

**BALL AND SAVAGE**  
ATTORNEYS  COUNSELORS AT LAW  
A PROFESSIONAL ASSOCIATION

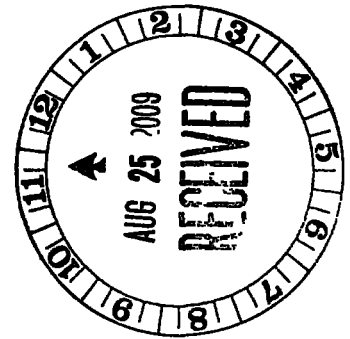
August 24, 2009

Hon. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

AUG 25 2009

Part of  
Public Record



Re: Addendum to Petition to Reopen and Reconsider

225601

Finance Docket No. 35164  
BNSF Railway Company – Petition for Declaratory Order

Docket No. AB-6 (Sub. No. 430X)  
BNSF Railway Company – Abandonment Exemption in Oklahoma County, OK

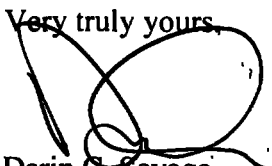
Dear Secretary Quinlan:

Enclosed please find for filing in the above-referenced cases an original and 10 copies of an Addendum to Petition to Reopen and Reconsider brought forward by Edwin Kessler, Petitioner.

Service upon the parties has been made as noted in the Certificate of Service.

If you have any questions concerning this Addendum, please let me know.

Very truly yours,

  
Darin C. Savage

Cc:

Edwin Kessler  
William P. Tunnell, Jr.  
Kristy Clark  
Norman N. Hill  
Eric M. Hockey  
Ellen R. Milcic

Robert D. Hart  
Jacqueline C. Rhodes  
Kathy Nelson  
William L. Humes  
Martha Peniston  
Kerry Pettingill

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

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**STB FINANCE DOCKET NO. 35164  
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER**

**STB DOCKET NO. AB-6(SUB NO. 430X)  
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER**

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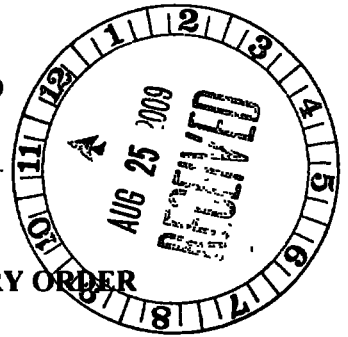
**EDWIN KESSLER (“PETITIONER”) – ADDENDUM TO PETITION TO REOPEN AND  
RECONSIDER THE ABOVE-REFERENCED DECLARATORY ORDER,  
FINANCE DOCKET NO. 35164, DECIDED MAY 19, 2009**

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**ADDENDUM TO THE PETITION SO STATES:**

1. Now comes Edwin Kessler, Petitioner to that certain Petition for Reopening and Reconsidering the Board’s declaratory order in the above-referenced proceedings, who herewith files this Addendum to said Petition (“Addendum”) which was filed on the same day as this Addendum.

2. Petitioner provides the Surface Transportation Board (“Board”) this Addendum to clearly identify the authority and basis that permits the Board to grant the relief of replacing the two at-grade crossings on the Packing Town Lead (“PTL”) line with two grade separated crossings, as requested in the original Petition. Petitioner observes that the former Chickasha Line had two grade separated crossings at South Walker and South Robinson, in the south part of Oklahoma City, Oklahoma. Now, the new train traffic has been rerouted from the Chickasha Line to the PTL, which has no grade separated crossings, only two hazardous at-grade crossings creating a more dangerous passage across South Walker Avenue and South Robinson Avenue. Given the new evidence that hazardous materials are being transported, Petitioner asks the Board to order BNSF Railway Company (“BNSF”) to construct grade separated crossings and build fences to maintain the same level of safety as was available on the Chickasha Line. Although Petitioner is aware that the Board does not have express, primary jurisdiction over railroad



safety, it may exercise a forceful, non-preemptive jurisdiction in order to take actions to remedy safety problems in two ways. First, the Board may adopt and impose safety standards promulgated by the Federal Railroad Administration ("FRA") to correct threats to public safety. *See* STB Finance Docket No. 33697, *National R.R. Pass. Corp. – Petition for Decl. Order – Weight of Rail*, served June 29, 2001, Jan. 31, 2003, Mar. 25, 2003, *aff'd* Boston & Maine Corp. v. STB, 364 F.3d 318, 320-21 (D.C. Cir. 2004) (Board sought FRA assistance and relied on FRA track safety standards governing the speed at which railroads can operate); 49 CFR 1106 (procedures established through a joint FRA/STB rulemaking, to ensure adequate and coordinated consideration, by both the Board and FRA, of safety integration issues in certain railroad consolidation cases). Secondly, the Board has authority to address major safety issues by imposing environmental mitigation conditions on railroad companies. *See* STB Finance Docket No. 35087, *Canadian Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, decided December 24, 2008, at 39 (the Board imposed extensive mitigation measures to address safety concerns associated with train traffic traveling through urban communities, including the installation of a closed circuit television ("CCTV") system and the construction of two grade separated crossings).

3. Given that BNSF provided false and misleading information and that the at-grade crossings on the PTL are dangerously positioned within the heart of the Capitol Hill community, Petitioner asks the Board to require BNSF to construct grade separated crossings, build substantial fences, and install a CCTV system to monitor the area where the tracks and crossings interface with the city park and residential complexes. Also, as was required by the Board in *Canadian*, Petitioner asks the Board to impose an environmental reporting and monitoring period condition, of appropriate duration, requiring BNSF to file quarterly reports on its progress in implementing the Board's mitigation conditions. *See id.*

4. Prior to rerouting of train traffic to the PTL, the trains traveled through Oklahoma City at an uninterrupted rate of 30-40 miles per hour. Now, because of congestion caused by the rerouting, trains may sit in place on the PTL for substantial lengths of time. Such stasis and delay creates circumstances under which tank cars become easily accessible targets for acts of sabotage, threatening the safety of the

surrounding communities as well as Oklahoma City proper. It must be realized that trains no longer have caboose cars staffed with personnel to insure tail-end security.

5. Petitioner respectfully requests the Board to incorporate the above-described considerations and requests into its review of the original Petition to Reopen and Reconsider the Declaratory Order decided May 19, 2009, in STB Finance Docket No. 35164, filed simultaneously with this Addendum.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Darin C. Savage', with a stylized, looping flourish at the end.

Darin C. Savage  
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Attorney for Petitioner

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Dated: August 24, 2009

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of August 2009, a copy of the foregoing Addendum to the Petition to Reopen and Reconsider STB Finance Docket No. 35164/STB Docket No. AB-6(SUB NO. 430X) was mailed, postage prepaid thereon, to the following:

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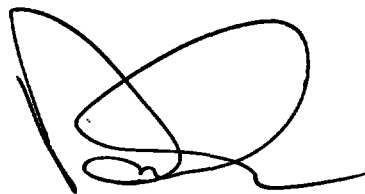
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