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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34335

NOV 29 2004
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KEOKUK JUNCTION RAILWAY COMPANY—FEEDER RAILROAD DEVELOPMENT
APPLICATION—LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL

PETITION FOR RECONSIDERATION
PETITION TO WAIVE PAGE LIMIT
REQUEST FOR ORAL ARGUMENT

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Dated: November 29, 2004

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SURFACE TRANSPORTATION BOARD

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The Toledo, Peoria and Western Railway Corporation (“TP&W”) respectfully petitions the Surface Transportation Board (the “Board”) pursuant to 49 C.F.R. § 1115.3 to reconsider the “*Sale Decision*,” which required TP&W to sell to the Keokuk Junction Railway Company (“KJRY”) the 76-mile rail line between LaHarpe, IL, milepost 194.5, and Hollis, IL, milepost 118.5 (the “Line”) for \$3,940,756.¹ TP&W is requesting waiver of the 20-page limit set forth in 49 C.F.R. § 1115.3(d). TP&W is also requesting oral argument on this petition pursuant to 49 C.F.R. § 1116.

WAIVER OF PAGE LIMITATION

The manner and timing of the evidence presented in this proceeding by KJRY concerning the valuation of real estate denied TP&W the opportunity to respond to the real estate valuation evidence presented by KJRY. To fully respond to the real estate valuation presented by KJRY

¹ *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Railroad of Toledo, Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (STB served October 28, 2004).

for the first time on rebuttal, TP&W is submitting two verified statements and one opinion. The Board has recognized the necessity of this presentation to provide due process to TP&W.²

There are changed circumstances and new evidence concerning the location of a new shipper on the Canton, milepost 140.0, to Hollis line (the "Canton-Hollis Line") that substantially effects the valuation of the Canton-Hollis Line. TP&W is submitting a brief verified statement by Mr. Alan J. Satunas describing the new business and the value of that business to TP&W (under seal and classified as Highly Confidential). In addition, Mr. Satunas describes the tax credits created under the American Jobs Creation Act of 2004 that will be lost by TP&W from the forced sale of the Line.

Finally, in response to the Sale Decision, TP&W is enclosing a verified statement from Mark Garvin dealing with scrap and relay valuations.

To support this petition, TP&W has attached the additional information and evidence described above that will cause the document to exceed the 20-page page limitation in the Board's rules.

Not only was TP&W denied the opportunity to respond to new evidence submitted by KJRY on Rebuttal that in most proceedings is presented in the moving party's opening testimony, but the Board has asked TP&W to address the value of scrap metal. For these reasons, TP&W requests the Board to waive the page limitation of 49 C.F.R. § 1115.3(d).

REQUEST FOR ORAL ARGUMENT

TP&W has been ordered to sell over one-third of its railroad to KJRY. Not only is this a taking of unprecedented scope, but the circumstances surrounding the TP&W have changed

² *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Railroad of Toledo, Peoria and Western Railway Corporation Between La Hapre and Hollis, IL*, STB Finance

substantially and can best be explained to the Board in an oral argument. In addition, there are serious issues of railroad real estate and scrap steel valuation that require oral argument.

BACKGROUND

KJRY commenced this proceeding on April 9, 2003, by filing a Feeder Railroad Development Application under 49 U.S.C. § 10907, pursuant to the rules at 49 C.F.R. § 1151 (the “Application”). KJRY seeks to force TP&W to involuntarily sell the Line to KJRY. After the Board ordered rejection or supplementation of the Application,³ KJRY filed Supplemental Evidence Supporting the Feeder Railroad Development Program Application of Keokuk Junction Railway Company on June 9, 2003 (the “Supplement”). TP&W submitted a Reply to Supplemental Evidence on June 24, 2003, asking the Board to reject the Application, as supplemented, for failure to comply with the requirements of the *May 9 Decision*. KJRY improperly replied on June 27, 2003. The Board accepted the Application, as supplemented. *Keokuk Junction Railway Company-Feeder Line Acquisition-Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (STB served July 9, 2003 and as modified by a late release on July 9, 2003) (the “*July 9 Decision*”).

On July 18, 2003, TP&W appealed the *July 9 Decision* and sought clarification concerning the Mapleton Spur (the “July 18 Appeal”). KJRY responded on August 1, 2003 (the “August 1 Reply”). Despite having claimed three times that the Application was complete, KJRY filed another eight pages of evidence on August 1.

TP&W filed discovery on KJRY on August 13, 2003. KJRY responded on August 28,

Docket No. 34335 (STB served November 24, 2004), at 3.

³ *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Railroad of Toledo, Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (STB served May 9, 2003).

2003, causing TP&W to file a Motion to Compel Discovery Responses on September 5, 2003 (“September 5 Motion to Compel”). The Board denied the TP&W Motion to Compel.⁴

TP&W filed Comments on October 16, 2003. KJRY filed its rebuttal on November 7, 2003. KJRY filed monthly updates of its financing commitment through October 2004. TP&W updated the scrap steel values, as did KJRY.

ARGUMENT

The Board has been given extraordinary power under 49 U.S.C. § 10907 to require one railroad to involuntarily sell all or a portion of its property to another party if certain criteria are met and if the buyer pays the constitutional minimum value of the property being acquired. TP&W will demonstrate that the Board committed material error in finding that KJRY had met all of the criteria under 49 U.S.C. 10907(c)(1). TP&W will also demonstrate that changed circumstances, new evidence and material error require the Board to increase the constitutional minimum value of the Line from \$3,940,756 to \$---,---.

I. The Board erred in accepting KJRY’s evidence that TP&W failed to provide adequate service and that service was inadequate for a majority of shippers over the Line.

A. The Board has ignored its own standard in determining inadequate service.

The Board concluded that TP&W refused to provide adequate service and that the service on the Line to a majority of shippers was inadequate. This finding was based on unverified letters that were filed directly with the Board. In proceedings where shippers contend that a railroad has not provided adequate service and seek damages and restoration of service, the

⁴ In discovery, TP&W sought certain safety information from KJRY. KJRY refused to produce the information and the Board denied TP&W’s motion to compel the production of that information. The Board then chastised TP&W for making “unsubstantiated safety allegations”

Board requires a factual demonstration that there has been a reasonable request for service.⁵

There is no evidence in this record of a reasonable request for service.

KJRY's application is based upon unverified letters sent to KJRY and the Board by 10 shippers. They contended in their unverified letters that TP&W's service was inadequate and that rates were too high. However, there is no evidence that any of the shippers requested service from TP&W and were denied service by TP&W. The Board has concluded that it will not require damages or repair of a line where there is no evidence of a request for service.⁶

In the *Sale Decision*, at 5-6, the Board also concluded that the rates TP&W proposed to charge were "clearly unreasonable" based on a comparison to previous years. As the Board well knows, the determination of whether rates are reasonable is a rigorous process, requiring specific preliminary findings of market dominance⁷ and then an analysis based on constrained market pricing under 49 U.S.C. § 10701(d). A rate is presumed to be reasonable unless it is found to be unreasonable. 49 U.S.C. § 10701(c). The Board has not determined that TP&W has market dominance over the traffic of the shippers supporting KJRY, nor has it conducted any analysis to determine that those rates were unreasonable. The Board has merely concluded that the rates are unreasonable based on prior rates. TP&W believes such a conclusion is in error and comes from the Board's failure to realize that the nature of the Line changed once overhead traffic was rerouted, but not from any accepted analysis of the reasonableness of rates.

even though the Board had denied TP&W from substantiating its safety allegations by denying the motion to compel production of safety related documents.

⁵ *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42086 (STB served May 12, 2004) at 5.

⁶ *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42086 (STB served May 12, 2004), at 6.

⁷ 49 U.S.C. § 10707.

Based on the above, TP&W contends that the Board erred in concluding that TP&W refused to provide adequate service and that transportation was inadequate for a majority of shippers on the Line.

B. There is no justification for the sale of the Mapleton to Hollis Line.

In the Application, KJRY sought to acquire the Line along with the Mapleton Spur. In the Supplement, KJRY stated that it might or might not acquire the Mapleton Spur. Finally, in rebuttal, KJRY stated that it no longer sought to acquire the Mapleton Spur, but did not withdraw its request to acquire the Mapleton to Hollis portion of the Line.

In the *Sale Decision*, the Board relied upon (1) evidence that TP&W did not market the Line west of Mapleton, (2) complaints of high rates from shippers along the Line, and (3) TP&W's prior sale to the SF&L Railway, Inc. ("SF&L"), which had been revoked by the Board⁸, of the portion of the Line between LaHarpe, milepost 194.5, and West of Peoria, milepost 123.0, to justify its decision under the criteria of 49 U.S.C. § 10907(c)(1)(A).

Mapleton is located at milepost 123.0. It was the eastern terminus of the line TP&W sought to sell to SF&L. The line sought by KJRY extends eastward from Mapleton to milepost 118.5 at Hollis. As evidenced by the *Sale Decision*, at 5, TP&W continuously marketed its rail line west to Mapleton. Further, none of the shippers on the Mapleton Spur complained about the rates being charged by TP&W for movement over the Mapleton to Hollis line. Finally, TP&W never sought to sell or abandon the line between Mapleton and Hollis.

The Board justified the acquisition of the Line under 49 U.S.C. § 10907(c)(1)(B), including the Mapleton to Hollis portion, by uncritically analyzing the unverified letters from

several shippers on the Line. In doing so, the Board dismissed the fact that the five shippers on the Mapleton Spur had not complained about service when it said “The five overhead shippers that have not complained about TP&W’s service ... are located on the Mapleton Spur which TP&W will retain and thus are not part of the application.” *Sale Decision* at 7. The Board also mischaracterized the shippers on the Mapleton Spur as overhead shippers on the Line. The shippers on the Mapleton Spur have no alternative other than shipping via Mapleton. Since the traffic from the Mapleton Spur moves east over TP&W from Mapleton to Hollis, the traffic on the Mapleton to Hollis line is actually local traffic. Again, the Board erred in its analysis of the evidence to find that KJRY had carried its burden of proof for the Mapleton to Hollis line.

The Board then went on to conclude that TP&W would be in the same or a better position because KJRY had offered it trackage rights over the Mapleton to Hollis line for one dollar per year. *Sale Decision* at 8. The Board overlooked three considerations in reaching its conclusion. First, a railroad that owns its line has much more control over its ability to move its traffic and adequately serve its shippers than a tenant railroad that is subject to the priorities of the owning railroad. Second, the trackage rights proposed by KJRY are not for one dollar per year, but for a base rental of one dollar per year plus many additional costs. Finally, KJRY and its affiliated companies have taken extreme actions when involved in disputes with a connecting railroad. For example, when The Burlington Northern and Santa Fe Railway Company (“BNSF”) rebuffed an attempt by KJRY to purchase a line that had been served by BNSF for over 100 years, KJRY physically blocked its track and cut off BNSF’s access to the shippers. It took several years of

⁸ *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served October 17, 2002 and clarified January 31, 2003).

litigation for BNSF to obtain access to its shippers.⁹ More recently, KJRY's affiliate, the Indiana Southwestern Railway Co. is alleged to have removed the rail providing a physical connection to the national railroad system for the Ohio Valley Railroad Company.¹⁰ As the Board recognized in the *Sale Decision*, the Mapleton Spur contains traffic that is very valuable to TP&W. KJRY and its affiliates have shown a propensity for taking the most drastic types of self-help relief. TP&W is very concerned that its valuable customers on the Mapleton Spur will be placed in jeopardy if TP&W must operate pursuant to trackage rights over KJRY between Mapleton and Hollis, because of the extreme measures that KJRY and its corporate parent Pioneer Railcorp have shown they are willing to take and the time it takes to obtain relief from such actions.

There is no evidence in the record supporting the acquisition of the Mapleton to Hollis line under 49 U.S.C. § 10907(c)(1). TP&W has continuously operated over that line and there have been no complaints from the shippers who use that line. TP&W respectfully requests the Board to reconsider its decision requiring TP&W to sell its line from Mapleton, milepost 123.0, to Hollis, milepost 118.5, to KJRY under 49 U.S.C. § 10907 and deny KJRY's application for the Mapleton to Hollis line.

II. The Board did not value the Line at the constitutional minimum value as required by 49 U.S.C. 10907(b)(2).

A. There is new evidence of a new shipper on the Canton to Hollis line that will generate a going concern value.

⁹ *The Burlington Northern and Santa Fe Railway Company – Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, STB Finance Docket No. 33740 (STB served May 13, 2003), at 3.

¹⁰ See Finance Docket No. 34608, *Ohio Valley Railroad Company--Acquisition and Operation Exemption--Harwood Properties, Inc., Petition for Expedited Relief for Service Emergencies pursuant to 49 C.F.R. §§1146 and 1147*.

In its Petition for Stay, TP&W noted that a new shipper had decided to locate a large facility near Canton, IL. Because of a confidentiality agreement with the shipper, TP&W did not identify the shipper, the commodity, the exact location, or the value of the commodity being moved. In its response to the Petition for Stay, KJRY submitted a letter from the shipper that has been classified as Highly Confidential. The shipper identified itself, the commodity involved, and its location near Canton, confirming everything that TP&W had said. Curiously, the Board ignored the presence of such information in the record in the *Stay Decision*, at 3.

Mr. Satunas provides details in the Highly Confidential portion of his verified statement. Discussions with the shipper began in March 2004, after TP&W had filed its Comments and KJRY had filed its Rebuttal. Hence, this evidence was not available to TP&W at the time it filed its Comments. In addition, negotiations were not far enough along until just recently for TP&W to be able to bring this issue to the Board's attention while being highly confident that the shipper would use rail service to its facility near Canton.

Attached hereto is the Verified Statement of Mr. Alan J. Satunas, Vice President and General Manager of TP&W. Mr. Satunas has been instrumental in arranging for the shipper to build-out to allow competitive pricing between Class I carriers near Canton on TP&W. As Mr. Satunas explains, the shipper and TP&W were ready to execute a contract when the Board served the *Sale Decision*. The *Sale Decision* apparently has caused the shipper to have second thoughts about entering a contract with TP&W, but not about its decision to locate near Canton. See the Highly Confidential Attachment to the KJRY Reply to Stay Request.

Regardless of whether TP&W or KJRY provides the service to this shipper, it will be business that TP&W sought and generated. This new traffic is now part of the value of the Canton-Hollis Line. Instead of the constitutional minimum value of Canton-Hollis Line being

net liquidation value because of a lack of business, this new business now makes the Canton-Hollis Line a going concern, for which TP&W must be compensated under 49 U.S.C. § 10907(b)(2).

As TP&W explained in its Comments, the Board is required to separately value portions of a line as either going concern value or net liquidation value if there are distinct line segments. The Canton-Hollis Line is distinct from the LaHarpe to Canton line. Based on the new shipper, the Canton-Hollis Line will have a going concern value and should be valued accordingly to meet the requirement of the statute that TP&W be compensated at the going concern value of the Canton-Hollis Line. 49 U.S.C. § 10907(b)(2).

The portion of Mr. Satunas' Verified Statement that identifies the revenue from the shipper and TP&W's operating ratio has been classified highly confidential. However, TP&W expects to earn \$310,000 net operating revenue per year from this new traffic. Applying the Board's most recent cost of capital¹¹ of 9.4% to the annual net operating revenue of \$310,000 yields a going concern value of \$3,297,872.30, far in excess of the NLV of the Canton-Hollis Line that the Board has ordered KJRY to pay TP&W.

If the Board rejects TP&W's proposal to limit the forced sale to the line between LaHarpe and Canton, then the Board must order KJRY to compensate TP&W for the Canton-Hollis Line at the going concern value of \$3,297,872.30.

B. The Board committed material error in permitting KJRY to defer submitting evidence on land valuation until KJRY filed its rebuttal.

¹¹ *Railroad Cost-Of-Capital* —2003, STB Ex Parte No. 558 (Sub-No. 7) (STB served June 28, 2004).

Under the regulations governing feeder line applications, applicants are required to submit verified statements in support of “an estimate of the NLV.” 49 C.F.R. 1150.3(a)(4). In its Application, KJRY submitted a verified statement with by Mr. Gohmann, who is not a real estate appraiser, with a one page analysis of the real estate based on a review of “track charts.” Application at 186-187. KJRY, despite bearing the burden of proof, did not review the title on the Line or conduct an across-the-fence (“ATF”) valuation in the Application. In the Supplement KJRY provided no additional evidence as to the value of the real estate.¹²

TP&W was placed in a difficult position because of KJRY’s failure to submit any recognized evidence on the valuation of real estate. KJRY, the party with the burden of proof who was supposed to submit a case-in-chief with its application, had not submitted anything approaching a traditional real estate appraisal or valuation in a proceeding before the Board, and no justification for KJRY’s valuation. TP&W responded with substantial evidence of title and valuation by Mr. Cecil who buys and sells land for TP&W in the usual course of business and is very familiar with TP&W. On rebuttal, KJRY finally submitted evidence on the value of the real estate in an opinion from Mr. Mooty and a verified statement from Mr. Higgs. Had this evidence been filed with KJRY’s Application or Supplement, TP&W would not only have relied on Mr. Cecil to reply to these witnesses, but would have submitted testimony from witnesses similar to Mr. Golden, Mr. Rex, and Mr. Gray, if not those same witnesses in its Comments. However, by waiting until rebuttal to file its first evidence on the value of real estate, KJRY denied TP&W the opportunity to reply to that evidence. The Board committed material error in permitting KJRY to submit its first evidence on land valuation as part of KJRY’s rebuttal.

¹² It must be noted that KJRY sought discovery of the deeds to the Line. TP&W objected based on the public availability of the documents as well as other technical reasons. KJRY did not file

Not only is the Board required to provide due process to TP&W, but more importantly, the Board may not require TP&W to sell its rail line for less than the constitutional minimum value under section 10907, which is presumed to be not less than the net liquidation value. TP&W must be given the opportunity by the Board to demonstrate the NLV since the Board cannot order the sale at less than the NLV.

To that end, TP&W is filing the opinion of Mr. Jeffrey P. Gray and Mr. Scott R. Borstein of Wildman, Harrold, Allen & Dixon (for convenience referred to as 'Mr. Gray') on TP&W's title to the real estate, and the verified statements of Mr. Douglas S. Golden and Mr. Charles W. Rex, critiquing the appraisal performed by Mr. L. Arlen Higgs. Had KJRY followed the Board's rules and the Board required KJRY to follow its rules, KJRY would have submitted Mr. Mooty's opinion and Mr. Higgs testimony with the Application and TP&W would have had the opportunity to respond, and would have responded, in its Comments. TP&W expects further evidence on the value of the real estate from KJRY in its response to this Petition in order for the Board to fulfill its mandate of determining the NLV of the Line.¹³

Mr. Gray followed Mr. Mooty's format in analyzing the Deeds. Mr. Gray agrees with Mr. Mooty's analysis of the Deeds in Rows 3, 5, 7, 8, 9, 10, 11, and 12. However, Mr. Gray reached a different conclusion for the Deeds in rows 1, 2, 6, 13, 14, 16, and 18. Unlike Mr. Mooty who considered only the granting clause of the deeds, Mr. Gray considered the entire

a motion to compel. KJRY also did not obtain the deeds from public sources.

¹³ It must seem strange to the Board that KJRY's bank was willing to commit over \$7 million in loans to KJRY to acquire property valued by KJRY at barely \$3 million. It is also strange that KJRY accepted the valuation set by the Board almost immediately, even though it was nearly \$1 million higher than the value attributed to the Line by KJRY. Of course, the strangeness evaporates if one considers that KJRY and its bank actually view the value of the Line to exceed \$7 million and believe the price set by the Board to be far below the true net liquidation value of the Line.

Deed and clearly explained why Mr. Mooty's analysis was in error. Even if the Board gives equal weight to the opinions of Mr. Gray and Mr. Mooty, since the burden of proof is on KJRY and the Board must not set the price to be paid by KJRY below the constitutional minimum, the Board must accept the analysis of TP&W's expert as to TP&W's title to the Line. However, even a cursory review of the two opinions leads a reasonable person to conclude that Mr. Gray's opinion is much more detailed and accurate than Mr. Mooty's.

Mr. Golden and Mr. Rex have reviewed Mr. Higgs appraisal and find that it does not meet the standards developed by the Board. Mr. Cecil conducted an ATF appraisal. Both Mr. Golden and Mr. Rex have reviewed Mr. Cecil's appraisal and concluded that it complies with appropriate ATF appraisal methodology.

Mr. Higgs claims that Mr. Cecil did not consider sales from the old abandoned right-of-way in calculating NLV for the real estate. Mr. Rex and Mr. Golden correctly explain that it was improper for Mr. Cecil to include those sales, and for Mr. Higgs to base his appraisal on those sales because: (1) the most recent from 1995 is too old to be relevant; and (2) they are not across-the-fence from the real estate in the Line.

Mr. Higgs claims that the best way to appraise the Line is to look at the results from the sale of six other rail corridors that were abandoned by various railroads in Illinois between eight and fifteen years ago. Mr. Rex and Mr. Golden succinctly refute Mr. Higgs' claim by pointing out that Mr. Higgs' verified statement does not contain an independent real estate appraisal as defined by the minimum standards set forth in the Uniform Standards of Professional Appraisal Practice and provides no support from appraisal literature for this theory.

Moreover, Mr. Rex explains that Mr. Higgs is not even qualified to conduct such an appraisal. Mr. Rex, a well respected appraiser, author in the field of real estate appraisal, and

instructor in the field of real estate appraisal concludes that Mr. Cecil's appraisal is sound, while Mr. Higgs and KJRY's counsel did not even perform an appraisal. Mr. Rex is also quite correct when he explains that the discounts applied by KJRY were not applied by Mr. Higgs and were not appropriately developed by Mr. Higgs.

The Board has rejected the use of other rail corridors as a legitimate means of valuation when compared to an ATF appraisal. *LaPorte Abandonment* at 5-6. Here, Mr. Cecil's ATF valuation has been reviewed and approved by two experts in real estate appraisal. Indeed, Mr. Rex was the appraiser whose appraisal the Board accepted in the *LaPorte Abandonment*.

The Board has rejected the use of unit costs based on former rail corridors saying that "we do not consider this an acceptable method of valuation for NLV purposes." *Boston and Maine Corporation—Abandonment—in Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 83) (STB served July 1, 1998), at 6. Instead the Board concluded "The highest and best non-rail use is to sell parcels to adjoining landowners or other interested parties. We find the ATF method of valuation is appropriate for this case." *Id.* Mr. Cecil, as confirmed by Mr. Golden and Mr. Rex prepared an acceptable ATF valuation for TP&W, while Mr. Higgs prepared an unacceptable corridor comparison and no appraisal.

Mr. Golden has recalculated the NLV of the real estate based upon Mr. Gray's analysis of title, Mr. Cecil's ATF analysis, and Mr. Higgs sell-off period, which Mr. Golden accepted in order to conservatively estimate the NLV of the real estate. See Golden VS, Exhibit B. Based on Mr. Golden's calculations, the real estate NLV for the Line is 1,828,570. The real estate NLV for the line between LaHarpe and Canton (milepost 140.0) is \$958,610.7, and the real estate NLV for the line between Canton (milepost 140.0) Hollis is \$870,463.

C. The Board failed to follow its own precedent in averaging the value of scrap steel.

The *Sale Decision* at 14, contrary to precedent cited there, chose to average the price of scrap steel over a time period based on two much older decisions. TP&W contends that the Board erred in averaging the price of scrap steel, and that TP&W was entitled to the value of scrap steel on the date the *Sale Decision* was served. Indeed, in Mr. Garvin states that he would have sold the scrap material as of November 1, 2004, if this were a voluntary sale, forgoing any potential upside in the scrap steel market to lock in the November 1, 2004 value.

The *Sale Decision* relies on two decisions to attempt to back track from the Board's most recent precedent increasing net salvage value to incorporate the "increase for the price of scrap steel."¹⁴ The Board was correct in its analysis in the *LaPorte Abandonment*, and should follow its recent precedent. Indeed, there is strong support for that precedent in the other decisions cited by the Board.

The Board averaged the scrap price of steel when the selling railroad stated that it averaged the scrap price of steel as a matter of course and when the purchase price of steel became depressed.¹⁵ In *N&W Abandonment*, the ICC was asked to set the terms for the sale of a line of railroad that had been approved for abandonment. The value of scrap metal had been falling over the past several years. The ICC concluded that "carriers need not sell their scrap materials during periods of depressed prices." *Id.*, at 5. The ICC then stated that "we are reluctant to accept artificially low prices." *Id.*, at 6. The ICC selected the railroad's average of

¹⁴ *CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served April 30, 2004) ("*LaPorte Abandonment*").

the scrap price as the better of two submissions. *Id.* When referring to fit materials, the ICC stated that it would accept newer data. *Id.*

The ICC accepted the averaging of the most recent steel prices in a proceeding where it was deciding whether to grant an abandonment and needed to determine the NLV of the line in order to calculate opportunity costs.¹⁶ In *C&NW Abandonment*, the ICC accepted the averaging of six months of scrap value proposed by the railroad, substantially less than the 16 months the Board used in the *Sale Decision*.

The Board did not order TP&W to transfer the Line to KJRY until October 28, 2004. Until the *Sale Decision* was served, it was unclear that TP&W would be required to sell the Line to KJRY. Once the *Sale Decision* was served, the Board should value the Line as of that time, especially where there is a volatile scrap market. Mr. Garvin has valued the scrap in the Line using values from AMM and Iron Age, both as of November 1, 2004, the date nearest the service of the *Sale Decision* and the date on which Mr. Garvin would voluntarily sell the scrap steel. That value of \$240 per ton for scrap steel should be accepted by the Board in accord with its very recent rationale in *LaPorte Abandonment* and the logic of not requiring a railroad to sell at a depressed price in *N&W Abandonment*.

1D. The Board must include tax credits that will be forgone in its valuation.

Mr. Satunas has explained that under the American Jobs Creation Act of 2004, provisions relating to railroads at 26 U.S.C. §45G, a class III railroad will earn tax credits of up to \$3,500

¹⁵ *Norfolk and Western Railway Company—Abandonment Between New Castle and Rushville, in Henry and Rush Counties, IN*, ICC Docket No. AB-10 (Sub-No. 11) (ICC served February 11, 1983) (“*N&W Abandonment*”).

¹⁶ *Chicago and Northwestern Transportation Company—Abandonment Between Marshalltown (Powerville) and Cedar Falls Junction and Between Hicks and Dike—in Marshall, Tama,*

per mile on a system wide basis if its qualified investments are \$7,000 per mile on a system wide basis. Qualified investments are defined as all expenditures for maintaining and replacing the track, including roadbed, bridges, and related track structures that are owned or leased by a Class III railroad like TP&W.

The TP&W is 283 miles long. TP&W in 2004 budgeted \$2,096,553 for qualifying investments, thereby qualifying for the entire tax credit over its entire line of \$990,500. TP&W has budgeted and will continue to make similar investments in its line for 2005, 2006, and 2007, the three years that the tax credit is available. The Line is 76 miles long, plus 7.3 miles of yard and side track, a total of 83.3 miles. TP&W will be entitled to a tax credit of \$ 291,550 per year, or a total tax credit of \$874, 650. Mr. Satunas has also calculated the tax credit by segment.

III. TP&W agrees to sell the LaHarpe to Canton line to KJRY and grant overhead trackage rights at standard rates value to KJRY between Canton and Hollis.

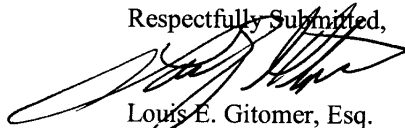
TP&W remains willing to sell the portion of the line between LaHarpe and Canton, milepost 140.0, to KJRY for NLV as revised to reflect the true real estate and scrap values. TP&W is also willing to grant KJRY trackage rights over the line between Canton, milepost 140.0, and Hollis at standard industry rates and on standard industry terms. Not only will KJRY be able to serve the local shippers who have supported it, but KJRY will also be able to avoid the cost of acquiring and maintaining the Line, while still being able to reach Hollis. In addition, TP&W will be able to obtain the benefit of its hard work in attracting a major new shipper to the Canton area.

CONCLUSION

Grundy and Blackhawk Counties, IA, ICC Docket No. AB-1 (Sub-No. 211) (ICC served December 14, 1988) ("C&NW Abandonment").

TP&W has demonstrated that the *Sale Decision* contains material error, that there are changed circumstances and that there is new evidence. TP&W requests the Board to reverse the Sale Decision because the evidence did not meet the criteria of section 10907(c)(1)(A and B). If the Board persists in requiring the sale, TP&W respectfully requests that the Board exclude the Mapleton to Hollis segment because there is no evidence under section 10907(c) supporting the sale of that portion of the Line. TP&W also requests the Board to set the value of the Canton-Hollis Line at a GCV of \$3,297,872.30, and of the LaHarpe to Canton line at an NLV of \$5,855,083 (consisting of \$ 958,107 net liquidation value for land and \$4,896,976 net salvage value for track and materials), plus the lost tax credit of \$874, 650.¹⁷

Respectfully Submitted,



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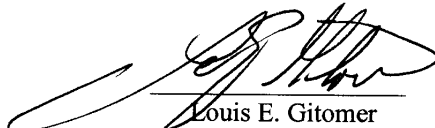
Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: November 29, 2004

¹⁷ The NLV of the Canton-Hollis Line is \$3,102,210 consisting of \$ 870,463 net liquidation value for land and \$ 2,231,747 net salvage value for track and materials. For the Line, the NLV is \$ 8,957,293, consisting of \$ 1,828,570 net liquidation value for land and \$ 7,128,723 net salvage value for track and materials.

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this pleading upon all parties of record in this proceeding, by hand or overnight delivery.



Louis E. Gitomer
November 29, 2004

Before the Surface Transportation Board

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY – FEEDER RAILROAD
DEVELOPMENT APPLICATION – LINE OF TOLEDO, PEORIA & WESTERN
RAILWAY CORPORATION BETWEEN LA HARPE AND HOLLIS, IL

VERIFIED STATEMENT OF ALAN J. SATUNAS

My name is Alan J. Satunas and I am Vice President and General Manager of the Toledo, Peoria & Western Railway Corp. ("TP&W"). I have previously filed a Verified Statement in this proceeding. This statement addresses two changed circumstances that have arisen during the pendency of this proceeding before the Surface Transportation Board (the "Board") and affect the value of the Line (as defined below) if the Board orders TP&W to involuntarily sell the Line to the Keokuk Junction Railway Company ("KJRY"). First will be the loss of \$874,650 in tax credits to TP&W, and second the expected revenue from a new shipper, which is discussed in the Highly Confidential section of this statement, as permitted by the confidentiality agreement between the parties.

1. The total mainline track mileage of TP&W that is owned or leased is 251.3 miles, including 31.7 miles of siding and yard track, a total of 283.0 miles. This includes the 76.0 miles from LaHarpe at MP 194.5 to Hollis at MP 118.5 (the "Line"), with an additional 7.3 miles of sidings and yard tracks. Under the American Jobs Creation Act of 2004, provisions relating to railroads at 26 U.S.C. §45G, a Class III railroad will earn tax credits of up to \$3,500 per mile on a system wide basis if its qualified investments are

\$7,000 per mile on a system wide basis. Qualified investments are defined as all expenditures for maintaining and replacing the track, including roadbed, bridges, and related track structures that are owned or leased by a Class III railroad like TP&W. To fully qualify for the maximum tax credit allowed, TP&W would have to spend \$1,981,000 (283 miles times \$7,000) per year. Using the 2004 TP&W budget for track maintenance of \$1,020,583, and capital expenditures for track and related track structures of \$1,075,970, TP&W would spent \$2,096,553 in 2004 and would have qualified for all of the tax credits that are limited to \$3,500 per track mile of \$990,500. TP&W's projected budgets for 2005, 2006 and 2007 equal or exceed the 2004 budget and 2004 expenditures, and therefore will exceed the available credit. If TP&W is required to sell the Line to KJRY, then TP&W will lose the ability to claim tax credits for the mileage taken, while, if KJRY expends the necessary funds on a system wide basis, KJRY will obtain the benefit of those tax credits. For the 54.5-mile LaHarpe to Canton segment, at \$3,500 per mile TP&W would lose a tax credit of \$190,750 per year over three years of \$572,250. For the 21.5 miles of the Canton to Hollis segment, this would be an additional \$225,750.¹ In addition, TP&W would lose tax credits for the 7.3 miles of side and yard track totaling \$ 76,650. This is money that would be removed from TP&W by the forced sale, and the Board should require KJRY to fully compensate TP&W for the taking in the amount of \$874,650, or a lesser amount if the Board reduces the mileage it requires TP&W to sell to KJRY.

2. HIGHLY CONFIDENTIAL

¹ The Mapleton to Hollis segment included in the Canton to Hollis line is 4.5 miles long with a three year tax credit of \$47,250.

VERIFICATION

I, Alan J. Satunas, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 29th day of November, 2004.


Alan J. Satunas

V:\Depts\Legal\TPW\verified statement - satunas.doc

Before the Surface Transportation Board

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY – FEEDER RAILROAD
DEVELOPMENT APPLICATION – LINE OF TOLEDO, PEORIA & WESTERN
RAILWAY CORPORATION BETWEEN LA HARPE AND HOLLIS, IL

VERIFIED STATEMENT OF MARK D. GARVIN

My name is Mark D. Garvin and I have previously filed a Verified Statement in this proceeding. I prepared six spreadsheets showing the Net Salvage Value (“NSV”) of the Toledo, Peoria & Western Railway Corp.’s (“TP&W”) line of railroad from MP 194.5 at LaHarpe to MP 140.0 at Canton (“LaHarpe Line”), from Canton to Hollis at MP 118.5 at Hollis (“Hollis Line”), and from LaHarpe to Hollis (the “Line”). Three of the spreadsheets use values from AMM and three from Iron Age, all as of November 1, 2004.

One of my duties for TP&W is to determine the proper time to liquidate assets in order to obtain the highest and best use of those assets for TP&W. If TP&W were voluntarily liquidating the Line between October 28, 2004 and January 26, 2005, I would have directed TP&W to have sold the scrap rail on November 1, 2004 as soon as I saw the AMM scrap prices for No. 1 Heavy Melt in Chicago on that day of \$240 per ton. Although there is continued growing demand for scrap steel from China and the price reached \$250 per ton in September, I would not risk a loss in value below \$240 per ton by waiting, even though there is an excellent opportunity for an increase in value. My business judgment is that in a voluntary sale of assets involving a willing buyer and willing seller, TP&W would receive its highest and best value for scrap steel by selling it

at the value of \$240 per ton based on the AMM November 1, 2004 value for Chicago No. 1 Heavy Melt. This same analysis is true for reroll rail, which has climbed steadily since June 2004 to \$325 per ton according to AMM.

I have accepted the Board's valuation of ties and ballast of \$735,051, of signals for \$0, and of turnouts of \$100,381. I have reduced the value of relay rail by 20 percent, as the Board did in its decision at page 15. I have also adopted the Board's liquidation costs.

For the LaHarpe Line, the NSV using AMM values is \$4,896,976. It is attached hereto as my Exhibit A. For this same line, using Iron Age values, the NSV is \$4,869,082 and it is attached as my Exhibit B. For the Hollis Line, the NSV using AMM values is \$2,231,747 and that spreadsheet is attached as my Exhibit C. Using Iron Age values, the NSV for this line is \$2,208,871 in Exhibit D. The NSV for the Line based on AMM of \$7,128,723 and Iron Age of \$7,077,953, respectively. The relay prices were obtained from quotes from buyers of relay rail in Chicago.

Finally, Exhibit E Contains the AMM quotes for No. 1 Heavy Melt and re-roll rails from April 1, 2004 to November 1, 2004.

EXHIBIT A

TPW - MP 140 to MP 194.5

YFW - MP 140 to MP 194.5											
Rail											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Discounted Relay 20%	Total \$ GT
131lb	CWR	1.1	219.03	240.94	215.12	Relay	\$600		\$144,561		\$115,649
115lb	CWR	3.6	192.28	692.21	618.04	Relay	\$670		\$463,779		\$371,023
115lb	Jnt	9.74	192.28	1872.81	1672.15	Relay	\$575		\$1,076,864		\$861,491
115lb	Jnt	1.5	192.28	288.42	257.52	Reroll					\$83.693
115lb	Jnt	1	186.21	186.21	166.26	Scrap		\$240			\$39,902
112lb	CWR	2.8	187.26	524.34	468.16	Relay	\$600		\$314,604		\$251,683
100lb	Jnt	6.62	167.20	1106.86	988.27	Reroll		\$325			\$321,188
100lb	Jnt	3.22	161.92	521.38	465.52	Scrap		\$240			\$111,725
112lb	Jnt	9.67	187.26	1810.84	1616.82	Relay	\$500		\$905,421		\$724,337
112lb	Jnt	3	187.26	561.79	501.60	Reroll		\$325			\$163,020
112lb	Jnt	1.98	181.35	359.07	320.60	Scrap		\$240			\$76,944
131lb	Jnt	4.4	219.03	963.74	860.48	Relay	\$510		\$491,508		\$393,206
131lb	Jnt	1	219.03	219.03	195.56	Reroll		\$325			\$63,558
105lb	Jnt	1.4	170.02	238.02	212.52	Scrap		\$240			\$51,005
90lb	Jnt	1	145.73	145.73	130.11	Scrap		\$240			\$31,227
100lb	Jnt	5	167.20	836.00	746.43	Relay	\$510		\$426,360		\$341,088
80lb	Jnt	0.26	129.54	33.68	30.07	Scrap		\$240			\$7,217
70lb	Jnt	2.41	113.34	273.16	243.89	Scrap		\$240			\$58,534
Totals		59.7		10874.23	9709.14		Total Rail Value			\$4,066,492	

OTM										
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Total \$ GT
100lb	Jnt	10.04	55.3	555.21	495.73	Scrap		\$240		\$118,974
90lb	Jnt	1	50.0	50.00	44.64	Scrap		\$240		\$10,714
115 lb	Jnt	1	84.2	84.20	75.18	Scrap		\$240		\$18,043
70lb	Jnt	2.41	40.0	96.40	86.07	Scrap		\$240		\$20,657
80lb	Jnt	0.26	57.0	14.82	13.23	Scrap		\$240		\$3,176
105lb	Jnt	1.4	57.0	79.80	71.25	Scrap		\$240		\$17,100
112lb	Jnt	1.98	84.0	166.32	148.50	Scrap		\$240		\$35,640
112lb	CWR	2.8	74.0	207.20	185.00	Relay	\$325		\$67,340	
112lb	Jnt	12.67	84.0	1064.28	950.25	Relay	\$325		\$345,891	
115lb	CWR	3.6	74.8	269.28	240.43	Relay	\$325		\$87,516	
115lb	Jnt	11.24	84.2	946.41	845.01	Relay	\$325		\$307,583	
131lb	Jnt	5.4	93.2	503.28	449.36	Relay	\$325		\$163,566	
131lb	CWR	1.1	82.5	90.75	81.03	Relay	\$325		\$29,494	
100lb	Jnt	4.8	55.3	265.44	237.00	Relay	\$325		\$86,268	
Totals		59.7		4393.39	3922.67		Total OTM Value			\$1,311,961

Tie and Ballast Reinstall				Signal Appliances			
	Per Mile	Miles	Total		Price/Units	No. Units	Total
Tie & Ballast - STB decision	\$ 8,968	59.7	\$535,414	Signal - STB decision	\$0	27	
\$ 735,051							
		Total Tie Value	\$535,414		\$0.00		
					Total all Signals		\$0

		Turnouts						
		Per T/O	No. T/O	Total		Per Mile	Mileage	Total
Turnouts - STB decision	\$ 2,049	24.0		\$49,166	Removal Cost - STB decision	\$ 17.857	59.7	\$1,066,058
\$ 100,381					\$ 1,463,553.0			
		Total Tie Value		\$49,166	Total Removal Cost			\$1,066,058

Gross Liquidation Value		\$5,963,034
		\$ 1,066,058
Net Liquidation Value		\$4,896,976

EXHIBIT B

Liquidation Value of Railroad Asset
TPW - MP 140 to MP 194.5

Rail											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Discounted Relay 20%	Total \$ GT
131lb	CWR	1.1	219.03	240.94	215.12	Relay	\$600		\$144,561	\$115,649	
115lb	CWR	3.6	192.28	692.21	618.04	Relay	\$670		\$463,779	\$371,023	
115lb	Jnt	9.74	192.28	1872.81	1672.15	Relay	\$575		\$1,076,864	\$861,491	
115lb	Jnt	1.5	192.28	288.42	257.52	Reroll		\$315			\$81,118
115lb	Jnt	1	186.21	186.21	166.26	Scrap		\$247			\$41,066
112lb	CWR	2.8	187.26	524.34	468.16	Relay	\$600		\$314,604	\$251,683	
100lb	Jnt	6.62	167.20	1106.86	988.27	Reroll		\$315			\$311,306
100lb	Jnt	3.22	161.92	521.38	465.52	Scrap		\$247			\$114,983
112lb	Jnt	9.67	187.26	1810.84	1616.82	Relay	\$500		\$905,421	\$724,337	
112lb	Jnt	3	187.26	561.79	501.60	Reroll		\$315			\$158,004
112lb	Jnt	1.98	181.35	359.07	320.60	Scrap		\$247			\$79,189
131lb	Jnt	4.4	219.03	963.74	860.48	Relay	\$510		\$491,508	\$393,206	
131lb	Jnt	1	219.03	219.03	195.56	Reroll		\$315			\$61,603
105lb	Jnt	1.4	170.02	238.02	212.52	Scrap		\$247			\$52,492
90lb	Jnt	1	145.73	145.73	130.11	Scrap		\$247			\$32,138
100lb	Jnt	5	167.20	836.00	746.43	Relay	\$510		\$426,360	\$341,088	
80lb	Jnt	0.26	129.54	33.68	30.07	Scrap		\$247			\$7,428
70lb	Jnt	2.41	113.34	273.16	243.89	Scrap		\$247			\$60,241
Totals		59.7		10874.23	9709.14						
Total Rail Value										\$4,058,045	

OTM											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT		Total \$ GT
100lb	Jnt	10.04	55.3	555.21	495.73	Scrap		\$255			\$126,410
90lb	Jnt	1	50.0	50.00	44.64	Scrap		\$255			\$11,384
115lb	Jnt	1	84.2	84.20	75.18	Scrap		\$255			\$19,171
70lb	Jnt	2.41	40.0	96.40	86.07	Scrap		\$255			\$21,948
80lb	Jnt	0.26	57.0	14.82	13.23	Scrap		\$255			\$3,374
105lb	Jnt	1.4	57.0	79.80	71.25	Scrap		\$255			\$18,169
12lb	Jnt	1.98	84.0	166.32	148.50	Scrap		\$255			\$37,868
12lb	CWR	2.8	74.0	207.20	185.00	Relay	\$315		\$65,268		
12lb	Jnt	12.67	84.0	1064.28	950.25	Relay	\$315		\$335,248		
115lb	CWR	3.6	74.8	269.28	240.43	Relay	\$315		\$84,823		
115lb	Jnt	11.24	84.2	946.41	845.01	Relay	\$315		\$298,119		
131lb	Jnt	5.4	93.2	503.28	449.36	Relay	\$315		\$158,533		
131lb	CWR	1.1	82.5	90.75	81.03	Relay	\$315		\$28,586		
100lb	Jnt	4.8	55.3	265.44	237.00	Relay	\$315		\$83,614		
Totals		59.7		4393.39	3922.67						
Total OTM Value										\$1,292,514	

Ties and Ballast Removal				Signal Appliances			
	Per Mile	Miles	Total		Price/Units	No. Units	Total
Tie & Ballast - STB decision	\$ 8,968	59.7	\$535,414	Signal - STB decision	\$0	27	
\$ 735,051				\$0.00			
Total Tie Value			\$535,414	Total all Signals			\$0

Turnouts				Removal Cost			
	Per T/O	No. T/O	Total		Per Mile	Mileage	Total
Turnouts - STB decision	\$ 2,049	24.0	\$49,166	Removal Cost - STB decision	\$ 17,857	59.7	\$1,066,058
\$ 100,381				\$ 1,463,553.0			
Total Tie Value			\$49,166	Total Removal Cost			\$1,066,058

Gross Liquidation Value		\$5,935,140
		\$1,066,058
Net Liquidation Value		\$4,869,082

EXHIBIT C

TPW - MP 140 - MP 118.5

Rail											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Discounted Relay 20%	Total \$ GT
115lb	Jnt	10	192.28	1922.80	1716.79	Relay	\$575		\$1,105,610	\$884,488	
115lb	Jnt	2.69	192.28	517.23	461.82	Reroll		\$325			\$150,090
115lb	Jnt	0.2	186.21	37.24	33.25	Scrap		\$240			\$7,980
131lb	Jnt	5.1	219.03	1117.06	997.38	Relay	\$510		\$569,702	\$455,762	
131lb	Jnt	1	219.03	219.03	195.56	Reroll		\$325			\$63,558
112lb	CWR	2	187.26	374.53	334.40	Relay	\$600		\$224,717	\$179,773	
90lb	Jnt	0.5	145.73	72.86	65.06	Scrap		\$240			\$15,614
100lb	Jnt	0.2	167.20	33.44	29.86	Reroll		\$325			\$9,704
70lb	Jnt	0.57	113.34	64.61	57.68	Scrap		\$240			\$13,844
Totals		22.26		4358.81	3891.79	Total Rail Value			\$1,780,813		

OTM											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT		Total \$ GT
115lb	Jnt	12.69	84.2	1068.50	954.02	Relay	\$325		\$347,262		
115lb	Jnt	0.2	84.2	16.84	15.04	Scrap		\$240			\$3,609
131lb	Jnt	6.1	93.2	568.52	507.61	Relay	\$325		\$184,769		
112lb	CWR	2	74.0	148.00	132.14	Relay	\$325		\$48,100		
90lb	Jnt	0.5	50.0	25.00	22.32	Scrap		\$240			\$5,357
100lb	Jnt	0.2	55.3	11.06	9.88	Relay	\$325		\$3,595		
70lb	Jnt	0.57	40.0	22.80	20.36	Scrap		\$240			\$4,886
Totals		22.26		1860.72	1661.36	Total OTM Value			\$597,577		

		Ties and Ballast Removal			Signal Appliances			
		Per Mile	Miles	Total		Price/Units	No. Units	Total
Tie & Ballast - STB decision		\$ 8,968	22.3	\$199,637				
\$	735,051				Signal - STB decision	\$0	12	
		Total Tie Value		\$199,637	\$0.00			
					Total all Signals			\$0

		Turnouts							
		Per T/O	No. T/O	Total			Per Mile	Mileage	Total
Turnouts - STB decision		\$ 2,049	25.0	\$51,215	Removal Cost - STB decision	\$ 17,857	22.3		\$397,495
\$	100,381				\$	1,463,553.0			
Total Tie Value				\$51,215	Total Removal Cost				\$397,495
					Gross Liquidation Value				

EXHIBIT D

Liquidation Value of Railroad Asset
TPW - MP 140 - MP 118.5

Rail											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Discounted Relay 20%	Total \$ GT
115lb	Jnt	10	192.28	1922.80	1716.79	Relay	\$575		\$1,105,610	\$884,488	
115lb	Jnt	2.69	192.28	517.23	461.82	Reroll		\$315			\$145,472
115lb	Jnt	0.2	186.21	37.24	33.25	Scrap		\$247			\$8,213
131lb	Jnt	5.1	219.03	1117.06	997.38	Relay	\$510		\$569,702	\$455,762	
131lb	Jnt	1	219.03	219.03	195.56	Reroll		\$315			\$61,603
112lb	CWR	2	187.26	374.53	334.40	Relay	\$600		\$224,717	\$179,773	
90lb	Jnt	0.5	145.73	72.86	65.06	Scrap		\$247			\$16,069
100lb	Jnt	0.2	167.20	33.44	29.86	Reroll		\$315			\$9,405
70lb	Jnt	0.57	113.34	64.61	57.68	Scrap		\$247			\$14,248
Totals		22.26		4358.81	3891.79			Total Rail Value		\$1,775,033	

OTM											
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT		Total \$ GT
115lb	Jnt	12.69	84.2	1068.50	954.02	Relay	\$315		\$336,577		
115lb	Jnt	0.2	84.2	16.84	15.04	Scrap		\$255			\$3,834
131lb	Jnt	6.1	93.2	568.52	507.61	Relay	\$315		\$179,084		
112lb	CWR	2	74.0	148.00	132.14	Relay	\$315		\$46,620		
90lb	Jnt	0.5	50.0	25.00	22.32	Scrap		\$255			\$5,692
100lb	Jnt	0.2	55.3	11.06	9.88	Relay	\$315		\$3,484		
70lb	Jnt	0.57	40.0	22.80	20.36	Scrap		\$255			\$5,191
Totals		22.26		1860.72	1661.36			Total OTM Value		\$580,482	

Ties and Ballast Removal					Signal Appliances			
		Per Mile	Miles	Total		Price/Units	No. Units	Total
Tie & Ballast - STB decision	\$	8,968	22.3	\$199,637	Signal - STB decision	\$0	12	
					\$0.00			
				Total Tie Value				\$0
								Total all Signals

Turnouts								
		Per T/O	No. T/O	Total		Per Mile	Mileage	Total
Turnouts - STB decision	\$	2,049	25.0	\$51,215	Removal Cost - STB decision	\$	17,857	\$397,495
					\$	1,463,553		
				Total Tie Value				Total Removal Cost

Gross Liquidation Value		\$2,606,366
Net Liquidation Value		\$2,208,871

\$4,869,341.00

\$7,078,212.33

EXHIBIT E

AMM SCRAP AND REROLL VALUES

(PER TON)

DATE	SCRAP VALUE	REROLL VALUE
4/1/2004	\$230	\$250
5/3/2004	\$220	\$250
6/1/2004	\$180	\$230
7/1/2004	\$180	\$230
8/2/2004	\$235	\$265
9/1/2004	\$250	\$290
10/1/2004	\$215	\$290
11/01/204	\$240	\$325

VERIFICATION

I, Mark D. Garvin, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 16th day of November 2004.

Mark D. Garvin

Mark D. Garvin