Sketch map Martin, Appendix 2.

The trackage indicated on the sketch map as KCT Mainline does handle trains of a number of carriers. See: Martin, 2. However, it is not the use of the KCT Mainline by other carriers which would bring the trackage under "line of railroad" when utilized by KRR. Rather, it is the use by KRR of the KCT Mainline for switching operations which makes the trackage excepted for KRR, i.e., the "use test." Brotherhood of Locomotive Engineers v. U.S., 101 F.3d 718, 726-28 (D.C. Cir. 1996); United Transp. Union-Illinois v. Surface Transp., 169 F.3d 474, 478-79 (7th Cir. 1999); United Transp. Union v. Surface Transp. Bd., 183 F.3d 606, 613 (7th Cir. 1999).

Trackage acquired and operated by KRR is excepted trackage; much of the trackage is concededly switching trackage for all carriers, and even where KRR or KCS claim some trackage--operated also by other carriers--to be mainline, the "use" test renders all of the trackage excepted for KRR when operated by KRR.

3. The Agreements & Employees Confirm KRR Switching. The agreements between KRR, KCS, and KCT, all indicate that the arrangement is for KRR to substitute for KCS in the performance of switching in the Kansas City terminal. This is illustrated by the two principal agreements, each dated May 27, 2004, "TRACK LEASE," (Exhibit 2), and "TRACK SUB-LEASE AND SWITCHING AND MAINTENANCE AGREEMENT KCT TRACKAGE" (Exhibit 3). The agreements do not provide that KRR is to make rental payments to KCS; rather, the agreements provide that KCS is to pay KRR. (Exhibit 2, p. 6; Exhibit 3, pp. 8-9). The agreements provide that all cars are in the account of

KCS, with KCS responsible for the car mileage proportion of expenses under the KCT agreement, and KRR makes up the trains for KCS, including air tests, among many other features. This is contract switching. Moreover, KCS under the agreements reserves to itself the right to operate over the trackage "leased" or "sub-leased" for KRR operations. (Exhibit 2, p. 4; Exhibit 3, p. 6). In fact, the statement of William J. Martin, indicates that such is the situation, with KCS performing some operations. (Martin, 3).

BLET witnesses emphasize that KRR is simply the switching agent for KCS. The two carriers use the same radio frequencies, KRR employees assemble the KCS end-of-train devices, and KRR has access to the KCS MCS software. (Rogers, 2; Martin, 3).

B. KRR Contract Switching is not Converted to "Line of Railroad." The major limitation of the "use" test is that if the purpose and effect of otherwise excepted switching trackage is to extend substantially the tracks of a carrier into new territory, particularly where it extends into territory already served by another carrier, the extension nevertheless will be found "line of railroad" and subject to §10901 for its acquisition and operation. The leading citation to this extension of excepted switching track, into acquisition or operation of "line of railroad," is Justice Brandeis in Texas & Pac. Ry. v. Gulf, Etc. Ry., 270 U.S. 266, 278 (1926) (T&P):

But where the proposed trackage extends into territory already not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern....If the purpose and effect of the new trackage is to extend sub-

stantially the line of a carrier into new territory, the proposed trackage constitutes an extension of the railroad within the meaning of paragraph 18, although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks.

1. The "Entire Line" Theory Is Wrong & Is Not Followed.

The Board's Chairman, in his May 28, 2004 stay decision, citing Effingham, opined that because the KRR operation would constitute KRR's entire line of railroad, and because KRR would be holding out service to the public, the operation would come under §10901. (Decision, 5/28/04, 2), supra at 5. Thus, the Chairman adopted the "entire line" theory, in part, for denying a stay.

The Board's apparent "entire line" theory, i.e., that any track operated as the only track by an entity automatically becomes line of railroad subject to §10901, rather than excepted spur or switching track subject to §10906, is not sustainable. There are numerous switching carriers throughout the nation which do not possess Board operating authority, and do not require §10901 operating authority. The unreported decision in Effingham, did not involve rulemaking, and was not sustained beyond its particular facts by the Court of Appeals. There is no "entire line" theory mentioned by Justice Brandeis.

The Board elaborated upon Effingham in F.D. No. 34145, Bulkmatic Railroad Corporation-Acquisition and Operation Exemption-Bulkmatic Transport Company (Bulkmatic) (served Nov. 19, 2002), ^{10/} stating that Effingham, in addition to "entire line," involved two additional criteria, (1) a new railroad which would compete with other carriers in the territory that it had not

^{10/} Reconsideration denied May 9, 2003 (served May 15, 2003).

previously served, and (2) the new railroad would interchange traffic with the national rail system. Bulkmatic, 7.

The Board appears in several cases to have drifted into the "entire line" theory, as the sole and only criteria for overriding excepted trackage, so as to render the trackage "line of railroad," in F.D. No. 33997, Texas Central Business Lines Corporation--Operation Exemption--MidTexas International Center, 2-3 (served Sept. 20, 2002); F.D. No. 34252, Union Pacific Railroad Company--Operation Exemption--in Yolo County, CA, 3-4 (served Dec. 5, 2002). However, the Board recently discussed Effingham as involving the "entire line" plus a new rail shipper. F.D. No. 34429, The New York City Economic Development Corporation--Petition for Declaratory Order, 7 (served July 15, 2004).

It is clear that the "entire line" theory, as an important or key determinant for converting §10906 excepted trackage to §10901 line of railroad, is an aberration, which should not be followed here. Indeed, there is no legal basis or support for the theory.

2. Holding Out Service to Public. The Board's Chairman mentioned holding out service to the public as a necessary criteria for overriding the KRR's otherwise excepted switching. (Decision, 5/28/04, 2). However, KRR does not hold itself out to the general public. KRR is not listed in Open & Prepay Station List, Anthony J. Will, OPSL 6000-Y.^{11/} KRR performs contract switching for KCS in the Kansas City terminal. The real carrier, insofar as the public is concerned, is KCS, not KRR. The shippers and

^{11/} We have checked all OPSL bi-monthly issuances through Supplement No. 10, effective August 15, 2004. The OPSL tariff is on file with the Board, open to public inspection, at its OCED-OCETIC. It is accorded official notice. 49 CFR 1114.4, 1114.6.

receivers look to KCS for car supply, service, rates, and the usual characteristics of railroading. KCS announced the KRR would provide switching service to KCS customers, and that customers could continue to telephone KCS offices. (Exhibit 1). There is no indication that KRR is providing service competitive with KCS, or that KRR will solicit traffic for competitors of KCS.^{12/}

The switching agreements between KCS, and KRR (Exhibits 2 & 3) clearly demonstrate that KRR is the contract switching provider for KCS. Among numerous conditions, all cars are to be in the account of KCS, KCS is responsible for the car mileage proportion of the M&O expenses under the KCT agreement, and KRR will input rail movement into the KCS MCS system. KCS retains the right to operate over all of the leased or subleased trackage. KRR is responsible for the initial air test for outbound KCS trains. Revenue from switching operations, including demurrage, is retained by KCS.

3. No 'New' Shippers. KRR's operations do not involve "new" shippers. The shippers are existing KCS shippers, and many are specifically listed in the KRR-KCS agreements; for example, Exhibit 3, Atta. B. Moreover, KRR would not be invading KCS territory; rather, KCS is inviting KRR into KCS territory.

^{12/} Kansas City, KS, is served by BNSF, ICE, KCS, and UP; Kansas City, MO, is served by AMTK, BNSF, CPRS, CSXT, ICE, and KCS. See: OPSL 6000-Y, pp. 179, 260.

II. THE EXEMPTION SHOULD BE REVOKED TO
CARRY OUT THE RAIL TRANSPORTATION POLICY.

If KRR's notice is not rejected, or the exemption not summarily revoked, then the exemption should be revoked, pursuant to 49 U.S.C. §10502(d), to carry out the rail transportation policy, 49 U.S.C. §10101.

The statutory standard which governs acquisition and operation of lines (assuming that excepted switching is converted to extension of line), is "public convenience and necessity," a very broad term. 49 U.S.C. 10901(c).

The condition of railroad employees is very much a part of the public convenience and necessity, although the Board is not ordinarily empowered to impose employee protective conditions in §10901 proceedings. This is comparable to the former ICC's consideration of the public convenience and necessity in passenger discontinuance proceedings, i.e., the agency is to consider the effect on employees in passing upon the public convenience and necessity, but cannot impose protective conditions. Great Northern Ry. Co. Discontinuance of Service. 307 I.C.C. 59, 70-76 (1959); Illinois Commerce Commission v. United States, 347 F.Supp. 1217, 1219-20 (N.D. Ill. 1971) (three-judge).

The record shows a severe impact upon KCS engineers and switchmen in the Kansas City terminal. There have already been a loss of 18 jobs, with a dramatic percentage reduction in locomotive engineers. (Martin, 1-2; Parker, 2).

The employee criteria of the rail transportation policy, 49 U.S.C. §10101(11), have the goal of fair wages, and safe and suitable working conditions in the railroad industry. The severe

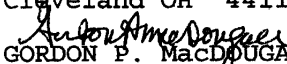
job losses and reduced earnings of KCS employees, and the reduced wage and fringe benefits for KRR employees, all bear upon the public convenience and necessity.

Revocation of the class exemption is necessary to carry out the employee criteria of §10101(11). In this manner the public convenience and necessity would be the ultimate test. Of course, upon revocation of the class exemption for the transaction, KRR could seek an individual exemption, and attempt additional evidence.

CONCLUSION

The Board should revoke the exemption, or reject the notice of exemption, on the ground the transaction is not within the line acquisition class exemption; if the exemption/notice is not revoked/rejected, the exemption should be revoked in order to carry out the rail transportation policy.

Respectfully submitted,

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August 16, 2004

Certificate of Service

I hereby certify I have served a coy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

NAFTA RAILWAY



KANSAS CITY SOUTHERN

June 1, 2004

KAW River Railroad to provide some local switching in Kansas City

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Last week, KCSR notified its customers that beginning June 1, 2004, Kaw River Railroad, Inc. (KAW) will provide switching service to customers located on KCSR's and Kansas City Terminal Railway's tracks in Kansas City between approximately Grand Ave on the Missouri side and 25th Street on the Kansas side. KAW is a wholly owned subsidiary of Watco Companies, Inc. (Watco), a well-respected and widely recognized rail service provider that currently operates seven Class III railroads in nine states.

KCSR remains committed to providing optimum service to its customers, and is confident that KAW will provide local switching service that will ensure fulfillment of that commitment. Switching schedules, frequency of service and contact phone numbers will remain the same, with the addition of three KAW contacts: Mark McClellan, General Manager, 816-807-8687; Alan Elliott, Assistant Vice President Marketing, 620-231-2230; and Dan Linden, Regional Manager, 620-235-9636.

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TRACK LEASE

THIS AGREEMENT, entered into this 27th day of May, 2004, by and between The Kansas City Southern Railway Company, a Missouri Corporation, hereinafter referred to as "KCS" and Kaw River Railroad, Inc., a Kansas Corporation, hereinafter referred to as "KRR".

RECITALS:

WHEREAS, KCS provides certain rail switching services to industries and others now or hereinafter located on or served from trackage owned and operated by KCS in Kansas City, Wyandotte County, Kansas (the "KCS Trackage"); and

WHEREAS, KCS and KRR have entered into a Track Sub-Lease and Switching and Maintenance Agreement, dated May 27, 2004 (the "KRR Sublease Agreement") governing certain switching services and maintenance work to be performed by KRR for KCS on trackage leased to KCS by Kansas City Terminal Railway Company ("KCT") in Kansas City, Kansas and Kansas City, Missouri (the "KCT Trackage") pursuant to the Track Lease and Switching and Maintenance Agreement dated December 15, 1992 (the "KCT Agreement"); and

WHEREAS, concurrent with the term of the KRR Sublease Agreement, KCS desires to further contract with KRR for KRR to perform a portion of the switching services and maintenance work on the KCS Trackage as hereinafter described, and KRR is willing to perform such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants and agreements hereinafter contained to be kept and performed by the parties hereto, it is agreed as follows:

ARTICLE I DEFINITION OF CERTAIN TERMS.

A. The term "Leased Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCS as shown with red lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference, and used in connection with the performance of the services hereunder, including but not limited to all rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankments, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and any and all equipment and installation required by lawful authority in connection with

construction, renewal, maintenance and operation of said track structures and all appurtenances thereof of the KCS Trackage .

B. The term "Industries" shall mean those industries, businesses and other operations now or hereinafter located on or adjacent to the Leased Trackage which now or hereinafter receive or desire to receive Switching Services.

C. The term "Joint Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT as approximately shown in blue lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

D. The term "MCS" shall mean KCS's computer system known as the Management Control System.

ARTICLE II. DESCRIPTION OF DUTIES

A. In the performance of this Agreement, KRR agrees to provide the following services.

B. KRR shall, at its sole cost and expense (except as otherwise provided herein):

(1) Obtain such authority as may be required at KRR's expense for the operations by KRR as contemplated by this Agreement including, to the extent necessary, an application or exemption filing under 49 U.S.C. 10901; and

(2) Perform all work and services necessary to facilitate, or incidental to, the switching of cars to and from those Industries including but not limited to intra-plant switching, pursuant to and in accordance with the terms and conditions of this Agreement; and

(3) Block traffic to be transferred to KCS in up to seven (7) blocks in accordance with KCS's initial blocking plan (the "Blocking Plan") as set forth on Attachment B, attached hereto and made a part hereof. Deviations from the Blocking Plan will require reasonable notice from KCS prior to future accommodations being made. All inbound traffic from the KCS to KRR will be received in the same blocking as is currently being received, until it is deemed mutually beneficial by both the KCS and KRR to make adjustments to current inbound blocking to better serve the customers.

(4) With the exception of KCS's signal, grade crossing protection and communications systems, and their related labor and materials, KRR will manage, supervise, provide and perform all maintenance and repair work and services and provide all materials and supplies therefore (including all work and materials for changes, additions, betterments and retirements) of the Leased Trackage which:

(a) are necessary to maintain the Leased Trackage in good order, condition and

repair at levels consistent with efficient train movements, (b) meet the requirements of the Federal Railroad Administration ("FRA"); are no lower than the levels that existed on the date this Agreement became effective; and meet standards which may from time to time be reasonably established by KCS. All portions of the leased trackage including any portion of the Leased Trackage which has been excepted by the FRA shall be maintained at its condition and current maintenance levels when this Agreement becomes effective.

In performing the foregoing services, KRR shall furnish and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies, and other incidentals in the management, supervision and performance of the foregoing services, all of which shall be collectively referred to herein as the "Switching Services". KRR shall consider for employment those of KCS's employees who want to work for KRR on the terms and conditions of employment that are offered by KRR, at KRR's sole discretion. KRR shall give priority-hiring consideration to employees of KCS who work on the Leased Trackage. Any such individuals who KRR in its sole discretion determines to be qualified for a job that KRR has available, shall be offered such job by KRR on the terms and conditions that KRR establishes, in KRR's sole discretion. KRR promptly shall notify KCS of the name of each of KCS's current employees who KRR offers to hire, and also the name of each of these employees who KRR actually hires.

All such work, services, materials and supplies are herein collectively referred to as the "Switching Maintenance Work". The Switching Maintenance Work shall include, and KRR shall perform, such other maintenance and repair work and services on the Leased Trackage and provide such other materials and supplies necessary to perform such other maintenance and repair work as may for time to time be requested by KCS, which KRR shall comply with the standards of the FRA and the standards issued by KCS. KCS shall be responsible for the cost and expense of all work and materials for changes, additions, betterments and retirements of the Leased Trackage, including the cost and expense for improvements to and maintenance of the Leased Trackage at higher levels than its condition or current maintenance on the date this Agreement became effective.

C. KRR shall supply all materials and equipment and pay all wages, taxes and fringe benefits of its employees engaged in the performance of the Switching Services and of the Switching Maintenance Work. KRR shall have the exclusive direction and control of the Switching Services performed on the Leased Trackage and KRR shall be solely responsible for scheduling and overseeing the Switching Services and the Switching Maintenance Work, for the degree of care with which the Switching Services and the Switching Maintenance Work is performed, and for the quality of the results of the Switching Services and the Switching Maintenance Work.

D. KRR shall perform the Switching Services and the Switching Maintenance Work in a fair and impartial manner. Moreover, in performing the Switching Services and for Switching Maintenance work, KRR shall comply with all applicable federal and state

statutes, rules and regulations, including but not limited to, supplying at KRR's own expense, certified locomotive engineers.

ARTICLE III. USE OF LEASED FACILITIES

A. In order to provide the Switching Services and perform the Switching Maintenance Work under this Agreement, and for the sum of _____ and other good and valuable consideration paid to it by KRR, KCS hereby sub-leases to KRR the Leased Trackage, for the purposes set forth in this Agreement, subject to the rights of KCS and other authorized users of KCS Trackage.

B. KCS retains the right to conduct operations over the Leased Trackage.

ARTICLE IV. EQUIPMENT

A. Except as provided in Article II.C of the KRR Sublease Agreement, for the purposes of car hire accounting, all rail cars handled by KRR pursuant to this Agreement will at all times remain in the KCS account and be the responsibility of the KCS. KRR shall provide and furnish such vehicles, equipment, crews and supplies necessary to perform the services provided for under this Agreement to be performed by KRR, including switch engine or engines, switch crews and other employees, as well as all fuel, water, supplies, roundhouse handling and other incidentals.

B. KRR shall provide vehicles and equipment as necessary to perform the Switching Maintenance Work under this Agreement.

C. If a car is bad ordered while in the possession of KRR under this Agreement, such bad ordered car shall be subject to the provisions of the KRR Sublease Agreement.

ARTICLE V. REMOVAL OF CREWS

Upon good cause being shown, any member of a crew of KRR engaged in performance of duties on behalf of KRR pursuant to this Agreement shall be removed there from upon written request of KCS. In the event a board or tribunal subsequently sustains the employee's position, such employee shall not thereafter be barred from service on the Leased Trackage by reason of such occurrence. Anything herein to the contrary notwithstanding, KRR shall not be required to remove any person from service if prevented from doing so by law or regulation of a public authority having jurisdiction, or by a contract with respect to removal from service.

ARTICLE VI. SWITCHING OF CARS

A. KRR shall be responsible for all cars, defects in such cars, violations of operating rules and all other violations of federal, state and local statutes, rules and regulations, which occur during KRR's performance of its obligations under this Agreement.

B. KRR shall use, for the interchange of cars, those portions of the Leased Trackage currently identified and designated for interchange, and such other portions of the Leased Trackage as KRR and other carriers agree to use for interchange. In using Leased Trackage or such other trackage designated by KCS for interchange, KRR shall place or leave all cars to be interchanged at safe distances from any grade crossings or any track or tracks which may now or hereafter connect therewith or intersect the same, and so as not to interfere with, obstruct or endanger in any manner the operation or use of any other tracks or grade crossings.

C. KRR shall furnish KCS with accurate records maintained in the MCS (Management Control System) by KRR which may be used as a basis for arriving at the number of cars switched by KRR. Such records shall show the car numbers, initials and contents, date of movement, and for whose account moved, and shall be subject to review and check at any and all times.

D. KRR shall be deemed to have commenced and terminated Switching Services for each individual car designated for switching in accordance with the then current Interchange Rules of the Association of American Railroads.

E. KRR agrees to provide service to customers equal to or better than provided for in the KCS service plan set forth in "Attachment B" attached hereto and incorporated herein by reference. KCS will have final reasonable approval of any service plan and KRR will make reasonable improvements in service to insure quality service is provided to customers and service is in compliance with the KCS service plan. KRR will not make any decrease in the level of service, unless changes in KRR's operating plan are requested by KRR and agreed to in writing by KCS, approval of any requests and changes to the operating plan will not be unreasonably withheld by KCS.

F. KRR, takes the Leased Trackage subject to existing track leases or future track leases agreed to by KCS. Provided that future track leases will not unreasonably constrain or impair the current ability of KRR to serve existing or future customers KRR has no right to any revenues from leased tracks.

G. KRR agrees to preserve interchange practices in effect as of the date of this Agreement. Such practices are outlined on Attachment B. Interchange practices will be subject to discussion and review between KRR and other carriers pursuant to an assurance of efficient operating practices and quality service to customers.

H. KCS, as reasonably practicable in its regular train traffic, agrees to haul on KCS's rail system between Pittsburg, Kansas and the Leased Trackage at no cost to KRR all locomotives, cars, materials and equipment (the "Equipment") being delivered to the Leased Trackage for use by KRR in performing any of the duties called for hereunder. KRR shall indemnify, defend and save harmless KCS for all damage or destruction to the Equipment, including contents and lading, while in the possession of KCS, except to the extent caused by KCS's gross negligence or willful acts.

ARTICLE VII. COMPENSATION

A. As KRR's sole compensation for performing the Switching Services and the Switching Maintenance Work called for hereunder shall be:

1. per loaded car, which shall include, industry switching, transfer work, blocking and any other services provided for in this agreement, and
2. per car for each car that is delivered to KRR empty and subsequently interchanged to another railroad without having been loaded.
3. per train for each initial terminal air test performed by KRR on outbound trains.
4. For performing Car Inspection and Repair Work, KRR shall receive of all ARR labor rates in effect for each billable man hour for all non-KCS owned cars and an agreed upon shop rate for all such work on KCS owned cars. Further, KRR shall receive of ARR allowance for materials applied using the current AAR Office and Field Manual allowance.
5. Beginning January 1, 2005, the charges in this subsection 1 and 2 of this Article VII A shall be adjusted annually, on the anniversary of the Effective Date, by of the change in the RCAF-U in the four immediately preceding calendar quarters.

The above charges include without limitation, switching and miscellaneous services including but not limited to intraplant switching at Industries, switches to or from leased track(s) and intermediate switching. Revenues from such services, including demurrage, shall be retained by KCS.

Contemporaneously with the execution of this Agreement the parties are also entering into the KRR Sublease Agreement. It is the intent of the parties that only one charge will be assessed by KRR for each car handled under these agreements, therefore the charges in this Agreement will not apply in any instance where a charge is made under the KRR Sublease Agreement.

Any payments due KRR shall be paid within twenty (20) days of receipt of an invoice from KRR.

ARTICLE VIII. INSPECTION OF RECORDS

KRR shall keep complete and accurate records relating to the performance of the Switching Services and the Switching Maintenance Work. So much of the books,

accounts and records of KRR as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by proper officers and agents of KCS. KCS and its agents, employees or representatives, shall have the right to audit the records of KRR for purposes of satisfying KCS and KCS's Board of Directors of KRR's proper and timely performance of the Switching Services and the Switching Maintenance Work, the number of cars switched by KRR, and the appropriateness of KRR's charges hereunder.

ARTICLE IX. EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the later of: execution of this agreement; approval by the Surface Transportation Board, if required; the effective date of an exemption; or as of such other date mutually agreed. If it is determined that it is necessary to obtain labor contract agreement from the affected labor crafts, this Agreement is contingent on obtaining such approval. KRR will be responsible for obtaining any approvals necessary from the Surface Transportation Board and any other prerequisite legal authority at its cost. Unless sooner terminated pursuant to Articles XII or XV hereof, this Agreement shall have an initial term of one year and thereafter shall automatically renew for additional terms of one year unless either party hereto gives the other party written notice of its intent to terminate this Agreement at least ninety days prior to the end of the initial term or any renewal term, as applicable. KCS may, at its option, terminate this Agreement upon the expiration or termination of the KCT Agreement.

In the event either the KCT Agreement, the KRR Sublease Agreement or both are terminated or expire, this Agreement will terminate at the same time.

ARTICLE X. LIABILITY

A. Prior to KRR commencing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, KCS and KRR will conduct a joint inspection of the Leased Trackage to establish and agree upon the condition of the Leased Trackage at the time of KRR beginning service under this Agreement and that the Leased Trackage is suitable for safely conducting the operations contemplated by this Agreement. KRR shall not, by reason of KCS's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Leased Trackage have or make against KCS any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom. KRR AGREES TO HOLD HARMLESS AND INDEMNIFY KCS FOR ANY CLAIMS INCLUDING BUT NOT LIMITED TO THOSE ALLEGED TO RESULT FROM KCS'S NEGLIGENCE PRIOR TO THE JOINT INSPECTION, ARISING DURING THE TERM OF THIS AGREEMENT RESULTING FROM OR ALLEGED TO RESULT FROM THE CONDITION OF THE LEASED TRackage, EXCEPTING (i) THOSE CLAIMS ARISING FROM OR RELATED TO KCS'S SIGNAL, GRADE CROSSING PROTECTION AND COMMUNICATIONS SYSTEMS, AND THEIR RELATED LABOR AND MATERIALS, AND (ii) THOSE CLAIMS FOR WHICH THE LOSS,

DAMAGE, DESTRUCTION, INJURY, OR DEATH OCCURRED PRIOR TO KRR COMMENCING OPERATIONS UNDER THIS AGREEMENT.

B. KRR shall be responsible for all losses or damages in any way arising from, growing out of or connected with the Switching Services and Switching Maintenance Work performed by KRR or the condition of the Switching Trackage KRR is responsible for maintaining, except to the extent caused by the negligence, intentional acts or breach of this Agreement by KCS, its officers, agents, directors, employees or subcontractors (excluding KRR and its subcontractors). For purposes of applying this Section all officers, agents and employees of KRR while engaged in performance of the Switching Services and Switching Maintenance Work shall be considered exclusive employees of KRR and motive power, work trains, other equipment and other property of KRR while likewise engaged in the Switching Services and Switching Maintenance Work were exclusive equipment or other property of KRR.

C. KRR may make settlement of any claim for loss or damage for which it or KCS may be liable hereunder, but no payment in excess of
shall be voluntarily made by KRR in settlement of any such claim without first obtaining in writing consent of KCS, which consent shall not be arbitrarily nor capriciously withheld.

D. If a claim is made against either party hereto which under this Agreement is not chargeable in whole or in part with liability involved herein, such party shall promptly notify in writing the other party hereto without penalty on its part for failure to do so.

E. All releases taken pursuant to settlement of any and all claims involving joint liability hereunder shall include KRR and KCS and copies thereof shall be furnished each such party.

F. Neither party shall, however, be bound by any judgment or decree at law or in equity against the other party hereto unless it has had reasonable notice from such other party allowing it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other, the party receiving the same shall be bound by the judgment or decree in such action or suit.

G. Each party hereto shall fully indemnify and save harmless the other party hereto from and against all loss or damage properly chargeable to the indemnifying party under provisions of this Agreement.

H. KRR shall use reasonable and customary care, skill and diligence in the performance of the Switching Services and the Switching Maintenance Work. Should KRR fail to repair any defect in the Leased Trackage or perform by other Switching Maintenance Work within a reasonable time after KCS shall have given written notice

thereof to KRR, specifying the defect and requesting that it be repaired, then KCS shall have the right to make necessary repairs which shall be paid for by KRR.

ARTICLE XI. INSURANCE.

A. KRR shall provide, in addition to any other form of insurance or bond required by statute, insurance of at least the following kinds and amounts:

1. Railroad General Liability insurance containing broad form contractual liability with a single limit of at least _____ per occurrence or claim and an aggregate limit of at least _____. Coverage must be purchased to include but not be limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations

2. Business Automobile Coverage insurance containing a combined single limit of at least _____ per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

3. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, if applicable.
- Employers' Liability (Part B) with limits of at least _____

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

B. The insurance certificate covering such insurance shall be furnished to the Company before notice to begin work and shall be satisfactory to the Company with

respect to coverage (including the contractual liability herein assumed by the Contractor), amount, and character of insurance companies. The insurance certificate shall contain a clause reading: "In the event any of the above policies are materially altered, changed or canceled, Company will be furnished 30 days advance notice in writing."

ARTICLE XII. DEFAULT

A. If KCS shall fail to pay any sum payable by it hereunder on the date when same shall be due or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this Agreement and such default shall continue for a period of thirty (30) days after written demand for such payment, performance or compliance shall have been made upon KCS by KRR, then KRR shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KCS, this Agreement then and there by such notice shall be terminated and all rights of KCS hereunder shall cease and determine. Any such termination, however, shall not relieve KCS from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its rights to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KRR of the breach by KCS of any covenant or condition of the Agreement shall not impair the right of KRR to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Switching Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Switching Trackage.

B. If KRR fails to pay any sum payable by it hereunder on the date the same shall be due; or shall fail to promptly and properly perform the services provided under this Agreement in compliance with this Agreement; or should KRR fail to perform or comply with any other covenants or conditions of this Agreement, and such failure should continue for a period of thirty (30) days after written demand for such payment, performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KRR, this Agreement then and there by such notice shall be terminated and all rights of KRR hereunder shall cease and determine. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KCS of its right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement shall not impair the right of KCS to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Leased Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Leased Trackage.

C. In addition to all other default provisions set forth in this Article XI, if KRR fails to properly perform any of the services which are its responsibility to perform under this

Agreement or fails to perform them in accordance with the terms and conditions of this Agreement, KCS, at its sole discretion, shall have the right to perform any portion of or all of such services itself until such time as the failure is cured in KCS's sole opinion. Any cost incurred by KCS to perform such services shall be reimbursed by KRR. Should such failure continue for a period of thirty (30) days after written demand for performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated. If KCS makes an election to terminate pursuant to this Article, it shall give written notice of such election to KRR. This Agreement shall be terminated and all rights of KRR shall cease twenty-four (24) hours after notice of intent to terminate is sent electronically or by express mail to KRR. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its right to enforce any such liability, or of the benefits of any covenants or obligations contained in this Agreement.

ARTICLE XIII. INDEMNIFICATION

KRR AGREES TO DEFEND, INDEMNIFY AND HOLD KCS ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS AND RECOVERIES FOR LOSS OR DAMAGE TO ANY PROPERTY AND INJURY TO OR DEATH OF ANY PERSONS, HOWSOEVER THE SAME MAY BE CAUSED (WHETHER ARISING OUT OF OR BASED UPON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) DIRECTLY OR INDIRECTLY RESULTING FROM KRR'S AND/OR KRR'S EMPLOYEES ACTIVITIES IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL ACTS OR BREACH OF THIS AGREEMENT BY KCS, ITS OFFICERS, AGENTS, DIRECTORS, EMPLOYEES OR SUBCONTRACTORS (EXCLUDING KRR AND ITS SUBCONTRACTORS).

IN THE PERFORMANCE OF THIS AGREEMENT KRR SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL GOVERNMENTAL STATUTES, ORDINANCES, ORDERS AND REGULATIONS. NO PENALTIES, COSTS OR ADDITIONAL EXPENSE RESULTING FROM FAILURE TO COMPLY WITH ANY SUCH REQUIREMENT SHALL BE ADDED TO OR FORM THE BASIS FOR ANY PART OF THE CONTRACT PRICES HEREIN PROVIDED. KRR SHALL INDEMNIFY, SAVE HARMLESS KCS AND ASSUME THE COST OF DEFENSE FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS TO THE EXENT CAUSED OR PERMITTED BY KRR.

ARTICLE XIV. ARBITRATION

A. In the event any disagreement shall arise between the Parties hereto as to the interpretation or the application of the provisions of the Agreement, then, upon the written request of either Party, in which request the issue in dispute is set forth, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association (“AAA”) under the AAA Commercial Arbitration Rules (the “Rules”) then in force, to the extent such Rules are not inconsistent with the provisions of this Agreement.

B. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within (30) days after the Party requesting arbitration shall notify in writing the other Party of such dispute, the dispute shall be submitted to such single arbitrator.

C. If a single arbitrator cannot be agreed upon before the expiration of such period of thirty (30) days, the dispute shall be submitted to three arbitrators experienced in matters of the character in dispute to be appointed as follows: The party requesting arbitration shall select an arbitrator and give written notice thereof to the other Party. Such other Party shall select an arbitrator within thirty (30) days after receipt of such notice and give written notice thereof to the Party requesting arbitration. If within the time specified a Party fails to nominate its party-appointed arbitrator or the two party-appointed arbitrators fail to nominate the third arbitrator, either party may request the AAA to make the appointment according to the Rules. If any nominated arbitrator is not appointed, declines, resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party or arbitrators entitled to appoint that arbitrator shall promptly nominate a successor. If the arbitrators are unable to agree on a replacement third arbitrator, then the AAA shall make the appointment according to the Rules.

D. The arbitrator or arbitrators, having taken and subscribed an oath before a person authorized by law to administer oaths to the effect that he or they will try to impartially and justly decide the matter or controversy according to the best of his or their ability, which oath shall be filled to his or their decision, shall, as soon as practicable after his or their decision, shall, as soon as practicable after his or their selection, hear the dispute or disputes submitted and shall give to each of the Parties reasonable notice of the time and place of such hearing. The hearing shall be conducted at the time and place designated as aforesaid, and, after hearing both Parties and taking such testimony or making such investigation as he or they may deem necessary. The arbitration award shall be in writing, shall give reasons for the decisions reached and shall be signed and dated by the arbitrator(s), and a copy of the award shall be delivered to each of the Parties. The Party against which an award assesses a monetary obligation or enters an injunctive or mandatory order shall pay that obligation or comply with that order on or before the 30th calendar day following the receipt of the award or by such other date as the award may provide. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the Parties.

E. Upon the presentation of such decision, each Party shall immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision is required of it.

F. Each Party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsels. The compensation, cost and expense of the single arbitrator or the third arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

G. Until a decision is made upon any dispute submitted to arbitration, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such dispute.

ARTICLE XV. USE OF MCS SYSTEM

KRR agrees not to use any function of the KCS Management Control System ("MCS") for any purpose other than: train set, switching, EEL, and way billing inquiry for the purpose of inputting rail movement events related to cars handled under this Agreement. KCS will not charge KRR for the use of the system. Prior to commencement of the services under this Agreement, KCS will provide MCS training as reasonably necessary under the terms of the KRR Sublease Agreement.

If KRR, or anyone gaining access to KCS's MCS system through KRR, or as a result of KRR's actions:

- (a) Intentionally accesses additional functions of the KCS MCS system other than the following functions: train set, switching, EEL, and weigh billing inquiry, for the purpose of utilizing the additional functions; or
- (b) Intentionally attempts to access or use any part of the KCS MCS system for any purpose other than in connection with its responsibilities under this Agreement,

then this Agreement may be terminated immediately by KCS without any obligation or liability to KRR other than that existing prior to such termination and KCS shall be entitled to a permanent injunction prohibiting the disclosure of any information obtained from the use of KCS's MCS system. In the event of any such unauthorized use KRR shall be responsible for all attorney's fees and costs KCS incurs to enforce this provision.

ARTICLE XVI. SERVICE OF NOTICES

Any notice herein provided for shall be in writing and deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to the party as follows, unless notice of change of address has been previously given in writing.

IF TO KCS: Senior Vice President Operations
The Kansas City Southern Railway Company
PO Box 219335
Kansas City, MO 64121-9335

IF TO KRR: Executive Vice-President – Strategic Development
Kaw River Railroad, Inc.
315 w 3rd street
Pittsburg, KS. 66762

ARTICLE XVII. AGREEMENT TO BE CONSTRUED LIBERALLY NOT FOR BENEFIT OF THIRD PARTIES

This Agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other third party.

ARTICLE XVIII. SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the respective successors, lessees and assigns of the parties hereto, provided however, KRR may not assign this Agreement to a third party without the written consent of KCS. Such consent shall not be unreasonably withheld if KRR assigns this agreement to a responsible third party in connection with the merger of KRR into, or the sale of all or substantially all of KRR's assets to, the assignee, but no assignment by KRR of this Agreement shall release KRR from its obligations hereunder.

ARTICLE XIX. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE XX. INDEPENDENT CONTRACTOR

KRR is an independent contractor, providing its own tools, equipment, supervision, and employees, and KRR's employees shall not be considered to be the employees of KCS for any purpose whatsoever.

ARTICLE XXI. CONFIDENTIALITY

KRR agrees to maintain the confidentiality of all shipper information received in the performance of this contract, including but not limited to rates, origins, destinations, customer contact information and to use such information only for the purpose of performing its obligations under this agreement. Upon termination or expiration of this Agreement, KRR agrees to return all such information and any compilations, memos, summaries or other documents containing such information. The parties agree that all of the terms of this Agreement are confidential and shall not be disclosed by any party without the written consent of the other parties, to individuals not employed by or acting as counsel for or consultants to KCS or KRR respectively, except as required by law, provided that the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking STB approval or exemption of the Agreement under applicable STB confidentiality procedures.

The obligation of confidentiality contained in this section shall not include information which (i) becomes lawfully available to the public other than as a result of a disclosure by the parties, its representatives, or its agents, or, (ii) was lawfully available to KRR on a non-confidential basis prior to its disclosure to KRR or its agents or representatives under this Agreement or as a result of performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By:

Michael R. Haney

Title:

Chairman, President and CEO

KAW RIVER RAILROAD, INC.

By:

Gary J. J.

Title:

General Counsel & Asst. Secretary

ATTACHMENT B

TO TRACK LEASE KCS TRACKAGE

<u>Customer Name</u>	<u>Trackage Served From</u>	<u>Frequency</u>	<u>Current Job</u>
Procter and Gamble	KCT	7 days/wk	YKS105 (0630)
Meridian Rail	KCT	5 days/wk	YKS112 (0800)
Total Distribution	KCT	As needed	YKS112 (0800)
Ace Pallet	KCT	As needed	YKS112 (0800)
Thomas	KCT	As needed	YKS112 (0800)
Inland Container	KCS	5 days/wk	YKS112 (0800)
KC Hardwood	KCS	As needed	YKS112 (0800)
KC Railcar	KCS	As needed	YKS112 (0800)
Colgate Palmolive	KCS	Evry other day	YKS112 (0800)
Lite-Weight Products	KCS	As needed	YKS112 (0800)
Philadelphia Quartz	KCS	5 days/wk	YKS112 (0800)
Kaw River Shredding	KCT	6 days/wk	YKS217 (1500)
National Compressed Stl.	KCT	6 days/wk	YKS217 (1500)
Kansas City Star (Watco)	KCT	5 days/wk	YKS217 (1500)
Constar	KCT	As needed	YKS217 (1500)
Darling	KCT	As needed	YKS217 (1500)
KCS/Knoche Transfer ¹	KCT	6 days/wk	YKS310 (2359)
UP/Neff Yard	KCT	2-3 days/wk	YKS310 (2359)
BNSF/Argentine Yard ²	KCT	1-2 days/wk	YKS310 (2359)

Blocking on outbound train departing Mill Street Yard

Blue Springs

Odessa

Higginsville

Marshall

Slater

Mexico

East St.Louis

¹ All IC&E and NS traffic originating in Mill Street Yard is hauled to Knoche Yard with other KCS traffic on the KCS Knoche Transfer.

² On occasion, BNSF traffic is hauled to Knoche Yard on the KCS Knoche Transfer for furtherance by KCS to BNSF.

**TRACK SUB-LEASE AND
SWITCHING AND MAINTENANCE AGREEMENT
KCT TRACKAGE**

THIS AGREEMENT, entered into this 27th day of May, 2004, by and between The Kansas City Southern Railway Company, a Missouri Corporation, hereinafter referred to as "KCS" and Kaw River Railroad, Inc., a Kansas Corporation, hereinafter referred to as "KRR".

RECITALS:

WHEREAS, KCS, pursuant to the Track Lease and Switching and Maintenance Agreement dated December 15, 1992 (hereinafter "KCT Agreement"), as amended, with Kansas City Terminal Railway Company ("KCT"), is obligated to provide certain switching services to industries and others now or hereinafter located on trackage owned by KCT, and KCS is further obligated to perform certain maintenance work on trackage used for said switching services, all in accordance with the terms and conditions set forth in the KCT Agreement; and

WHEREAS, KCS desires to contract with KRR for KRR to perform a portion of the switching services and maintenance set forth in the KCT Agreement, The KCS will provide KRR with a copy of the KCT Agreement, Operating Agreement and Yard Office Lease Agreement (as those terms are defined herein) to aid KRR in fulfillment of KCS's obligations under the KCT Agreement as well as other services provided herein, and KRR is willing to perform such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants and agreements hereinafter contained to be kept and performed by the parties hereto, it is agreed as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS.

A. The term "Leased Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT, and used in connection with the performance of the services hereunder, including but not limited to KCT's Mill Street Yard and all rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankments, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and any and all equipment and installation required by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof, west of signal 82L as shown with green lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

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B. The term "Industries" shall mean those industries, businesses and other operations now or hereinafter located on or adjacent to the Leased Trackage which now or hereinafter receive or desire to receive Switching Services.

C. The term "Joint Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT as approximately shown in blue lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

D. The term "Operating Agreement" shall mean that certain agreement, dated June 12, 1909, by and among KCT, KCS and other railroads using KCT's tracks and facilities, as amended to date by nine Supplemental Operating Agreements, and as the same may be hereafter amended, modified or revised as provided in the Operating Agreement.

E. The term "Yard Office Lease Agreement" shall mean that certain agreement, dated July 1, 1993, between KCS and KCT covering KCS's lease of certain property located at 1101 South Mill Street, Kansas City, Wyandotte County, Kansas.

F. The term "MCS" shall mean KCS's computer system known as the Management Control System.

G. The term "KCT Agreement" shall have the meaning given in the preamble.

ARTICLE II. DESCRIPTION OF DUTIES

A. In the performance of this Agreement KRR agrees to provide the services KCS is obligated to perform under the KCT Agreement in compliance with the terms of that Agreement, and those terms of the Operating Agreement incorporated therein as set forth in the KCT Agreement.

B. KRR shall, at its sole cost and expense (except as otherwise provided herein):

(1) Obtain such authority as may be required at KRR's expense for the operations by KRR as contemplated by this Agreement including, to the extent necessary, an application or exemption filing under 49 U.S.C. 10901; and

(2) Perform transfer services between Mill Street Yard and KCS, Burlington Northern Santa Fe Railroad Company, Union Pacific Railroad Company and other railroads as required from time to time, and supply at its cost and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies; and

(3) Perform all work and services necessary to facilitate, or incidental to, the switching of cars to and from those Industries including but not limited to intra-

plant switching, pursuant to and in accordance with the terms and conditions of this Agreement; and

(4) Block traffic to be transferred to KCS in up to seven (7) blocks in accordance with KCS's initial blocking plan (the "Blocking Plan") as set forth on Attachment B, attached hereto and made a part hereof. Deviations from the Blocking Plan will require reasonable notice from KCS prior to future accommodations being made. All inbound traffic from the KCS to KRR will be received in the same blocking as is currently being received, until it is deemed mutually beneficial by both the KCS and KRR to make adjustments to current inbound blocking to better serve the customers.

(5) With the exception of KCT's signal, grade crossing protection and communications systems, and their related labor and materials, KRR will manage, supervise, provide and perform all maintenance and repair work and services and provide all materials and supplies therefore (including all work and materials for changes, additions, betterments and retirements) of the Leased Trackage necessary to maintain the Leased Trackage in good order, condition and repair at levels consistent with efficient train movements, the requirements of the Federal Railroad Administration ("FRA"), the KCT Agreement and standards which may from time to time be established by KCT or KCS, provided that any portion of the Leased Trackage which has been excepted by the FRA shall be maintained at its existing condition and current maintenance levels. All such work, services, materials and supplies are herein collectively referred to as the "Switching Maintenance Work"

In performing the foregoing services, KRR shall furnish and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies, and other incidentals in the management, supervision and performance of the foregoing services, all of which shall be collectively referred to herein as the "Switching Services". KRR shall consider for employment those of KCS's employees who want to work for KRR on the terms and conditions of employment that are offered by KRR, at KRR's sole discretion. KRR shall give priority-hiring consideration to employees of KCS who work on the Leased Trackage. Any such individuals who KRR in its sole discretion determines to be qualified for a job that KRR has available, shall be offered such job by KRR on the terms and conditions that KRR establishes, in KRR's sole discretion. KRR promptly shall notify KCS of the name of each of KCS's current employees who KRR offers to hire, and also the name of each of these employees who KRR actually hires.

The Switching Maintenance Work may include, and KRR shall perform, such other maintenance and repair work and services on the Leased Trackage and provide such other materials and supplies necessary to perform such other maintenance and repair work as may from time to time be reasonably requested by KCT or KCS, which KRR shall comply with the standards of the FRA and the standards issued by KCT or KCS. KCT shall be responsible for the cost and expense of all work and materials for changes,

additions, betterments and retirements of the Leased Trackage, including the cost and expense for improvements to and maintenance of the Leased Trackage at higher levels than its existing condition or current maintenance at the time of the execution of this Agreement.

C. KRR shall, at its sole cost and expense (except as otherwise provided herein):

(1) Be responsible for the initial terminal air test on outbound trains. KRR shall perform the initial terminal air test in accordance with the applicable rules of the FRA and AAR governing initial terminal air tests at the rates set forth in Article VII of this Agreement.

(2) Be liable for any loss or damage for KRR's failure to perform, or properly perform, initial terminal air tests.

(3) Perform all required car inspections and bad order repairs on cars handled under the Switching Services, except as provided in subsection C (5) of this Article II. If a rail car is bad ordered as a result of said inspection by KRR, and it is necessary that it be set out for repair, KRR shall promptly switch such bad ordered rail car to the repair tracks and perform the required repairs. Such bad ordered rail car shall, after being repaired by KRR, be promptly placed back in service for handling by KRR under the Switching Services. All such work, services, materials and supplies are herein collectively referred to as the "Car Inspection and Repair Work" and shall be billed at the rates set forth in Article VII of this Agreement. No additional charges shall apply to KRR's physical handling of rail cars to or from the repair tracks.

(4) Furnish electronically or as otherwise agreed to by the parties to KCS daily inspection and repair reports from which KCS will bill car owners for such repairs in accordance with the Field and Office Manuals of the Interchange Rules adopted by the AAR, hereinafter called "Interchange Rules," in effect on the date of performance of the repairs. KCS shall then prepare and submit billing directly to and collect from the rail car owners for rail car owner responsibility items as determined under said Interchange Rules, provided, however, that the cost of any repair or replacement of railcars that are damaged or destroyed while in the possession of KRR under the Switching Services shall be the sole responsibility of KRR. KCS will retain all revenues collected from the rail car owners.

(5) Promptly notify KCS's designated Mechanical Officer and request disposition of said rail car, should KRR, during the course of performing the Car Inspection and Repair Work, discover any defect or damage condition or conditions on a rail car which, in KRR's opinion, (i) exceeds KRR's capabilities to make the required repair(s) or (ii) cannot be repaired by KRR and returned to service within seventy-two (72) hours from the time of such discovery. Upon receipt of KCS's disposition instructions, KRR shall promptly comply with such instructions. If KCS instructs KRR to deliver a rail car to KCS pursuant to this

Article II.C (5), KRR must make such delivery within forty-eight (48) hours of receiving such instructions or said rail car shall transfer to KRR's car hire account upon expiration of the forty-eight (48) hour period and remain in KRR's car hire account until delivery is made.

(6) KCS will utilize its best efforts to assist KRR in obtaining pricing for all parts, equipment, supplies and materials required for KRR's car repair responsibilities or other services to be provided by KRR under this Agreement, which are comparable to the prices KCS pays for similar parts, equipment, supplies and materials, but under no circumstances will KCS's best efforts require KCS to incur any additional charge or expense.

D. KRR shall supply all materials and equipment and pay all wages, taxes and fringe benefits of its employees engaged in the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. KRR shall have the exclusive direction and control of the Switching Services performed on the Leased Trackage and KRR shall be solely responsible for scheduling and overseeing the Switching Services, the Switching Maintenance Work the Car Inspection and Repair Work, for the degree of care with which the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work are performed, and for the quality of the results of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work.

E. KRR shall perform the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work in a fair and impartial manner. Moreover, in performing the Switching Services, the Switching Maintenance Work and Car Inspection and Repair Work, KRR shall comply with all applicable rules and regulations, including, supplying at KRR's own expense certified locomotive engineers.

F. Except as provided in Article II.C of this Agreement, for the purposes of car hire accounting, all rail cars handled by KRR will at all times remain in the KCS account while on the Leased Trackage. KRR will input rail movement events into the KCS Management Control System ("MCS") at no additional cost to KCS. KRR agrees not to use any function of the KCS MCS system for any purpose other than: train set, switching, EEI, and way billing inquiry for the purpose of inputting rail movement events related to cars handled under this Agreement. KCS will not charge KRR for the use of the system. Prior to commencement of the services under this Agreement, KCS will provide MCS training as reasonably necessary to train up to three (3) KRR personnel selected by KRR on the MCS system (in no event less than one training session) without charge to KRR to input data into the KCS MCS system. If any training is required after the initial training sessions KCS will provide such training provided KRR shall reimburse KCS for the cost of such training. If KCS changes the MCS system to the extent that additional training is required for the KRR personnel to use the MCS system, KCS will provide such additional training session as may be reasonably necessary to train KRR personnel on the changes to the MCS system (in no event less than one training session) without charge to

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KRR. If any additional training is required after the initial re-training sessions, KCS will provide such training provided KRR shall reimburse KCS for the cost of such re-training.

G. In the performance of the work and obligations provided herein, comply with all applicable federal, state and local governmental statutes, ordinances, orders and regulations. **KRR SHALL INDEMNIFY, SAVE HARMLESS AND ASSUME THE COST OF DEFENSE OF KCS AND KCT FROM AND AGAINST ALL CLAIMS, ACTIONS, FINES, PENALTIES OR LEGAL PROCEEDINGS TO THE EXTENT ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS BY KRR AND ALL OF ITS SUBCONTRACTORS DURING THE TERM OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, WILLFUL ACTS OR OMISSIONS, VIOLATION OF LAW OR THE BREACH OF THIS AGREEMENT BY KCT OR KCS.**

ARTICLE III. USE OF LEASED FACILITIES

A. KCS shall be responsible for the car mileage proportion of the maintenance and operating expenses under the KCT Agreement for cars handled by KRR pursuant to this Agreement. KRR shall not use the Joint Trackage, in combination or connection with the Leased Trackage, in such a way so as to interfere or otherwise hinder the use of the Joint Trackage by KCT or any other Party to either the KCT Agreement or the Operating Agreement.

B. In order to provide the Switching Services and perform the Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, and for the sum of _____ and other good and valuable consideration paid to it by KRR, KCS hereby sub-leases to KRR the Leased Trackage including KCT's Mill Street Yard, for the purposes set forth in this Agreement, subject to the rights of KCT and other users of KCT Trackage.

C. KRR's operations over the Joint Trackage shall be in compliance with and subject to the rights of any parties to the KCT Agreement, the Operating Agreement, KCT's operating rules and Special Instructions and shall be governed by KCT's traffic control system.

D. KCS retains the right to conduct operations over the Leased Trackage.

E. KCS agrees to furnish KRR with a copy of the current lease from the KCT of the building (s) currently being used by the KCS and referred to as the yard office at Mill Street and further agrees to sublease the building currently used by KCS at the Mill Street yard to KRR at the rate KCS pays to the KCT under the Yard Office Lease Agreement. KRR agrees to comply with all the terms of the Yard Office Lease Agreement.

ARTICLE IV. EQUIPMENT

A. KRR shall provide and furnish such vehicles, equipment, crews and supplies necessary to perform the services provided for under this Agreement to be performed by KRR, including switch engine or engines, switch crews and other employees, as well as all fuel, water, supplies, tools and equipment, roundhouse handling and other incidentals.

B. KRR shall provide vehicles and equipment as necessary to perform the Switching Maintenance Work and Car Inspection and Repair Work under this Agreement.

C. KCS, as reasonably practicable in its regular train traffic, agrees to haul on KCS's rail system between Pittsburg, Kansas and the Leased Trackage at no cost to KRR all locomotives, cars, materials and equipment (the "Equipment") being delivered to the Leased Trackage for use by KRR in performing any of the duties called for hereunder. KRR shall indemnify, defend and save harmless KCS for all damage or destruction to the Equipment, including contents and lading, while in the possession of KCS, except to the extent caused by KCS's gross negligence or willful acts.

ARTICLE V. REMOVAL OF CREWS

Upon good cause being shown, any member of a crew of KRR engaged in performance of duties on behalf of KRR pursuant to this Agreement shall be removed therefrom upon written request of KCS or KCT. In the event a board or tribunal subsequently sustains the employee's position, such employee shall not thereafter be barred from service on the Leased Trackage by reason of such occurrence. Anything herein to the contrary notwithstanding, KRR shall not be required to remove any person from service if prevented from doing so by law or regulation of a public authority having jurisdiction, or by a contract with respect to removal from service.

ARTICLE VI. SWITCHING OF CARS

A. KRR shall be responsible for all cars, defects in such cars, violations of operating rules and all other violations which occur during KRR's performance of its obligations under this Agreement.

B. KRR shall use, for the interchange of cars, those portions of the Leased Trackage currently identified and designated for interchange, and such other portions of the Leased Trackage as KRR and other carriers agree to use for interchange. In using Leased Trackage or such other trackage designated by KCT or KCS for interchange, KRR shall place or leave all cars to be interchanged at safe distances from any grade crossings or any track or tracks which may now or hereafter connect therewith or intersect the same, and so as not to interfere with, obstruct or endanger in any manner the operation or use of any other tracks or grade crossings.

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C. KRR shall furnish KCS with accurate records maintained by KRR in the MCS (Management Control System) which may be used as a basis for arriving at the number of cars switched by KRR. Such records shall show the car numbers, initials and contents, date of movement, and for whose account moved, and shall be subject to review and check at any and all times.

D. KRR shall be deemed to have commenced and terminated Switching Services for each individual car designated for switching in accordance with the then current Interchange Rules of the Association of American Railroads.

E. KRR agrees to provide service to customers equal to or better than provided for in the KCS service plan in effect at the time of execution of this Agreement. KCS will have final reasonable approval of any service plan and KRR will make reasonable improvements in service to insure quality service is provided to customers and service is in compliance with the obligations contained in the KCT agreement. Unless changes in KRR's operating plan are requested by KRR and agreed to in writing by KCS, which consent shall not be unreasonably withheld, KRR's frequency of service to customers and other carriers, at minimum, shall be equivalent to the level of service performed by KCS, per "Attachment B", attached hereto and made a part hereof. KRR's combined operation at KCT's Mill Street Yard shall be staffed at least six days per week.

F. KRR, takes the Leased Trackage subject to existing track leases or future track leases agreed to by KCS or KCT provided that future track leases will not unreasonably constrain or impair the current ability of KRR to serve existing or future customers. KRR has no right to any revenues from leased tracks.

G. KRR agrees to preserve interchange practices in effect as of the date of this Agreement. Such practices are outlined on Attachment B. Interchange practices will be subject to discussion and review between KRR and other carriers pursuant to an assurance of efficient operating practices and quality service to customers.

ARTICLE VII. COMPENSATION

A. As KRR's sole compensation for performing the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work called for hereunder shall be:

1. per loaded car, which shall include, industry switching, transfer work, blocking and any other services provided for in this agreement, and
2. per car for each car that is delivered to KRR empty and/or subsequently interchanged to another railroad without having been loaded.
3. per train for each initial terminal air test performed by KRR on outbound trains.

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4. For performing Car Inspection and Repair Work, KRR shall receive of all ARR labor rates in effect for each billable man hour for all non-KCS owned or leased cars and an agreed upon shop rate for all such work on KCS owned or leased cars. Further, KRR shall receive of ARR allowance for materials applied using the current AAR Office and Field Manual allowance.
5. KRR commits to reducing the average monthly dwell time, based upon a calendar month, for cars handled at the Mill Street yard by . If KRR is able to reduce the average monthly dwell time for cars handled at the Mill Street yard by more than , compared to the six months prior to the first complete month of KRR operations, KCS will pay KRR one half of the savings to KCS from any further reductions in the dwell time.
6. Beginning January 1, 2005, the charges in this subsection 1 and 2 of this Article VII A shall be adjusted annually, on the anniversary of the Effective Date, by of the change in the RCAF-U in the four immediately preceding calendar quarters.

The above charges include without limitation, switching and miscellaneous services including but not limited to intraplant switching at Procter & Gamble ("P&G") and other shippers located on the Leased Track, weighing at Procter & Gamble, switches to or from leased track(s) and intermediate switching. Revenues from such services, including demurrage, shall be retained by KCS.

Any payments due KRR shall be paid within twenty (20) days of receipt of an invoice from KRR.

ARTICLE VIII. INSPECTION OF RECORDS

KRR shall keep complete and accurate records relating to the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. So much of the books, accounts and records of KRR as are related to the subject matter of this Agreement ("Records") shall at all reasonable times be open to inspection and audit by proper officers and agents of KCS. KCT and members of its Boards of Directors, or their agents or representatives, shall have the right to audit the Records of KRR for purposes of satisfying KCT and KCT's Board of Directors of KRR's proper and timely performance of the Switching Services, the Switching Maintenance Work and Car Inspection and Repair Work, the number of cars switched by KRR, and the appropriateness of KRR's charges hereunder.

ARTICLE IX. BEGINNING OF WORK AND EMPLOYEES

Upon this Agreement becoming effective pursuant to the provisions of Article XV hereof, KRR shall begin performing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work.

ARTICLE X. LIABILITY

A. Prior to KRR commencing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, KCS and KRR will conduct a joint inspection of the Leased Trackage to establish and agree upon the condition of the Leased Trackage at the time of KRR beginning service under this Agreement and that the Leased Trackage is suitable for safely conducting the operations contemplated by this Agreement. KRR shall not, by reason of KCS's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Leased Trackage have or make against KCS any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom. KRR AGREES TO HOLD HARMLESS AND INDEMNIFY KCS FOR ANY CLAIMS INCLUDING BUT NOT LIMITED TO THOSE ALLEGED TO RESULT FROM KCS'S NEGLIGENCE PRIOR TO THE JOINT INSPECTION ARISING DURING THE TERM OF THIS AGREEMENT RESULTING FROM OR ALLEGED TO RESULT FROM THE CONDITION OF THE LEASED TRACKAGE, EXCEPTING (i) THOSE CLAIMS ARISING FROM OR RELATED TO KCS'S SIGNAL, GRADE CROSSING PROTECTION AND COMMUNICATIONS SYSTEMS, AND THEIR RELATED LABOR AND MATERIALS, AND (ii) THOSE CLAIMS FOR WHICH THE LOSS, DAMAGE, DESTRUCTION, INJURY, OR DEATH OCCURRED PRIOR TO KRR COMMENCING OPERATIONS UNDER THIS AGREEMENT.

B. KRR shall be responsible for all losses or damages in any way arising from, growing out of or connected with the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work performed by KRR or the condition of the Switching Trackage KRR is responsible for maintaining, to the extent KCS is responsible for such loss and damage under the liability provisions of the KCT Agreement or the Operating Agreement, except to the extent caused by the negligence, intentional acts or breach of this Agreement by KCS, its officers, agents, directors, employees or subcontractors (excluding KRR and its subcontractors). For purposes of applying this Section all officers, agents and employees of KRR while engaged in performance of the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work shall be considered exclusive employees of KRR and motive power, work trains, other equipment and other property of KRR while likewise engaged in the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work were exclusive equipment or other property of KRR.

C. KRR may make settlement of any claim for loss or damage for which it or KCS may be liable hereunder, but no payment in excess of

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shall be voluntarily made by KRR in settlement of any such claim without first obtaining in writing consent of KCS, which consent shall not be arbitrarily nor capriciously withheld.

D. If a claim is made against either party hereto which under this Agreement is not chargeable in whole or in part with liability involved herein, such party shall promptly notify in writing the other party hereto without penalty on its part for failure to do so.

E. All releases taken pursuant to settlement of any and all claims involving joint liability hereunder shall include KRR and KCS and copies thereof shall be furnished each such party.

F. Neither party shall, however, be bound by any judgment or decree at law or in equity against the other party hereto unless it has had reasonable notice from such other party allowing it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other, the party receiving the same shall be bound by the judgment or decree in such action or suit.

G. Each party hereto shall fully indemnify and save harmless the other party hereto from and against all loss or damage properly chargeable to the indemnifying party under provisions of this Agreement.

H. If traffic over or upon said Joint Trackage or any part thereof or business thereon shall at any time be interrupted or delayed for any cause other than the willful act of either of the parties hereto then and in any such case neither of the parties hereto shall have any claim against the other for Loss or Damage of any kind or consequential, incidental or punitive damages of any kind caused by or resulting from such interruption or delay.

I. KRR shall use reasonable and customary care, skill and diligence in the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. Should KRR fail to repair any defect in the Switching Trackage or perform by other Switching Maintenance Work within a reasonable time after KCS shall have given written notice thereof to KRR, specifying the defect and requesting that it be repaired, then KCS shall have the right to make necessary repairs which shall be paid for by KRR.

ARTICLE XI. INSURANCE.

A. KRR shall provide, in addition to any other form of insurance or bond required by statute, insurance of at least the following kinds and amounts:

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1. Railroad General Liability insurance containing broad form contractual liability with a single limit of at least _____ per occurrence or claim and an aggregate limit of at least _____ Coverage must be purchased to include but not be limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations

2. Business Automobile Coverage insurance containing a combined single limit of at least _____ per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

3. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, if applicable.
- Employers' Liability (Part B) with limits of at least _____

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

B. The insurance certificate covering such insurance shall be furnished to the Company before notice to begin work and shall be satisfactory to the Company with respect to coverage (including the contractual liability herein assumed by the Contractor), amount, and character of insurance companies. The insurance certificate shall contain a clause reading: "In the event any of the above policies are materially altered, changed or canceled, Company will be furnished 30 days advance notice in writing."

ARTICLE XII. DEFAULT

A. If KCS shall fail to pay any sum payable by it hereunder on the date when same shall be due or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this Agreement and such default shall continue for a period of thirty (30) days after written demand for such payment, performance or compliance shall have been made upon KCS by KRR, then KRR shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KCS, this Agreement then and there by such notice shall be terminated and all rights of KCS hereunder shall cease and determine. Any such termination, however, shall not relieve KCS from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its rights to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KRR of the breach by KCS of any covenant or condition of the Agreement shall not impair the right of KRR to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Switching Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Switching Trackage.

B. If KRR fails: to pay any sum payable by it hereunder on the date the same shall be due; or shall fail to promptly and properly perform the services provided under this Agreement in compliance with the KCT Agreement or the Operating Agreement; or should KRR fail to perform or comply with any other covenants or conditions of this Agreement, and such failure should continue for a period of thirty (30) days after written demand for such payment, performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KRR, this Agreement then and there by such notice shall be terminated and all rights of KRR hereunder shall cease and determine. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KCS of its right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement shall not impair the right of KCS to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Leased Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Leased Trackage.

C. In addition to all other default provisions set forth in this Article XI, if KRR fails to properly perform any of the services which are its responsibility to perform under this Agreement or fails to perform them in accordance with the terms and conditions of this Agreement, KCS, at its sole discretion, shall have the right to perform any portion of or all of such services itself until such time as the failure is cured in KCS's sole opinion. Any cost incurred by KCS to perform such services shall be reimbursed by KRR. Should such failure continue for a period of thirty (30) days after written demand for

performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated. If KCS makes an election to terminate pursuant to this Article, it shall give written notice of such election to KRR. This Agreement shall be terminated and all rights of KRR shall cease twenty-four (24) hours after notice of intent to terminate is sent electronically or by express mail to KRR. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its right to enforce any such liability, or of the benefits of any covenants or obligations contained in this Agreement.

ARTICLE XIII. INDEMNIFICATION

KRR AGREES TO DEFEND, INDEMNIFY AND HOLD KCS HARMLESS FROM ANY ACTIONS, CLAIMS, DAMAGE OR OTHER LIABILITY OR CHARGES RESULTING FROM OR ARISING IN CONNECTION WITH KRR'S AND/OR KRR'S EMPLOYEES ACTIVITIES IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL ACTS OR BREACH OF THIS AGREEMENT BY KCS, ITS OFFICERS, AGENTS, DIRECTORS, EMPLOYEES OR SUBCONTRACTORS (EXCLUDING KRR AND ITS SUBCONTRACTORS).

IN THE PERFORMANCE OF THIS AGREEMENT KRR SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL GOVERNMENTAL STATUTES, ORDINANCES, ORDERS AND REGULATIONS. NO PENALTIES, COSTS OR ADDITIONAL EXPENSE RESULTING FROM FAILURE TO COMPLY WITH ANY SUCH REQUIREMENT SHALL BE ADDED TO OR FORM THE BASIS FOR ANY PART OF THE CONTRACT PRICES HEREIN PROVIDED. KRR SHALL INDEMNIFY, SAVE HARMLESS KCS AND ASSUME THE COST OF DEFENSE FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS TO THE EXTENT CAUSED OR PERMITTED BY KRR.

ARTICLE XIV. ARBITRATION

A. In the event any disagreement shall arise between the Parties hereto as to the interpretation or the application of the provisions of the Agreement, then, upon the written request of either Party, in which request the issue in dispute is set forth, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association ("AAA") under the AAA Commercial Arbitration Rules (the "Rules") then in force, to the extent such Rules are not inconsistent with the provisions of this Agreement. KCS decisions pursuant to Article XII.C. To perform services as provided therein shall not be subject to Arbitration.

B. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within (30) days after the Party requesting arbitration shall notify in writing the other Party of such dispute, the dispute shall be submitted to such single arbitrator.

C. If a single arbitrator cannot be agreed upon before the expiration of such period of thirty (30) days, the dispute shall be submitted to three arbitrators experienced in matters of the character in dispute to be appointed as follows: The party requesting arbitration shall select an arbitrator and give written notice thereof to the other Party. Such other Party shall select an arbitrator within thirty (30) days after receipt of such notice and give written notice thereof to the Party requesting arbitration. If within the time specified a Party fails to nominate its party-appointed arbitrator or the two party-appointed arbitrators fail to nominate the third arbitrator, either party may request the AAA to make the appointment according to the Rules. If any nominated arbitrator is not appointed, declines, resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party or arbitrators entitled to appoint that arbitrator shall promptly nominate a successor. If the arbitrators are unable to agree on a replacement third arbitrator, then the AAA shall make the appointment according to the Rules.

D. The arbitrator or arbitrators, having taken and subscribed an oath before a person authorized by law to administer oaths to the effect that he or they will try to impartially and justly decide the matter or controversy according to the best of his or their ability, which oath shall be filled to his or their decision, shall, as soon as practicable after his or their decision, shall, as soon as practicable after his or their selection, hear the dispute or disputes submitted and shall give to each of the Parties reasonable notice of the time and place of such hearing. The hearing shall be conducted at the time and place designated as aforesaid, and, after hearing both Parties and taking such testimony or making such investigation as he or they may deem necessary. The arbitration award shall be in writing, shall give reasons for the decisions reached and shall be signed and dated by the arbitrator(s), and a copy of the award shall be delivered to each of the Parties. The Party against which an award assesses a monetary obligation or enters an injunctive or mandatory order shall pay that obligation or comply with that order on or before the 30th calendar day following the receipt of the award or by such other date as the award may provide. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the Parties.

E. Upon the presentation of such decision, each Party shall immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision is required of it.

F. Each Party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsels. The compensation, cost and expense of the single arbitrator or the third arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

G. Until a decision is made upon any dispute submitted to arbitration, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such dispute.

ARTICLE XV. EFFECTIVE DATE AND TERM

If it is determined that it is necessary to obtain labor contract agreement from the affected labor crafts, this Agreement is contingent on obtaining such approval. KRR will be responsible for obtaining any approvals necessary from the Surface Transportation Board and any other prerequisite legal authority at its cost. This Agreement shall be effective as of the later of execution of this agreement, approval by the Surface Transportation Board, if required, effective dates of an exemption, or as of such other date mutually agreed. Unless sooner terminated pursuant to Article XII hereof, this Agreement shall remain in effect for an initial term of one (1) year and thereafter shall automatically renew for additional terms of one year unless either party hereto give the other party written notice of its intent to terminate this Agreement at least ninety days prior to the end of the initial term or any renewal term thereof, as applicable. In the event the KCT Agreement is terminated or expires, this agreement will terminate at the same time. KCS shall have the right to terminate this agreement at any time if, in its sole discretion it determines the service provided by KRR is inadequate or does not meet the requirements of the KCT Agreement.

If KRR, or anyone gaining access to KCS's MCS system through KRR, or as a result of KRR's actions:

- (a) Intentionally accesses additional functions of the KCS MCS system other than the following functions: train set, switching, EEI, and weigh billing inquiry, for the purpose of utilizing the additional functions; or
- (b) Intentionally attempts to access or use any part of the KCS MCS system for any purpose other than in connection with its responsibilities under this Agreement,

then this Agreement may be terminated immediately by KCS without any obligation or liability to KRR other than that existing prior to such termination and KCS shall be entitled to a permanent injunction prohibiting the disclosure of any information obtained from the use of KCS's MCS system. In the event of any such unauthorized use KRR shall be responsible for all attorney's fees and costs KCS incurs to enforce this provision.

ARTICLE XVI. SERVICE OF NOTICES

Any notice herein provided for shall be in writing and deemed to be properly served if deposited in the United States mail, certified mail return receipt requested,

Final Agreement – For Execution

postage prepaid, addressed to the party as follows, unless notice of change of address has been previously given in writing.

IF TO KCS: Senior Vice President Operations
The Kansas City Southern Railway Company
PO Box 219335
Kansas City, MO 64121-9335

IF TO KRR: Executive Vice-President – Strategic Development
Kaw River Railroad, Inc.
315 w 3rd street
Pittsburg, KS. 66762

ARTICLE XVII. AGREEMENT TO BE CONSTRUED LIBERALLY NOT FOR BENEFIT OF THIRD PARTIES

This Agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other third party.

ARTICLE XVIII. SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the respective successors, lessees and assigns of the parties hereto, provided however, KRR may not assign this Agreement to a third party without the written consent of KCS. Such consent shall not be unreasonably withheld if KRR assigns this agreement to a responsible third party in connection with the merger of KRR into, or the sale of all or substantially all of KRR's assets to, the assignee, but no assignment by KRR of this Agreement shall release KRR from its obligations hereunder.

ARTICLE XIX. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE XX. INDEPENDENT CONTRACTOR

KRR is an independent contractor, providing its own tools, equipment, supervision, and employees, and KRR's employees shall not be considered to be the employees of KCS for any purpose whatsoever.

ARTICLE XXI. CONFIDENTIALITY

KRR agrees to maintain the confidentiality of all shipper information received

Final Agreement - For Execution

in the performance of this contract, including but not limited to rates, origins, destinations, customer contact information and to use such information only for the purpose of performing its obligations under this agreement. Upon termination or expiration of this Agreement, KRR agrees to return all such information and any compilations, memos, summaries or other documents containing such information. The parties agree that all of the terms of this Agreement are confidential and shall not be disclosed by any party without the written consent of the other parties, to individuals not employed by or acting as counsel for or consultants to KCS or KRR respectively, except as required by law, provided that the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking STB approval or exemption of the Agreement under applicable STB confidentiality procedures.

The obligation of confidentiality contained in this section shall not include information which (i) becomes lawfully available to the public other than as a result of a disclosure by the parties, its representatives, or its agents, or, (ii) was lawfully available to KRR on a non-confidential basis prior to its disclosure to KRR or its agents or representatives under this Agreement or as a result of performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: Michael R. Murphy
Title: Chairman, President & CEO

KAW RIVER RAILROAD, INC.

By: [Signature]
Title: General Counsel & Asst. Secretary

ATTACHMENT B

TO TRACK SUB-LEASE AND SWITCHING AND MAINTENANCE AGREEMENT KCT TRACKAGE

<u>Customer Name</u>	<u>Trackage Served From</u>	<u>Frequency</u>	<u>Current Job</u>
Procter and Gamble	KCT	7 days/wk	YKS105 (0630)
Meridian Rail	KCT	5 days/wk	YKS112 (0800)
Total Distribution	KCT	As needed	YKS112 (0800)
Ace Pallet	KCT	As needed	YKS112 (0800)
Thomas	KCT	As needed	YKS112 (0800)
Inland Container	KCS	5 days/wk	YKS112 (0800)
KC Hardwood	KCS	As needed	YKS112 (0800)
KC Railcar	KCS	As needed	YKS112 (0800)
Colgate Palmolive	KCS	Evry other day	YKS112 (0800)
Lite-Weight Products	KCS	As needed	YKS112 (0800)
Philadelphia Quartz	KCS	5 days/wk	YKS112 (0800)
Kaw River Shredding	KCT	6 days/wk	YKS217 (1500)
National Compressed Stl.	KCT	6 days/wk	YKS217 (1500)
Kansas City Star (Watco)	KCT	5 days/wk	YKS217 (1500)
Constar	KCT	As needed	YKS217 (1500)
Darling	KCT	As needed	YKS217 (1500)
KCS/Knoche Transfer ¹	KCT	6 days/wk	YKS310 (2359)
UP/Neff Yard	KCT	2-3 days/wk	YKS310 (2359)
BNSF/Argentine Yard ²	KCT	1-2 days/wk	YKS310 (2359)

Blocking on outbound train departing Mill Street Yard

Blue Springs
Odessa
Higginsville
Marshall
Slater
Mexico
East St.Louis

¹ All IC&E and NS traffic originating in Mill Street Yard is hauled to Knoche Yard with other KCS traffic on the KCS Knoche Transfer.

² On occasion, BNSF traffic is hauled to Knoche Yard on the KCS Knoche Transfer for furtherance by KCS to BNSF.

PUBLIC VERSION

FD 34509
BLET
Exhibit 4

SUBLEASE AND ASSIGNMENT AGREEMENT

THIS SUBLEASE AND ASSIGNMENT AGREEMENT is made and entered into as of this 24 day of May, 2004, by and between **THE KANSAS CITY TERMINAL RAILWAY COMPANY**, a Missouri corporation, hereinafter referred to as "KCT", **THE KANSAS CITY SOUTHERN RAILWAY COMPANY**, a Missouri corporation, hereinafter referred to as "Assignor", and **KAW RIVER RAILROAD, INC.**, a Kansas corporation, hereinafter referred to as "Assignee".

WITNESSETH:

WHEREAS, there is in effect an agreement, hereinafter called the "Lease Agreement", having an effective date of July 1, 1993 between KCT and Assignor, covering Assignor's lease of certain property located at 1101 S. Mill Street, Kansas City, Wyandotte County, Kansas; and

WHEREAS, as set forth in Article 1 hereof, Assignee is acquiring (or has acquired) the rights and interests of Assignor in the Lease Agreement; and

WHEREAS, KCT, among other things, has previously consented to Assignor subleasing to Watco Switching Services ("Watco") Assignor's rights under the Lease Agreement, pursuant to the terms and conditions of that certain Consent to Sublease and Subcontract of Switching Agreement by and between KCT and Assignor dated March [24], 2004 (the "Consent Agreement") and KCT understands that Assignee is a subsidiary of Watco specifically organized to perform switching services in the Kansas City area; and

WHEREAS, Assignor and Assignee hereby requests that KCT confirm its consent to the sublease of the Lease Agreement to Assignee as the subsidiary of Watco;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein contained to be kept and performed by the parties hereto, it is mutually agreed as follows:

1. Assignor, effective June 1, 2004, (the "Effective Date") hereby subleases and assigns to Assignee all the rights and interests of Assignor under the Lease Agreement.

2. Assignee hereby acknowledges and assumes liability as the assignee of the Assignor under the Lease Agreement as of the Effective Date, and hereby further covenants and agrees to, as of the Effective Date, abide by and to perform all the covenants, provisions, conditions, obligations and restrictions in the Lease Agreement set forth and binding upon and agreed to be performed by Assignor.

3. Assignee shall indemnify and hold Assignor harmless from and against any damages whatsoever arising from or caused by Assignee's failure to perform any of the obligations hereunder assumed.

4. KCT hereby confirms that it has consented to, and that it continues to consent to, the sublease and assignment of the Lease Agreement on the terms and conditions set forth in the Consent Agreement. Further, KCT acknowledges and agrees that this consent runs not only to a sublease and assignment by Assignor to Watco of the Lease Agreement, but also a sublease and assignment of the Lease Agreement by Assignor to Assignee as a subsidiary of Watco; provided that Assignor shall remain responsible to, and shall indemnify, KCT pursuant to the terms and conditions of the Consent Agreement as if Assignor were Watco under the Consent Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Assignment Agreement in triplicate the day and year first above written.

Witnesses for KCT:

[Signature]
Diana B. Bond

THE KANSAS CITY TERMINAL
RAILWAY COMPANY

By: [Signature]
Title: President

Witnesses for Assignor:

[Signature]
Tim Beford

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By: [Signature]
Title: Chairman, Pres & CEO

Witnesses for Assignee:

[Signature]
Tim Beford

KAW RIVER RAILROAD, INC.

By: [Signature]
Title: General Counsel & Atty. in Ch.

VERIFIED STATEMENT OF
WILLIAM J. MARTIN

My name is William J. Martin, I am employed as a locomotive engineer by Kansas City Southern-ICE Joint Facility, an affiliate of Kansas City Southern Railway Company (KCS). I have been employed by KCS-ICE, or its various predecessors, for the past 32 years. I reside in Lenexa, KS.

I am a member of the Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET). I presently serve as Local Chairman for BLET's Division 930. For about 15 years, I was President of Division 930.

I have read the Notice of Exemption, filed May 25, 2004 by Kaw River Railroad, Inc. (KRR). I also have read the related notice of exemption, filed the same day by Watco Industries, to acquire control of KRR along with its other rail carriers.

I am fully familiar with KCS operations in the Kansas City area.

The formal advice from KCS was its KCS Terminal Notice #14, dated May 26, 2004, which became effective at the end of shifts on May 31, 2004. Some 11 assignments were abolished, and 6 were established. The net loss of 5 assignments was work primarily at the Mill Street Yard. Subsequently, by Terminal Notice #23, an additional engineer job was abolished through the restructuring made possible by transfer of certain operations to KRR. We no longer have any Mill Street Yard (YKS) assignments. The KCS notices to employees are attached as my Appendix 1. The displaced

locomotive engineers have exercised seniority elsewhere which, in turn, have resulted in further displacements, some leaving the craft of engineer. I calculate that 18 KCS operating (engineer and switchman) jobs have been lost due to the KRR takeover of our work. This has a particularly severe impact upon engineers, as we had only 21 engineers holding regular assignments (not including extra board), of a total of 31 qualified engineers, which has now been reduced to 15 regularly assigned engineers in the terminal. A number of persons have suffered reduced earnings in the process, and will continue to do so in the foreseeable future.

The map attached to the KRR notice, designated Exhibit "A," gives a general outline of the portion of the terminal contracted out to KRR operations. I have reproduced the map as my Appendix 2. The KCT switching trackage extending near Union Station to K.C. Star, shown in Green, was utilized by Watco earlier this year to switch cars to and from K.C. Star, which took the work away from KCS crews. However, KCS later resumed the K.C. Star operation. We were advised that Watco service had become unsatisfactory. Subsequently, Watco, and now Watco's affiliate, KRR, has resumed service to K.C. Star, displacing KCS crews.

The trackage outlined in Blue, termed KCT Mainline, extending from Union Station, and crossing the Kansas River, is utilized regularly by a number of railroads operating in the Kansas City MO/KS terminal. KCT stands for Kansas City Terminal Railway Company, which I have been advised is owned by the line-haul carriers operating to and within the Kansas City area, but KCT provides no train movements of its own. The bridge over the Kansas River is double-decked, with tracks on both levels. KRR is not the

only operator on the KCT Mainline designated on my Appendix 2. Moreover, my Appendix 2 does not show the tracks of other rail carriers connecting with the KCT Mainline.

The trackage designated KCT Switching Trackage, colored Green, was operated by our KCS crews, which included the Mill Street Yard. Our forces would provide switching to make-up and break-up KCS trains, with cars originating or destined to industries served by KCS. At present, KRR does this work for KCS. However, on occasion, KCS will operate over the KCT or KCS trackage leased or assigned to KRR, so as to assist the delivery of cars to Mill Street Yard destined to a particular industry. the need of a given industry. I have been the engineer on such movement, and I have been advised KCS did not surrender its concurrent right to operate on the trackage leased, sub-leased, or otherwise assigned to KRR.

The trackage designated KCS Trackage, colored Red, is used for switching cars to and from industries. It is not Mainline, and not used for through freight movements. The KCS Armourdale Yard is no longer an active yard, but does have some industries. Moreover, cars may be stored there for movement to or from local industries served by KCS. Appendix 2 does not list some important industries, which are in the Armourdale Yard.

The entire area shown on my Appendix 2 is utilized for switching and industrial work. The KRR operations which commenced June 1, 2004, perform switching and industrial work in substitution for our KCS service. KRR does not operate out of the Kansas City MO/KS terminal.

The KRR operating employees are not represented by any labor organization, and I estimate the wage level for these employees is substantially less than for comparable KCS employees. Moreover, and of considerable importance, I understand our health and other fringe benefits are substantially better than for KRR personnel.

VERIFICATION

STATE OF KANSAS)
COUNTY OF WYANDOTTE)

Under the penalties of perjury, I affirm the foregoing
statement is true and correct as stated.

William J. Martin

WILLIAM J. MARTIN

Dated at
Lenexa, KS
August 2, 2004

KANSAS CITY SOUTHERN RAILWAY
TERMINAL NOTICE #14
5/26/04

W.J. Martin
Appendix 1
Page 1 of 4

TO: ALL CONCERNED

EFFECTIVE END OF SHIFT 5/31/04 THE FOLLOWING MILL ST.
YARD ASSIGNMENTS ARE ABOLISHED.

YKS105 (ALL POSITIONS)
YKS112 (ALL POSITIONS)
YKS217 (ALL POSITIONS)
YKS405 (ALL POSITIONS)
YKS310 (ALL POSITIONS)

EFFECTIVE END OF SHIFT 5/31/04 THE FOLLOWING RELIEF
ASSIGNMENTS ARE ABOLISHED

YKC440 (ENGINEER POSITION) RELIEF #202
YKC430 (ENGINEER POSITION) RELIEF #102
YKC432 (ENGINEER POSITION) RELIEF #101
YKC434 (SWITCHMEN POSITIONS) RELIEF #3

EFFECTIVE END OF SHIFT 5/31/04 THE FOLLOWING JT. AGENCY
YARD ASSIGNMENTS ARE ABOLISHED

YKC108 (ALL POSITIONS)
YKC106 (ALL POSITIONS)

THE FOLLOWING JOBS WILL BE READVERTISED IN THE
FOLLOWING MANNER

YKC108 (RUN 4) WILL WORK IN REMOTE CONTROL OPERATION
MONDAY THROUGH AND INCLUDING THURSDAY. ON FRIDAY,
SATURDAY AND SUNDAY THIS JOB WILL WORK WITH AN
ENGINEER IN A CONVENTIONAL METHOD. THE REST DAYS
WILL BE FRIDAY AND SATURDAY FOR THE SWITCHMEN. THE
START TIME FOR THIS ASSIGNMENT WILL BEGIN AT 0630AM.

THE YKC430 (ENGINEER'S RELIEF #102) WILL BE READVERTISED TO WORK THE FOLLOWING SCHEDULE. REST DAYS WILL WEDNESDAY AND THURSDAY. WORK THE ENGINEER'S POSITION ON YKC108 (RUN 4) ON FRIDAY, SATURDAY, AND SUNDAY. ON MONDAY AND TUESDAY WORK ENGINEER'S POSITION ON YKC122 (RUN 3)

YKC106 WILL BE READVERTISED FOR A FULL CREW TO WORK THE FOLLOWING SCHEDULE. THE ENGINEER'S POSITION WILL WORK MONDAY THROUGH AND INCLUDING FRIDAY STARTING AT 0630AM. THE REST DAYS FOR THE ENGINEER'S POSITION WILL BE SATURDAY AND SUNDAY. THE FOREMAN AND HELPER POSITIONS WILL WORK SUNDAY THROUGH AND INCLUDING THURSDAY STARTING AT 0630AM. THE REST DAYS FOR THE FOREMAN AND HELPER WILL BE FRIDAY AND SATURDAY. THE HELPER POSITION ON FRIDAY AND SATURDAY WILL BE FILLED FROM THE SWITCHMEN'S EXTRA BOARD.

YKC432 (ENGINEER'S RELIEF #101) WILL BE READVERTISED TO WORK THE FOLLOWING SCHEDULE. REST DAYS WILL BE THURSDAY AND FRIDAY. WORK THE ENGINEER'S POSITION ON YKC106 ON SATURDAY AND SUNDAY STARTING AT 0630AM. WORK THE ENGINEER'S POSITION ON YKC116 ON MONDAY AND TUESDAY STARTING AT 0700AM. WORK THE ENGINEER'S POSITION ON WEDNESDAY TRAMP JOB AT 0759AM WHICH WILL GO ON DUTY AT THE JT. AGENCY.

YKC434 (SWITCHMEN'S RELIEF #3) WILL BE READVERTISED TO WORK THE FOLLOWING SCHEDULE. REST DAYS WILL BE MONDAY AND TUESDAY. WORK THE JT. AGENCY TRAMP ASSIGNMENT AT 0759AM ON WEDNESDAY AND THURSDAY. WORK YKC108 AT 0630AM ON FRIDAY AND SATURDAY. WORK YKC132 AT 0759 ON SUNDAY.

THE ENGINEER'S POSITION FOR THE THURSDAY 0759AM JT. AGENCY TRAMP JOB WILL BE FILLED OFF THE ENGINEER'S EXTRA BOARD.

THE ENGINEER'S POSTION FOR YKC210 (RUN 32) WILL BE FILLED OFF THE ENGINEER'S EXTRA BOARD ON SUNDAY.

THE FOLLOWING NEW YARD ASSIGNMENT WILL BE ADVERTISED AS THE YKC325 (RUN 50) TO WORK THE FOLLOWING 5 DAY WORK SCHEDULE AT THE JT. AGENCY. ON MONDAY THROUGH AND INCLUDING FRIDAY THIS JOB WILL BEGIN WORK AT 2300PM AND WILL BE RESPONSIBLE FOR THE CENTROPOLIS AREA INDUSTRIES AS WELL AS GST. THE JOB WILL HAVE AN ENGINEER, FOREMAN AND HELPER POSITIONS. THE REST DAYS WILL BE SATURDAY AND SUNDAY FOR ALL POSITIONS.

ADVERTISEMENTS WILL CLOSE EFFECTIVE 1000AM 5/31/04. THE ASSIGNMENTS WILL BECOME EFFECTIVE TO WORK 6/1/04. BIDS MAY BE SUBMITTED BY USING THE VRU SYSTEM (1-800-554-8753) OR BY CALLING THE EMPLOYEE WORKFORCE MANAGER AT (1-866-219-6329).

KEVIN MCINTOSH

TERMINIAL SUPERINTENDENT

KANSAS CITY SOUTHERN RAILWAY
TERMINAL NOTICE #23
7/15/04

TO: ALL CONCERNED

EFFECTIVE END OF SHIFT 7/15/04 THE FOLLOWING YARD
ASSIGNMENTS ARE ABOLISHED.

YKC325 (ALL POSITIONS) RUN 50
YKC432 (ENGINEER POSITION) RELIEF 101
YKC434 (SWITCHMEN POSITIONS) RELIEF #3
YKC102 (SWITCHMEN POSITIONS) RUN 2

THE YKC434 (ENGINEER POSITION) WILL BE READVERTISED TO
WORK THE FOLLOWING SCHEDULE.

REST DAYS WILL BE THURSDAY AND FRIDAY.

WORK THE ENGINEER'S POSITION ON YKC106 ON SATURDAY
AND SUNDAY STARTING AT 0630AM. WORK THE ENGINEER'S
POSITION ON YKC116 ON MONDAY AND TUESDAY STARTING AT
0700AM. WORK THE ENGINEER'S POSITION ON YKC102 ON
WEDNESDAY AT 0630AM.

THE YKC102 WILL BE READVERTISED TO WORK IN REMOTE
CONTROL OPERATION ON MONDAY, TUESDAY, THURSDAY,
FRIDAY, SATURDAY AND SUNDAY. ON WEDNESDAY THIS YARD
ASSIGNMENT WILL WORK WITH AN ENGINEER IN A
CONVENTIONAL METHOD. THE REST DAYS FOR THE
SWITCHMEN WILL REMAIN THE SAME SATURDAY AND
SUNDAY. THE YKC434 WILL WORK THE ENGINEER'S POSITION
ON WEDNESDAY FOR THE YKC102.

KEVIN MCINTOSH

TERMINAL SUPERINTENDENT

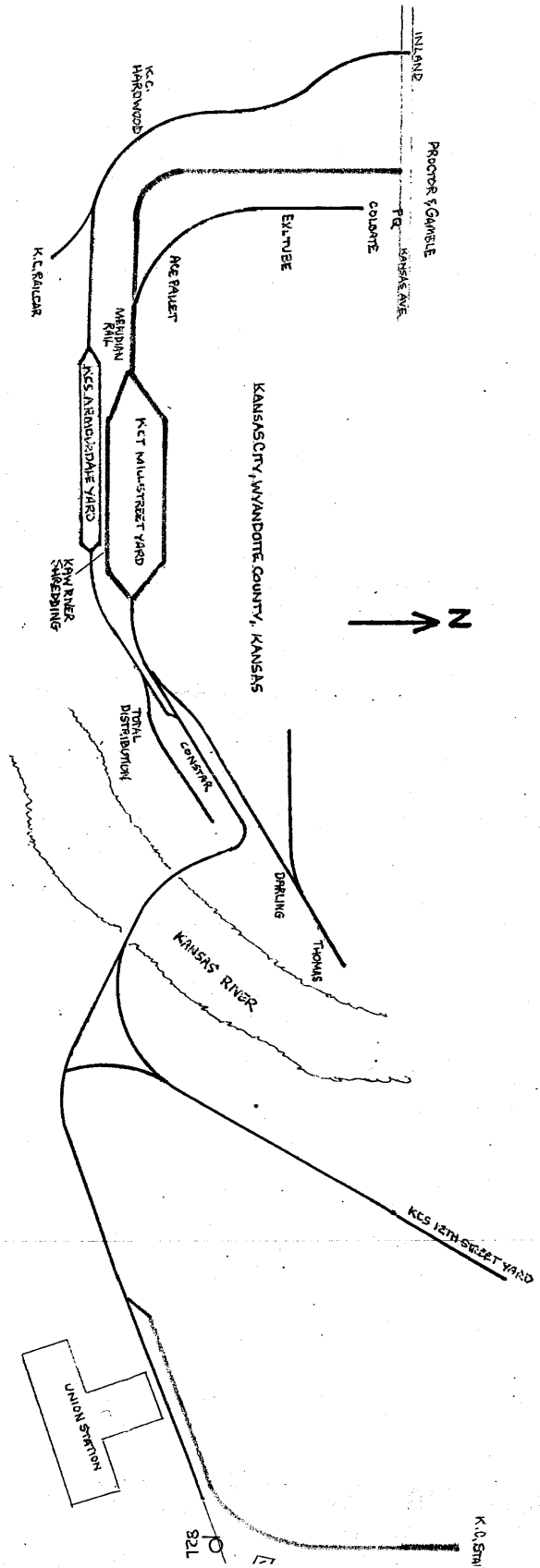


EXHIBIT "A"	
— KCT MAINLINE	APPROX. 6.2 MILES
— KCT SWITCHING TRACKS	4.5 MILES
— KCS TRACKAGE	7.5 MILES
X NOT INCLUDING YARD TRACKS	TOTAL 18.2 MILES

NOT TO SCALE - MAY 21, 2004 D.A. BRWKS

Finance Docket No. 34509

SUPPLEMENTAL VERIFIED
STATEMENT OF SAMUEL W. PARKER

My name is Samuel W. Parker. I am the same person by the same name that submitted a verified statement, dated May 27, 2004, in support of BLET's petition for stay. The May 27 statement is attached hereto, without the attached sketch map.

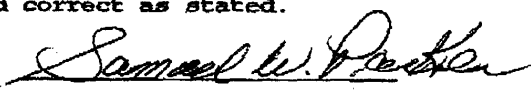
I have reviewed my May 27 statement. The initial estimate of employment loss has been modified by events, as set forth in the verified statement by the Local Chairman, William J. Martin, dated August 2, 2004, and I adopt his modification as set forth at pages 1-2 of his statement.

I have read the contention by Kansas City Southern Railway Company (KCS) in its reply to stay, at p. 3, dated May 28, 2004, where KCS disputes my claim the transfer of KCS operations to Kaw River Railroad, Inc. (KRR) would constitute a change in the KCS/BLET bargaining agreement. KCS points to Article VII, §3 of the May 31, 1996 national agreement, regarding transactions authorized under 49 U.S.C. §10901. I strongly disagree with KCS for several reasons, among which is that I am advised by counsel the instant transfer of switching operations does not come under 49 U.S.C. §10901. The KRR/KCS transaction constitutes a change in the collective-bargaining agreement.

STATE OF LOUISIANA
COUNTY OF CADDO

Under the penalties of perjury, I affirm the foregoing verified statement is true and correct as stated.

Dated at
Vivian, LA
August 11, 2004


SAMUEL W. PARKER

VERIFIED STATEMENT
OF SAMUEL W. PARKER

My name is Samuel W. Parker. I am employed by Kansas City Southern Railway Company (KCS) as a locomotive engineer. My seniority with KCS extends from 1977. I serve as General Chairman, on KCS, for Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters. (BLET)

KCS serves the Kansas City area, and switches cars to and from industries over its own trackage, as well as over tracks of the Kansas City Terminal Railroad (KCT), and the tracks of private industries.

My General Committee of Adjustment has jurisdiction over KCS/BLET matters in the Kansas City area. I am familiar with the Notice of Exemption in this proceeding, filed May 25, 2004, and have read the same. I am familiar with the KCS operations in the involved area. Moreover, I am in continual contact with BLET personnel who perform work on the involved trackage.

KCS proposes to contract out certain operations in the Kansas City area as embraced in its Notice. These operations would be transferred to a non-carrier to be named Kaw River Railroad Company, Inc. (KRR), which I am advised is an affiliate of Watco Companies (Watco), based at Pittsburg, Kansas. However, KRR's operations would not connect with the tracks or operations of any other Watco carriers, according to my understanding.

If KRR is permitted to take over the KCS operations, some five(5) regular, and two (2) extra KCS engine assignments would be abolished. These assignments are based at the KCT Millstreet Yard. This yard, and other trackage, are shown in the map attached as Exhibit A to the KRR notice, and I have reproduced the map as Exhibit A to my verified statement.

The KCS job loss would be an estimated 14 engineers and switchmen. In addition to these 14 persons, the adverse impact of the KRR substitution for KCS personnel would not merely be the estimated 14 lost jobs, but by the exercise of seniority, many others would be adversely in the bumping and rolling process. I believe a number of KCS employees would be forced to leave the Kansas City area in order to exercise their seniority.

In the event the transfer should become effective, but at a later date should be found unlawful, the status quo could not be restored. Restoration would be impossible due to the scrambling of positions. Moreover, I know of no provision in our KCS/BLET agreement for damage claims by employees for unlawful carrier discontinuance of service.

The involved trackage is utilized for switching cars to and from industries, sidings, and team tracks. The assignments are in yard service. The trackage does not handle through trains, and interchange is not effected with other carriers on the trackage. The work at Millstreet Yard does include some making up, and receipt of transfer runs, for operation over the KCT trackage termed KCT mainline on Exhibit A, for delivery/receipt with other rail carriers in the Kansas City area.

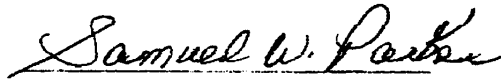
In my opinion, the KCS plan to contract the work out to a new non-carrier, KRR, would constitute a change in the KCS/BLET collective bargaining agreement.

VERIFICATION

STATE OF LOUISIANA)
COUNTY OF CADDO)

Under the penalties of perjury, I affirm the foregoing verified statement is true and correct as stated.

Dated at
Vivian, LA
May 27, 2004



SAMUEL W. PARKER

VERIFIED STATEMENT OF
KENNETH M. ROGERS

My name is Kenneth M. Rogers. I reside in Slater, MO. I am employed by Kansas City Southern Railway Company (KCS), as a locomotive engineer, and have been an employee of KCS, or its predecessors, since 1972. I am a member of the Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET). I serve as Local Chairman, and Legislative Representative, for BLET Division 8; I am also First Vice-Chairman for BLET's Missouri State Legislative Board.

I am familiar with the Kaw River Railroad, Inc. (KRR) takeover of certain KCS yard operations, on or about June 1, 2004. All of the KRR operating crew personnel report to and are based at the Mill Street Yard. The KRR crews make up and break-up KCS trains in the Mill Street Yard. The cars are originated at or destined to industries served over Kansas City Terminal Railway Company (KCT) switching trackage, or KCS switching trackage, or may be delivered to or received from nearby yards of other carriers over KTC mainline trackage. I use the term "KCT mainline" solely because it is so termed in the sketch map attached to the verified statement of William J. Martin, whom I know very well, and I have read his verified statement.

All of the KRR locomotive units are based at Mill Street Yard, with the exception of one unit positioned near Union Station, dedicated for the use of K.C. Star business, whose business, when performed by KCS crews, ordinarily required two switches

daily. The assignment serving the K.C. Star business does not operate to or from Mill Street Yard; rather, the work is picked-up or set-out near Union Station, usually by a crew operating to or from Mill Street Yard.

I am a locomotive engineer for KCS road trains which arrive and depart the KCT Mill Street Yard, although the sign on the yard office reads "KCS Mill Street Yard." Ordinarily, KCS has three road trains weekly between the Mill Street Yard, on the one hand, and St. Louis, MO., on the other hand.

I regard KRR as simply the agent of KCS. KRR does not operate outside the limited area of the Kansas City terminal shown on the sketch map already identified. Moreover, KCS and KRR use the same radio frequency (#78-78) for engine operations. This creates some confusion, and perhaps some safety concerns, but emphasizes the reality that KRR appears the agent of KCS, and acts in the stead of KCS. The KRR employees at the Mill Street Yard assemble the end-of-train device (ETD), and attach them to our KCS road trains. Finally, I add that KRR has access to the KCS software (MCS), and KRR's operating employees are qualified for KRR service by KCS officials.

VERIFICATION

STATE OF MISSOURI)
(COUNTY OF SALINE)

Under the penalties of perjury, I affirm the foregoing
statement is true and correct as stated.

Kenneth M Rogers

KENNETH M. ROGERS

Dated at
Staley, MO
August 12, 2004