BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB DOCKET NO AB-515

CENTRAL OREGON & PACIFIC RAILROAD, INC – COOS BAY RAILLINE

COOS-SISKIYOU SHIPPERS' COALITION PROTEST AND RESPONSE TO THE APPLICATION OF CENTRAL OREGON & PACIFIC RAILROAD, INC FOR AUTHORITY TO ABANDON RAILROAD LINES AND DISCONTINUE RAIL SERVICE

AND

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO FD 35160

COOS-SISKIYOU SHIPPERS' RESPONSE IN SUPPORT OF THE INTERNATIONAL PORT OF COOS BAY-FEEDER LINE APPLICATION-CENTRAL OREGON & PACIFIC RAILROAD

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Abandonments are not to be granted lightly, for once rail corridors are lost it is difficult to replace them (*Groome & Associates Inc*, STB Docket No 42087, p 3, (July 27. 2005))

To be relieved of its common carrier obligation, the railroad must first receive discontinuance or abandonment authority from the Surface Transportation Board ("STB" or "Board") It is therefore axiomatic that a rail line may not be abandoned without the prior approval of the Board [7]

In relieving a railroad of its common carrier obligation. the carrier must demonstrate that the line in question is a burden on interstate commerce Typically, to make the requisite showing the carrier must demonstrate that the costs it incurs exceed the revenues attributable to the line and that keeping the line in service would impose a burden on it that outweighs the harm that would befall the shipping public. as well as outweighs the adverse impacts on rural community development if the rail line were abandoned (*See San Pedro Railroad Operating Company, LLC*, Doc Num AB-1081-0-X (Feb 3, 2006))

The CORP argues that abandonment is appropriate in this case and that it should be relieved of its common carrier obligation since (a) to reopen the line would require a $2 9 million to $3 8 million investment over the next four years (*CORP Application*, p 3), and, (b) the line is allegedly operating at a loss (*CORP Application*, p 3) However, CORP's argument rings hollow given (a) the absence of any financial data to support its implication that it is operating at a loss on these specific lines, (b) its failure to treat the

[7] As discussed *supra*, in this case CORP utilized an illegal embargo to unilaterally abandon and discontinue service prior to its filing this application for abandonment (*See also Coos-Siskiyou Shippers Coalition Reply to the Response of Rail America, Inc and Central Oregon & Pacific Railroad, Inc to Order to Show Cause*)

tunnel repairs and maintenance as long term investments, (c) its own efforts to drive transportation from the line, and, (d) its failure to avail itself of opportunities to expand traffic or reduce costs

While Congress established the standard for abandonment (49 U S C § 10903(d)), an abandonment is also subject to equitable considerations The STB does not grant relief from the common carrier obligation when the railroad has brought upon itself the financial hardship it complains of, by failing to operate in a businesslike manner or when the hardship is a result of its own milking of the asset by failing to maintain its infrastructure[8]

Further, as demonstrated *supra*, neither abandonment nor discontinuance is appropriate in this case given the lack of reasonable alternative transportation options for the Shippers and the burden on the rural economy if the rail infrastructure is removed

Since the public convenience and necessity weigh heavily against abandonment and discontinuance, the Board should deny the application and require CORP to take the steps necessary to restore service With CORP's evident reluctance to operate the Coos Bay Subdivision, the Board should also grant the Port of Coos Bay's feeder line application

BACKGROUND

This proceeding has its origins in the acquisition in 1994 by CORP and its parent RailTex Inc , of various lines of the Southern Pacific Transportation Company (V S Paul Lundberg, p 3)

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[8] A railroad is required to provide adequate facilities for its rail traffic (*See Borough of Riverdale-Petition for Declaratory Order-The New York, Susquehanna and Western Railway Corp* , 4 STB 3809, n 15 (1999))

RailTex, Inc was subsequently acquired by RailAmerica in January 2000 (V S Paul Lundberg, p 3) who in turn was later acquired in 2007 by Fortress Investment Group, LLC ("Fortress"), an investment company that is focused on the "short term bottom line" [9]

Prior to the February 2007 acquisition by Fortress, CORP was operating the lines subject to this application in a profitable manner (*See* V S Paul Lundberg, p 4) [10]

However, within seven months (September 21, 2007) of the acquisition by Fortress, RailAmerica made the decision to embargo the line (*See Response of RailAmerica, Inc and Central Oregon & Pacific Railroad, Inc to Order to Show Cause*, Finance Docket No 35130, (hereinafter "RailAmerica Response to Show Cause") V S Paul Lundberg, p 7) The embargo covered that section of the Coos Line situated between Coquille and Richardson, Oregon (Embargo Number CORP000107 hereinafter referenced as "Embargo") (*RailAmerica Response to Show Cause*, Ex 7)

At the time the Embargo was issued, CORP stated the Embargo was a result of the "unsafe conditions in Tunnels 13, 15, and 18" (*Coos-Siskiyou Shippers' Coalition*

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[9] Fortress announced in November 2006 that it had reached an agreement to purchase the stock of RailAmerica, Inc (*http://www.reuters.com/article/businessNews/idUSWNAS357320061115*) Subsequently in February 2007, the sale was completed and RailAmerica stock was delisted and deregistered from the stock exchange (*http://milwaukee.bizjournals.com/southflorida/stories/2007/02/12/daily39.html*) *See also* background on *Fortress's investment and management strategies at http://www.msnbc.msn.com/id/17068896*

[10] The Verified Statement of Mr Lundberg states that the Coos Bay Subdivision generated a positive operating income in 2002 and 2003 (V S Paul Lundberg, p 4) He does not, however, state whether the subdivision generated a negative or positive income in the years 2004, 2005 or 2006 rather he merely states there was a reduction of cars shipped and implies there was an operating loss in those years One would assume that if CORP had indeed lost money in those years he would have so stated the negative operating loss the same as he stated the "positive operating income" Rather than disclose its losses the only year for which a dollar amount of loss is actually stated is the calculated avoidable loss of Mr Baranowski (V S Paul Lundberg, p 6, V S Baranowski) Mr Baranowski, however, notes that his analysis is limited in that CORP does not in the normal course of business maintain its revenue and expense data on a line specific basis (V S Baranowski, p 2), therefore he was forced to rely on assumptions rather than actual records

Reply to the Response of RailAmerica, Inc and Central Oregon & Pacific Railroad, Inc to Order to Show Cause, Finance Docket No 35130, Ex 1)

Simultaneously with the imposition of the September 21, 2007 Embargo, CORP also stated that "[t]he Coos Bay line just doesn't have enough business on it today to justify us making the repairs " (*http //www rtands com/breaking_news_archive shtml* p 98 of 619, accessed 1/3/2008) (*Coos-Siskiyou Shippers' Coalition Reply to the Response of RailAmerica, Inc and Central Oregon & Pacific Railroad, Inc to Order to Show Cause*, Finance Docket No 35130, Ex 1)

The CORP also stated that in the future they may reopen the Line "to support a container terminal at Coos Bay if such terminal be developed" (*RailAmerica Response to Order to Show Cause*, Ex 1) [11]

These statements clarified that notwithstanding its common carrier obligation, CORP would not be making the repairs necessary to reopen the Line – therefore admitting that it had unlawfully embargoed the line and unlawfully discontinued service

In response to CORP's unlawful embargo, the STB issued a show cause order on April 11, 2008 directing RailAmerica and CORP to show cause why the Board should not consider CORP's ongoing failure to provide service on the Coos Bay Line to be an unlawful abandonment, and why CORP should not be required to either promptly repair the tunnels on the Line and resume rail service or, in the alternative, to seek abandonment authority (Show Cause Order, p 11)

[11] CORP was acknowledging thereby that there may in fact be a *future public convenience and necessity* that would mitigate any current necessity to abandon the line

RailAmerica and CORP, responded to the Show Cause Order by stating that

> "[t]he increasing hazardous conditions in the tunnels along the Coos Bay Line led CORP management to bring the situation to RailAmerica's attention on September 18-19, 2007 [12] RailAmerica agreed with CORP that the line should be embargoed for safety reasons."

(*RailAmerica Response to Order to Show Cause*, V S Paul Lundberg, p 7)

Notably, at the show cause hearing Mr Lundberg did not reiterate CORP's earlier statement that the line was closed for financial reasons, and in fact, he was careful not to, for an admission that the Embargo was economically driven would have demonstrated that the Embargo was a clear violation of the embargo process

While Mr Lundberg asserted that the Embargo was in response to serious and well-documented safety concerns relating to the condition of the three tunnels (RailAmerica's Response to Show Cause, p 2), he carefully failed to mention that these safety concerns were well documented and had been repeatedly described as "*immediate*" repair needs for at least thirteen years – well before the Embargo

In July 2007, Shannon & Wilson[13] reported to CORP's engineers (V S Paul Lundberg, p 5) that

> "[i]ndications of severe liner and/or rock deterioration and instability *requiring immediate repair* (Repair Levels 1 and 2)[14] were observed at several locations in the timber-lined sections of Tunnels 13, 15, and 18, where the timber sets are heavily decayed, crushed, and/or offset We also observed rockfall hazards at several locations in Tunnels 13 and 15, where timber sets were removed and

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[12] There is no explanation as to why it took CORP over 60 days to bring these "immediate" repair and "hazardous conditions" to the attention of RailAmerica, it is clear, however, that CORP believed it could not act without RailAmerica's (its alter ego) concurrence when faced with these increasingly hazardous and immediate safety concerns

[13] In their letterhead, Shannon & Wilson, Inc identify themselves as "geotechnical and environmental consultants" (*See* RailAmerica Response to Show Cause, Ex 6, p 1)

[14] In its July 16, 2007 letter, Shannon & Wilson characterizes areas in need of immediate repair as Repair Level 1 which they defined as in need of repair within six months Repair Level 2 was defined as those areas that should be repaired within the next 12 months (RailAmerica Response to Show Cause Ex 6 p 2)

> replaced with steel sets, but the timber lagging was left in place and has now deteriorated and rotted away In addition, we identified rockfall hazards in two, short, unlined sections, also in Tunnel 13 Because of evident recent rockfalls, we strongly recommend repairs in these areas as well "

(*CORP Application*, V S Paul Lundberg, Attachment 1) (*emphasis* added)

In its subsequent September 21, 2007 report, Shannon & Wilson also commented that the problems in Tunnels 15 and 18 had been *previously identified and discussed with RailAmerica as early as November 2006* (RailAmerica Response to Show Cause, Ex 6, p 12)) Shannon & Wilson described these discussions in its September 21, 2007 letter by noting

> "[a]s stated and described in detail in our tunnel inventory report dated July 2007, we identified and classified numerous sections in the tunnels, that are in various states of deterioration and, in our opinion, require immediate rehabilitation work (within six months) in order to reduce the currently high risk of rock falls and timber collapses to more acceptable levels *Some of the areas – particularly in Tunnel 15 and Tunnel 18, were identified and discussed with you as early as November 2006, when emergency repairs were initiated in Tunnel 15* "

(*RailAmerica Response to Show Cause*, Ex 6, pp 12-13) (*emphasis* added)

Further, it noted that other problem areas had been observed during the period of November 2006 to January 2007[15] as well (*CORP Application*, V S Paul Lundberg, Attachment 1, pp 12-13)

Likewise, the condition of Tunnels 13, 15, & 18 had also been the subject of a tunnel inspection by Milbor-Pita & Associates, Inc in 2004, wherein Tunnel 15 was described as an "extremely serious section that in our opinion could suffer a tunnel collapse at any time "

[15] Notably, these maintenance and repair issues had been identified prior to the acquisition by Fortress in 2006 and would therefore have been reflected in the distress price Fortress paid to acquire RailAmerica

The Milbor-Pita & Associates report described the conditions in Tunnel 15[16] as

> "Four hundred feet (+/-) of the north end of the tunnel just in from the concrete portal structure are supported with highly deteriorated timber sets placed on a spacing of 1 to 2 feet, in an area of heavy seepage In many cases the timber sets have racked and/or pushed inward, and the face-to-face contacts of the timber segments are almost completely crushed In our opinion these timber sets have almost no support capacity and are in a zone of heavy ground, i e hence the very close spacing of the sets Heavy ground, likely soil and/or very weathered bedrock, combined with heavy seepage in an area supported with deteriorated timber supports is a recipe for a major collapse that will close the tunnel for weeks if not longer "

(Milbor-Pita & Associates May 5, 2004 letter attached to Central Oregon & Pacific Railroad, Inc letter to Mike Gaul, Port of Coos Bay, August 3, 2005 attached hereto as Shippers' Exhibit 2, p 21) [17]

In addition, Milbor-Pita described the conditions on Tunnel 13 as the second most serious tunnel problem of the tunnels inspected The report described the presence of "very wet, deteriorated timber sets" near the middle of the tunnel, a "section of close-spaced steel sets" which are "lagged with severely deteriorated wood planks that allow, rock blocks to punch through and fall on the track", and, "voids in back of the planks " The report recommended that the steel sets should be lagged with steel channel as an immediate re-support, and eventually the voids backfilled with clean concrete or expansive grout (Shippers' Exhibit 2, p 22)

Furthermore, the Milbor-Pita & Associates 2004 report was not the first time that the need for immediate repairs in these tunnels was documented

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[16] The report discussed the tunnels in order of most serious to the least serious, the most serious was Tunnel 15, *which we assume would therefore be the referenced "extremely serious section "*

[17] Milbor-Pita & Associates, Inc are "geotechnical and tunnel consultants" from Woodinville, Washington (*See* Shippers' Ex 2, p 21)

The need for immediate repairs in Tunnels 13 and 15 was also documented in a March 1, 1994 study by Shannon & Wilson, Inc (Shippers' Exhibit 2, pp 2-20) [18] In this report, Shannon & Wilson described the tunnel condition and "short-term rehabilitation requirements" by noting

> "[s]igns of important instability *requiring immediate repair* were observed in the timber sets in Coos Bay Tunnels 15 and 18, and in the gunite/steel lining in Coos Bay Tunnel 20 "[19]

(Shippers' Exhibit 2, p 7) (*emphasis* added)

Even after the tunnel collapse in September 2007, CORP elected not to undertake the repairs or maintenance on the line CORP stated in its November 2007 letter to the FRA,[20] that its "Capital Plan for 2008 does not include most of the Coos Bay Sub (approx 117 mi beyond Vaughn)" (Shippers' Exhibit 3, p 2) [21]

Robert G Paul, the Public Works Director for Douglas County,[22] noted that based upon his experience in receiving and reviewing geotechnical reports of this nature, he would have expected if the railroad intended to make the repairs, that the next step after CORP received the July 2007 letter would have been for the railroad to acquire the specific and detailed engineering designs, construction plans and specifications Once these were produced, he would then have expected the project engineer to order the

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[18] The 1994 Shannon & Wilson Report was prepared for CORP's predecessor Montana Rail Link (*See* Shippers' Ex 2)

[19] In its July 16, 2007 letter, Shannon & Wilson define areas in need of immediate repair as Repair Level 1 and as in need of repair within six months Repair Level 2 represented those areas that should be repaired within the next 12 months (*See* RailAmerica Response, Ex 6) Applying this classification to the 1994 report indicates that Shannon & Wilson was stating Tunnels 15 and 18 were in need of "immediate repair" within six months of March 1, 1994

[20] The FRA in October 2007 recommended that all three tunnels were in need of immediate repairs to permit the safe resumption of railroad operations (*RailAmerica Response to Show Cause*, V S Paul Lundberg Ex 8,)

[21] CORP was operating under a compliance agreement between the FRA and CORP in 2007 (Shippers' Ex 3)

[22] That part of the Coos Bay Subdivision situated north of the Coos County line and South of the Lane County line is within Douglas County

necessary materials, arrange for equipment, and establish a work schedule (V S Robert G Paul, pp 2-3)

While Mr Paul describes what would be the norm in the public transportation industry for this region. CORP did not take any of these steps In fact, neither Mr Lundberg's April 2008 verified statement nor the September 21, 2007 Shannon & Wilson letter describe any of these steps having occurred, let alone any steps being taken to initiate a repair program

If CORP intended to repair the tunnels in a timely manner, it clearly would have requested or prepared the "detailed proposal for the engineering design work and the preparation of construction plans and specifications" and included the repairs in their Capital Plan for 2008 [23] The absence of any reference to the engineering and design documents in the September 2007 report, serves to corroborate the Marketing and Sales Manager's statements that CORP was not going to make the repairs or reopen the line (Shippers' Ex 1)

While Shannon & Wilson initially reported that the tunnels "require immediate rehabilitation work (within six months) ", in its follow-up report dated September 21, 2007, it does not describe that any repairs or changes in tunnel conditions have occurred since the July report (*RailAmerica Response to Show Cause*, Ex 6, p 12) Notably, it referenced that the condition of the tunnels was in fact the same as they discussed with

[23] *Furthermore, if CORP seriously believed its public-private partnership proposal was viable it would* have included the tunnel repairs in its 2008 Capital Plan in anticipation of the repairs being conducted during 2008

CORP in November 2006[24] - in other words there had been no change over this 10-11 month period. However, during this same November 2006 to September 2007 time period, CORP continued to transport trains and materials through the tunnels – same as it did since the 2004 report which referenced the need for immediate repairs. Particularly noteworthy is the Shannon & Wilson comment that with respect to at least Tunnel 15 and Tunnel 18 it had previously advised CORP in 2006 that these tunnels required immediate rehabilitation work[25] (*RailAmerica Response to Show Cause*, Ex. 6, p. 12)

Notwithstanding that Shannon & Wilson had indicated there was an immediate need for repairs in November 2006 and then again in its July 2007 report, it reported in September 2007 that due to the delays that it may not now[26] be possible to undertake all of the repairs until the drier months of 2008 (*RailAmerica Response to Show Cause*, Ex. 6, p. 13)

The September 21, 2007 letter advised that

> "[h]owever, the increased seepage rate *in some areas* of the tunnels that normally accompanies the rainy season will contribute to an increased risk of instability and also makes *the application of remedial shotcrete in these seepage areas* impossible and hazardous. Consequently, it may not be safe for *much of the repair work* to be undertaken until the drier months of next spring and summer."

(*RailAmerica Response to Show Cause*, Ex. 6, p. 13) (*emphasis* added)

Notably, while Mr. Lundberg cites this September letter for the premise that no repairs could be undertaken until spring, in fact the report only identified the application

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[24] Shannon & Wilson describe the same tunnel problems that it had discussed in the July 2007 report. They note that the recent rockfall in Tunnel 19 now requires immediate attention as well. Tunnel 19 was last visited in June 2007, prior to the July 2007 report.

[25] Shannon & Wilson define the term "immediate" as those repairs that should be done within six months – not that the tunnel should be embargoed (*See* Rail America Response to Show Cause Ex. 6, p. 2)

[26] The authors are flagging the fact that as a result of the failure to timely act on their July recommendations, it may not now be possible to undertake all of the repairs in a timely manner and thereby adding several additional months to the original time period in which they recommended the repairs be completed.

of remedial shotcrete as being impossible and hazardous. it did not state that all repairs would be precluded [27]

After reviewing the same report, Douglas County Public Works Director Robert G Paul observed that based upon his experience with construction projects in Douglas County, it would be difficult to apply shotcrete under wet conditions However, he also noted that other activities could have been undertaken prior to applying the shotcrete and further noted that shotcrete could be applied in areas where seepage was not a problem (V S Robert G Paul, pp 3-4) He also took issue with Mr Lundberg's statement that weather conditions precluded tunnel repairs Mr Paul observed that while some repairs may have been precluded during the rainy season, not all repairs were, and, most importantly, he stated that the engineering, design, materials acquisition, etc were in-office type activities that could have and should have been done before any physical construction activities were initiated (V S Robert G Paul, pp 4-5)

Mr Paul also noted that the Verified Statement of Mr Lundberg does not explain why neither the repairs nor the engineering design work was commenced during the summer of 2007 given that the Shannon & Wilson report was issued in July 2007 well before the rainy season (V S Robert G Paul, pp 4-5)

Further contradicting Mr Lundberg's interpretation of the limited construction season is the fact that CORP's earlier repairs in Tunnel 15 were undertaken during November of 2006 (*Application of Central Oregon & Pacific Railroad, Inc for Authority to Abandon Railroad Lines and Discontinue Rail Service*, V S Paul Lundberg p 5) –

[27] The author of the letter carefully chose his words by including qualifiers such as "it may not be" and "for much of" when describing the repairs, in other words it would clearly depend on the type of repair and the timing of when repairs commenced

indicating that not only could the repairs be undertaken during the fall time period but also that CORP was well aware that the repairs were feasible between the July through November time period

It is also worth noting that CORP was able to initiate the 2006 repairs within 30 days after it received the October 2006 joint inspection report by the FRA and ODOT (*CORP Application*, V S Paul Lundberg, p 5) [28] Based on the past practice, one would expect that if CORP had intended to restore service in a timely manner it would have initiated the repairs shortly after the July 16, 2007 report or at least concurrent with the Embargo [29]

It is abundantly clear that CORP elected not to initiate repairs during periods when it was possible to undertake tunnel repairs – an election which was based solely on economic concerns rather than any physical limitation that was outside the control of CORP This economic embargo was simply an illegal use of the embargo process constituting an unlawful abandonment

Rather than respond to the repeated call for immediate repairs, CORP simply elected to continue its deferred maintenance policy and not make the recommended immediate repairs The tunnel conditions were clearly a direct result of CORP's consciously withholding essential repairs of the tunnels - repairs that had been identified as in need of *immediate* attention repeatedly over the previous 13 years

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[28] Obviously, the repairs could have been initiated in July 2007 or even as late as October 2007, as evidenced by the prior actions of CORP

[29] Further, since Shannon & Wilson physically inspected the tunnels between March 26-30, 2007 while accompanied by a RailAmerica escort, one would have expected oral discussions communicating the immediate need for tunnel repairs would have occurred at that time – several months before the date of the July 16, 2007 report (*See* RailAmerica's Response to Show Case Order, Ex 6, pp 1-2)

Not only was it possible for CORP to have initiated the repairs in July - or at least by the date of the Embargo,[30] it was also possible to have commenced and completed repairs anytime during the 13 years that the geotechnical engineers were repeatedly advising of the need for "immediate repair" in these precise tunnels It is clear that the repairs not only could have been commenced, but also could have been completed within a short period after either the July 21, 2007 report or the September 21, 2007 Embargo, let alone anytime after the March 1, 1994 report All of these reports and discussions documented to CORP the necessity of immediate repair on these tunnels

If Mr Lundberg was correct that it would only take four months to complete all of the Level 1 and Level 2 repairs[31] identified in the July 2007 report, then by his own estimate, it is also clear that if the repairs had been commenced shortly after they received the report, then CORP would have completed all of the repairs by November 2007 – well before the rainy season

Contrary to CORP's analysis, it is abundantly clear that *CORP/RailAmerica/Fortress, were all on notice of the need for tunnel repair and* maintenance long before the Embargo They simply elected to defer maintenance When the lack of maintenance resulted in tunnel collapse, they then imposed an embargo alleging an emergency situation existed which was out of their control As the above discussion illustrates, the tunnel conditions were well documented long before the tunnel collapse, the repairs could have been made in relatively short order, and, that CORP

[30] As evidenced by the 2006 repairs, CORP had demonstrated an ability to initiate tunnel repairs commencing as late as October

[31] It is notable that Shannon & Wilson described the Level 1 repairs as being necessary within six months while the Level 2 repairs were of less risk and could be undertaken in twelve months

consciously elected not to initiate repairs – all of which resulted in an illegal embargo and as time has demonstrated, an unlawful abandonment

While in the abandonment application, Mr Lundberg references the lines have been embargoed since September 21, 2007, "due to unstable conditions in several tunnels that make continued operation unsafe" (CORP Application, V S Paul Lundberg, p 2), he simply fails to mention that these unsafe conditions were the result of CORP and RailAmerica's practice of deferring maintenance and their policies of milking the asset It is abundantly clear that these unstable conditions were not a sudden catastrophic event – rather they were of CORP and RailAmerica's own failure to maintain the tunnels

Rather than address the deferred maintenance and repairs after imposing the Embargo, CORP waited nine months and then filed its "Notice of Intent to Abandon or Discontinue Service" for the Coos Bay Subdivision on June 16, 2008 CORP subsequently filed this abandonment application on July 14, 2008 (CORP Application)

In its application for abandonment, CORP now admits the Embargo was economically driven and argues that the massive losses from operation of the Coos Bay Subdivision weigh decidedly in favor of approving the application (*CORP Application*, pp 2-3)

However, it simply does not provide any documentation that supports these allegedly "massive losses "

It argues that during the period of September 2006 through August 2007, it has generated an avoidable operating loss of approximately $1 3 million (*CORP Application*,

p 2),[32] and that traffic has declined by 11 percent since 2006 and 37% since 2003 (*CORP Application*, p 2 [33] [34]

While CORP alleges the Coos Bay Subdivision generated an avoidable loss during the base year (*See CORP Application*, p 2), it does not, however, have actual records to demonstrate the validity of this loss calculation, rather it is merely a post hoc allocation of certain systemwide revenues and costs to this line based on per mile of track (*See* CORP Application, V S Baranowski, pp 2-3) [35]

While it is impossible to untangle CORP's records sufficient to determine the actual amount of financial loss incurred by CORP, it is clear that as a direct result of CORP's failure to maintain the lines and thereby fulfill its common carrier obligation, the Shippers on the Coos Line have suffered both direct and indirect damage These

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[32] While CORP argues that its agreement with the Union Pacific Railroad with respect to handling charges, limits its ability to set rates or to impose surcharges on shipments, it does not provide any indication that it has made an effort to increase the handling charges in recent years The statement of J Michael Hammer, Senior Vice President of Union Pacific Railroad, clarified that CORP was not limited in the amount it could charge shippers, and observed that in fact CORP had without objection from UP, imposed surcharges on shippers (Attachment 4- Public Version, p 1)

[33] CORP states that there has been a downward trend in traffic volume It references that there were 5 193 carloads in 2005, 5,363 carloads in 2006 and 4,018 carloads through September 2007, the date of the Embargo (Public Version p 2) Yet when one holds the numbers to close scrutiny, one finds that in 2006 the line was out of service for several days, therefore indicating that if the line had been in service, the number of cars in 2006 would most likely be higher Similarly, since the 2007 volume of 4,018 carloads represents at best only 9 months of service, one would expect that a full twelve month period would have generated a volume of 5,357 carloads) (4,018/9 = 446 cars per month, 446 x 12 = 5,357 carloads per year) Contrary to CORP's representation, the carloads have not exhibited a downward trend in available shipping during the 2005 through 2007 period, rather the trend reflects CORP's own maintenance issues and subsequent embargo If the line had been open for a full year in 2007, the traffic would have been in excess of that shipped in both 2005 and 2006 – not the 8% or 11% reduction described by CORP (CORP Application, V S John Williams, Attachment B)

[34] CORP's narrow view of the decline in shipping overlooks that by the fall of 2007 lumber prices had reached historically low prices and there has been a slowdown in the housing markets (V S Jason Smith, p 2) When the housing markets recover then the amount of traffic on the line can be expected to dramatically increase (Oral Testimony of Bill Goodman, p 2) ("the sawmill is currently operating at around 60% of capacity ")

[35] Mr Baranowski candidly noted that "[b]ecause CORP does not in the normal course of business *maintain its revenue and expense data on a line-specific basis at the same level of detail as a Class I* railroad It was therefore necessary to develop reasonable approaches for allocating certain CORP systemwide revenues and costs to the Subject Line " (*CORP Application*, V S Baranowski, pp 2-3)

damages are significant and cover not only increased transportation costs, but also the inability to access markets they traditionally serviced – and in the case of American Bridge and Southport Forest Products, the markets that their facilities were specifically designed to service (*See* V S Fred Jacquot, V S Jason Smith)

Fred Jacquot, plant manager for American Bridge Manufacturing, Inc . a bridge manufacturing and restorer in Reedsport, Oregon, noted that as a result of the Embargo, it is without the rail system necessary to ship in and out of its facility the heavy bridge components it relies upon for its business (V S Fred Jacquot) He noted that as a result of the Embargo, the American Bridge Manufacturing facility is no longer able to process the bridge repairs the facility was designed to repair (V S Fred Jacquot) He further noted that the weight and size of the work pieces they ship limit the transportation options and that without rail they are no longer able to access much of their markets (V S Fred Jacquot) [36]

Southport Forest Products situated its facility in Coos Bay in reliance on rail access that would allow it to stay competitive in the global market (V S Jason Smith) In support of Southport building its mill site in Coos Bay, the Port of Coos Bay built a rail spur connecting the mill site with the CORP lines (V S Jason Smith) Both the mill and the rail spur are jeopardized by the abandonment of the Coos Bay Subdivision

Ray Barbee, Vice President of Sales and Marketing for Roseburg Forest Products, noted that his company alone is incurring $208,000 to $250,000 per month in increased transportation costs (V S Ray Barbee) Further, Mr Barbee observed that lacking access

[36] American Bridge's problems from the loss of rail transportation is not a local problem it is a problem that adversely affects the entire United States- particularly those Class I railroads that depend on American Bridge for their bridge construction and maintenance (V S Fred Jacquot)

to rail, his company is unable to access its traditional markets throughout the United States, and, as a result, it is in turn being forced to market on a more limited regional scale (V S Ray Barbee)

Mr Smith testified as to the lack of trucks available to ship Southport's products and that the reload facilities did not have the manpower or equipment to handle the additional work that resulted from the Embargo (V S Jason Smith) The ability to transport the lumber products from Southport would face the same limitations after abandonment as it is now experiencing from the Embargo – a limitation that currently has the mill operating with extended shutdowns and in a survival mode (V S Jason Smith)

Mr Jacquot and Mr Barbee clearly demonstrate that the lack of rail transportation threatens not only their companies' immediate and long term viability, but also the long term viability of the local rural community Similar concerns relative to the impacts on the rural community were expressed at the oral hearing on August 21, 2008 (*See for example statement* by Eric E Farm of Menasha Forest Products Corporation) Mr Goodman described how the Embargo has increased highway congestion and the safety on these roads (Oral Statement Bill Goodman)

The embargo and illegal abandonment have greatly inconvenienced the local production facilities as well as rural communities Granting the abandonment petition will only exacerbate this condition with closures of mill facilities, increased safety issues on the rural roads, and, burdens on the local economy

While the short term gain of selling the rail lines for steel scrap may fit with the short term gain philosophy of a hedge fund such as Fortress, it flies in the face of the public trust embedded in the common carrier authority

DISCUSSION

A. CORP's & RailAmerica's Embargo was an illegal abandonment in violation of the common carrier obligation.

Under the common carrier obligation set forth in 49 U S C § 11101(a), railroads have a duty to provide service on reasonable request (*Bar Ale Inc v California Northern Railroad Co and Southern Pacific Transportation Company*, STB Finance Docket No 32821, p 5 (July 20, 2001)("*Bar Ale*"), *Groome & Associates v Greenville County Economic Development Corporation* STB Doc 42087 (July 27, 2005) ("*Groome*")

The very heart of the common carrier obligation is the recognition that the railroads are in a position of a unique public trust and are therefore held to higher standards of responsibility than other private enterprises (*GS Roofing Products Co v STB*, 143 F 3d 387, 393 (8th Cir 1998) ("*GS Roofing*")

The common carrier obligation may, however, be temporarily suspended by the use of an embargo in emergency situations that are beyond the railroad's control which result in the railroad being unable to perform its duty as a common carrier (*Bar Ale* at p 5)

Notwithstanding an embargo, a carrier may be found to be in violation of the common carrier obligation if the embargo is premised on damage that can be readily and inexpensively fixed, or if the embargo remains in effect too long (*GS Roofing* 143 F 3rd at 392)

In the absence of an emergency situation outside its control, an embargo cannot be used by a railroad to unilaterally abandon or discontinue service on a line (*Bar Ale* at 5)

If a carrier elects not to fix a line over which service is requested, it must take steps to obtain either abandonment or discontinuance authority (*Groome* at p 8, *Bar Ale* at 5-7, *GS Roofing* 143 F 3d at 393, *Decatur County Commissioners et al v Central Railroad Company of Indiana*, STB Finance Docket No 33386, (September 28, 2000) ("*Decatur*"))

In this case CORP and RailAmerica blatantly disregarded their common carrier obligation when it failed to maintain the lines and tunnels, and subsequent to the tunnel collapse, they failed to immediately commence tunnels repairs As noted above, the tunnel problems were not the result of a catastrophic or emergency event - rather the tunnel collapse was the result of deterioration from lack of maintenance The deterioration in the tunnels was a direct result of CORP's long standing policy of deferring maintenance the tunnels as well as lines were allowed to deteriorate [37] The tunnel collapse was not the result of an emergency outside its own control (*i e* hurricane, floods, and other acts of God) [38] Rather than make the investment in the Coos Bay Subdivision, CORP elected to unilaterally cease operations due solely to the fact that it would be inconvenient to make the repairs – inconvenient in that it did not fit with the short term gain philosophy of RailAmerica's hedge fund parent

[37] CORP was operating under a consent order with the FRA for its failure to maintain its rail system
[38] In this case CORP made no effort to rectify the tunnel situation, rather it simply illegally embargoed the line (*Compare GS Roofing* at 394) (while a railroad may have initially acted reasonably in embargoing a storm-damaged line, it may not be reasonable in maintaining the embargo if the railroad could have repaired the track in short order)

Once CORP failed to initiate line repairs, the Embargo became unreasonable and therefore an illegal embargo and CORP was no longer excused from its duty to provide service (*Bar Ale* at 5, *Groome* at p 5)

CORP/RailAmerica/Fortress all ignored the fundamental principle that a common carrier cannot unilaterally cease operations merely because maintaining or repairing the line would be financially inconvenient (*G S Roofing* 143 F 3d at 393) [39]

Prior to abandonment, CORP has the obligation to provide service and to maintain its line - including the tunnels (Railroad Ventures, Inc –Abandonment Exemption, AB-556-2-X, April 24, 2008, pp 5-6) ("Railroad Ventures")

The CORP Embargo was an illegal embargo representing an unlawful abandonment CORP's unlawful abandonment has had, and will continue to have, serious adverse impacts on the Shippers as well as the rural communities served by the Coos Bay Subdivision [40] The Application must therefore be denied and the ongoing illegal abandonment enjoined

B. The STB should determine that CORP's unlawful abandonment requires equitable relief and denial of the abandonment petition.

While CORP's abandonment petition is premised upon the high cost to operate the line and the purported reduction in shipments, it would not be equitable to allow abandonment in response to the tunnel conditions in light of the fact that CORP's failure

[39] Allowing CORP to unilaterally abandon the line rather than proceed through a formal abandonment process undermines the OFA process The OFA process is designed to keep the lines in the national rail system so that they can be used for long term rail service (Kansas City Southern Railway Company, AB-103-21-X (May 20, 2008, p 9)

[40] CORP's suggested manner for the shippers to mitigate the effects of the abandonment is to shift production from mills on the Coos Bay Subdivision to facilities elsewhere in Oregon or other states (*CORP Application*, V S John Williams, p 14), a strategy that cavalierly ignores the impacts on the rural communities along the lines and their economic development

to properly maintain the line and operate in accordance with the public trust afforded to it as a common carrier was the direct and proximate cause of the tunnel conditions

In balancing the equities, the STB should consider among other factors, the relative cost of restoration of service, the financial resources of the railroad,[41] the reliance of the Shippers on the rail service, and, most importantly, the extent of responsibility of the railroad for the condition of disrepair *Interstate Commerce Commission v Baltimore and Annapolis Railroad Company*, 398 F Supp 454, 464 (1975) ("*Baltimore & Annapolis Railroad*")

Under the railroad's public trust obligation, a railroad may not embargo a line simply because it would be inconvenient or less profitable to continue to provide service (*GS Roofing* 143 F 3d at 394)

Similarly, it is inconsistent with the public trust to allow the railroad to adopt a deferred maintenance program during periods of positive economic returns, and then, after milking the asset to the point of collapse, simply claim it is now uneconomical to make the necessary repairs

In a situation analogous to the Coos Bay Subdivision, the court in *Baltimore & Annapolis Railroad* noted that if the unsafe track conditions resulted in large part from the railroad's own policy of deferred maintenance, then the original cessation of service is not beyond the control of the railroad Since it was not a sudden catastrophic event, the embargo represented an unlawful abandonment and the court enjoined both the embargo and unlawful abandonment (*Baltimore & Annapolis Railroad* 398 F Supp at 463-64)

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[41] In this case, at a minimum the Board should consider the financial resources of both CORP and its alter ego RailAmerica Given the management philosophy of RailAmerica's parent corporation, it is also appropriate to consider the financial resources of Fortress as well

(*See also I C C v Chicago, Rock Island & Pac R R*, 501 F 2d 908, 911-13 (8th Cir 1974)

Likewise, in *Chicago, Rock Island & Pac R R*, the court acknowledged that the Board could exercise its discretion and refuse abandonment in situations where there has been abandonment by neglect In *Chicago, Rock Island & Pac R R*, the I C C argued that

> "the termination of service for reasons beyond the railroad's control may justify the exercise of discretion in refusing an injunction, but that no case has allowed 'abandonment by neglect,' i e, permitting a railway by a deliberate neglect of essential maintenance which allows tracks to deteriorate to a 'deplorable condition' to then successfully argue that restoration of service would be inequitably expensive "

(id at 95)

Upon review, the court of appeals agreed with the I C C position and noted that in the event there has been a willful policy of failing to maintain the lines, then the I C C may consider this factor as weighing against an argument by a railroad that conditions beyond the railroad's control caused the embargo conditions The court ruled that in such situations the

> "equities of the situation significantly favor the shippers on the line and require the issuance of an injunction "

(id at 915)

In *Baltimore & Annapolis Railroad*, where the court found that the damage to the bridge resulting from Hurricane Agnes had in fact resulted in the cessation of railroad operations on the line, it also found that the damage wreaked by the hurricane would not have occurred had the Baltimore & Annapolis Railroad performed routine maintenance on the bridge over the years The court noted that "if the unsafe track conditions have

resulted in large part from the railroad's policy of deferred maintenance. the cessation is not deemed "beyond the control" of the railroad " (id p 463) The court further observed that "virtually the entire cost of repairing the track to safe conditions is a result of B & A's longstanding policy of "deferred maintenance " (id p 463) As a result. the court found that the Baltimore and Annapolis Railroad's embargo was illegal from its inception and that the railroad should be enjoined thereby requiring the railroad to restore rail service (id at 466)

Likewise, in this case the conditions that led to the September 21, 2007 Embargo and to this abandonment application, were a direct result of CORP's and RailAmerica's deferred maintenance policies and their failure to maintain and repair the tunnels in a timely manner

The common carrier obligation imposes a public trust on CORP and RailAmerica, a trust obligation which is not satisfied by deferring maintenance and unilaterally ceasing operations This trust reflects the well-established principle that as part of their quasi-public nature, railroads are "held to a higher standard of responsibility than most private enterprises" (*G S Roofing Products Co v Surface Transp Bd*, 143 F 3d 387. 391 (8th Cir 1998)) Thus, a railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable (*G S Roofing*, 143 F 3d at 391)

To allow CORP to abandon the lines based on the results of its own deferred maintenance policies is inconsistent with the policies underlying the common carrier obligation

Given CORP's illegal embargo, illegal abandonment, and, the inequities of allowing a railroad to be rewarded for its own deferred maintenance, the Board should

reject the abandonment petition and issue an injunction requiring CORP and its alter egos, to restore service on the Coos Bay System [42][43]

C. The Financial Condition of CORP and RailAmerica are sufficient to fulfill common carrier obligation.

In its application for abandonment, CORP alleges that there has been a significant down turn in the number of rail cars shipped on the line and implies that as a result of this reduction the lines are uneconomical to operate However, the argument does not stand up under close scrutiny

While in its application, CORP alleges that traffic on the line has declined 11 percent since 2006 and by 37 percent since 2003 (*Corp Application*, p 2), in fact rail traffic has remained relatively consistent for the last three years

Like other allegations in its application, it is difficult if not impossible to validate CORP's allegations In this case CORP supports its argument of the declining trend in traffic by referencing the traffic volume was 5,193 carloads in 2005, 5,363 carloads in 2006, and, 4,108 carloads in 2007 (p 2) Yet when one examines the historic carload summary prepared by CORP for its November 14, 2007 presentation,[41] it used a different set of numbers which referenced annual carloads as 5,849 in 2004, 6,247 in 2005, 5,845

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[42] The Board should not allow CORP/RailAmerica/Fortress to ignore the long term obligations of a common carrier in order for them to obtain a short term gain resulting from the salvage of the rail line

[43] In the event the Board does approve the abandonment, then it should require CORP/RailAmerica/Fortress to compensate American Bridge, Southport, the Port of Coos Bay and other entities that in good faith made financial investments to construct facilities to receive or which investments were premised upon direct rail service (*See Central Michigan Railway Company*, AB-308-3-X, (October 31, 2003), p 5) The Shippers request that in the event abandonment is granted that further proceedings be initiated to determine the amount of good faith investment that CORP/RailAmerica/Fortress should be required for compensation to the Shippers

[41] The discrepancy between the summary prepared by CORP for the November 2006 presentation and the numbers utilized in the V S of Mr Williams is significant and makes one question the true amount of shipping on this line

in 2006, and 3,652 in 2007[45] (*See Reply of the Oregon International Port of Coos Bay*, STB Finance Docket No 35130, ex 24, p 13) Notwithstanding the discrepancy in its own numbers, it is clear that absent the closure of the line for repair in January 2007 and again in September 2007, a full year of operations in 2007 would have produced more rail shipments than either 2005 or 2006, thereby demonstrating not the decreasing trend alleged by CORP but an increasing or stable trend in shipments

The alleged decline in shipping is not, however, a decline in the Shippers' interest to ship product on the line, rather it is the failure of CORP to meet its common carrier obligation

Mr Jacquot of American Bridge described how CORP's own mismanagement resulted in its failure to maximize the potential for additional shipments on the line Mr Jacquot noted that

> "much of the time, our cars were misrouted on the CORP's line, and often were delivered 1-2 weeks later than expected Ordering empty cars for outgoing shipments was also problematic Often we could not contact the CORP car manager to place an order, we would not receive confirmation when cars were ordered, or we would not receive accurate delivery date estimates"

(V S Fred Jacquot, p 2)

Similarly, Mr Smith testified as to how once their mill reached its production levels, CORP's lack of tunnel maintenance and repair resulted in a shut down of its critical rail linkage and in turn layoffs and shutdowns in operation (V S Jason Smith)

Given the conflicting numbers utilized by CORP in analyzing the traffic on this line, it is difficult, if not impossible, to discern the actual amount of shipping on the line

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[45]

Absent reliable information on the number of carloads, one cannot determine the amount of revenue produced nor project with any certainty the potential of the line

It is clear, however, that a significant amount of traffic did and would continue to use these lines if service were restored

When one examines the historical shipping on the Coos Bay Subdivision, one quickly finds that CORP's policies of deferred maintenance and its own management failures have adversely affected the ability to ship on the line and, in turn, have affected the economic stability of the line

In the face of a high level of shipper interest and the company's mismanagement the proper remedy is not abandonment, rather it is an injunction against the Embargo and denial of the abandonment application The present and future public convenience and necessity do not require or permit the abandonment or discontinuance

D. CORP should not be allowed to segment the line.

While the Coos Bay Subdivision includes a total of 138 5 miles, CORP's application for abandonment only applies to that segment of the Coos Bay Subdivision lying to the west of Milepost 669 – a total of 118 5 miles (*CORP Application*, V S Paul Lundberg) CORP has elected to reserve the remaining 20 miles of the line extending from Milepost 669 to the connection with the Union Pacific Railroad line at Eugene, Oregon

The segmentation of the line should be denied for it foreclosures the viability of contiguous segments such as the 20 mile segment, the LPN Branch, Coquille Branch and the Coos Bay North Spit Rail Spur), therefore leading to their eventual abandonment (*See*

Caddo Antoine and Little Missouri Railroad Company v Surface Transportation Board, 95 F 3d 740, 748 (8th Cir 1996))

In *Caddo Antoine*, the court noted that the STB was to prevent situations wherein the railroad

> "downgrades by failing to maintain and repair its tracks services over a portion of its line that it deems more expensive to operate, while maintaining service to a single shipper that it deems easier and more profitable to serve, and then files a SDM covering only the undesirable portion of the line shortly before the abandoned shippers are able to file a feeder line application "

(*Caddo Antoine* 95 F 3d at 747)

To allow the proposed segmentation of the line not only violates the STB polices, it also is likely to lead to further allegations of uneconomical lines and subsequent abandonments [46]

E. The Shippers are experiencing more than Economic Loss.

In his analysis of alternative transportation options, Mr Williams concludes the Shippers have an adequate alternative source of transportation and that the Shippers' increase in costs is only approximately $2 9 million (*CORP Application*, V S Williams p 13)

Unfortunately, Mr Williams' calculation of the increased costs grossly underestimates the impact to the shippers

Ray Barbee references that Roseburg Forest Products alone is incurring $208,000 to $250,000 per month in increased costs plus additional costs in reload as a result of the embargo of the line He calculates that his company's increased transportation costs are

[46] Future abandonments can be anticipated on the LPN Branch and the Coquille Branch as well as the 20 mile segment being reserved and the Siskiyou Branch

in the range of $2,500,000 to $3,000,000 annually Mr Barbee further noted that these costs are the hard "transportation costs" and did not include the increased wear and tear on Roseburg's transportation infrastructure (i e truck loading docks, scales, and roads), administrative costs or inventory carrying costs (V S Ray Barbee)

Similarly, Mr Goodman of Georgia-Pacific West, Inc testified at the oral hearing that his company has experienced a 17-21% increase in transportation cost as a result of the Embargo He further testified that the absence of direct rail service will seriously jeopardize the GP Coos Bay Sawmill's long term ability to compete and sustain profitable operations (Oral Testimony of Bill Goodman) The freight cost impact from the embargo is currently $1 5 million per year on finished products and an additional $550,000 per year on wood fiber When the Georgia Pacific sawmills return to full production, the additional transportation costs are anticipated as being $2 5 million with respect to finished lumber and approximately $935,000 per year on wood fiber (Oral Testimony of Bill Goodman)

Likewise, Southport Forest Products is paying an additional $70,000 per month ($840,000 per year) in transportation costs solely related to transloading its lumber products to reloads in the Willamette Valley (V S Jason Smith)

Mr Barbee, Mr Goodman, and Mr Smith all describe how the industry is in an economic downturn and that one can expect that once the economy turns around then the demand for trucks will outstrip the supply, result in further transportation cost increases, and, further congest the coastal and mountain roads

While CORP asserts there is only a $2 5 million impact, it is clear that it has greatly underestimated not only the financial impacts to the local mills.[47] but it has also ignored the resulting transportation gridlock and impacts to the rural communities and mills

The abandonment application must be denied in that the public convenience and necessity require the continuation of the Coos Bay Subdivision The short term revenue that CORP/RailAmerica/Fortress can gain through the salvage of steel etc. is greatly outweighed by both the short term and long term harm that has and will befall the shipping public The adverse impacts on the rural communities from loss of manufacturing facilities. increased transportation impacts. and the rural communities' economic development, impose an unnecessary and unwarranted burden

CONCLUSION

The Surface Transportation Board should issue an order denying the abandonment application and. in turn. issue an injunction directing that CORP restore rail service The Board should also acknowledge that the railroads' common carrier obligation is a commitment that carries with it an obligation to manage its system and facilities on a long term basis as opposed to the short term gain that can be realized through the salvage

[47] Based on the Southport Lumber, Roseburg Lumber and Georgia Pacific additional transportation costs that are approximately $7,275 000, it is clear that CORP simply does not have an appreciation for the impacts to its shippers or the local communities in which it operates

of the lines Given the lack of interest by CORP/RailAmerica/Fortress to operate this line, the Shippers further support the Feeder Line Application of the Port of Coos Bay

Dated August 28, 2008

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ORAL TESTIMONY OF

ERIC FARM

ON BEHALF OF

MENASHA FOREST PRODUCTS CORPORATION

MENASHA
FOREST PRODUCTS CORPORATION

Written Copy of Oral Testimony to the Surface Transportation Board 223348
RE Docket No AB-515 (Sub-No 2X) and STB Finance Docket No 35160
Eugene, Oregon
August 21, 2008 223347
Eric E Farm

Good afternoon Chairman Nottingham, and Commissioner Buttrey Thank you for the opportunity to speak today and provide input on the proposed abandonment of the Coos Bay Line by CORP and the Feeder Line Application by the Port of Coos Bay My name is Eric Farm and I represent Menasha Forest Products Corporation which is based in North Bend, Oregon

Menasha is a private timber company that has been in Southwestern Oregon for over 100 years Our sole business is managing over 100,000 acres of timberland throughout Southwest Oregon We do not operate any manufacturing facilities, and consequently do little business directly with CORP, only amounting to 4 or 5 rail cars of bulk fertilizer per year But the more important issue to us, and all forest products companies in the region, is the secondary effects on our business, imposed by a lack of rail service on the Coos Bay Line.

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FOREST PRODUCTS CORPORATION

Menasha alone harvests and sells approximately 100 truck loads of logs each day to local lumber, plywood, and chip manufactures that are all serviced by CORP's Coos Bay and Siskiyou Lines Regionally, five more industrial timber companies and numerous private timberland owners own and manage over 700,000 acres which provide timber to mills along the Coos Bay Line These timberland owners currently harvest and sell approximately 450 truck loads of logs per day to manufacturers on the Coos Bay Line alone The mills on this line depend on this railroad to move finished products cost effectively to markets all over the United States The loss of rail service on the Coos Bay Line has been compounded by the stagnant housing market, which has pushed lumber prices to the lowest point in over 20 years Short term, the mills located along the Coos Bay Line are forced to operate at a loss just to remain in the global lumber market Long term, their ability to continue operating is in jeopardy If these manufacturers are not able to compete and must shut down their facilities, companies like Menasha will have no option but to haul all of our logs to mills along the I-5 corridor that still have rail service Because lumber, plywood and wood chips are a commodity It's nearly impossible to pass this additional cost of transporting raw materials on to the retail buyer of individual 2x4s or sheets of plywood Therefore the additional cost of transporting logs or lumber to a facility with rail service must be absorbed by the manufacturer This additional cost also reduces the price that the mills

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can afford to pay for raw materials, in our case logs If we are forced to truck every log to mills with rail service, our company would have to pay an additional $300 per load [or $14,000 per day] in additional transportation costs This might not sound like a lot, but it adds up to $3 2 million per year, which comes directly off our bottom line, and during a market cycle in which we can least afford it Whether or not to resume rail service along the Coos Bay Line is just not an option Hundreds of family wage jobs and the economic livelihood of our region depend on this vital transportation link

From a safety standpoint, to get to the I-5 corridor trucks must navigate over one of two routes through the Oregon Coast Range These highways are two-lane, windy roads, that are subject to closure during winter storms And during the summer months, RV and tourist traffic can cause significant delays along these routes In log trucks alone, the addition of 450 round trips each day could paralyze these highways

Another concern for timber companies with no manufacturing division, such as Menasha, is that if any mills along the Coos Bay Line are forced to close due to lack of rail service the remaining mills may have excessive log supplies available, further reducing competition for logs and resulting in lower log sales prices This one/two

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punch of higher transportation costs, and lower sales prices will substantially reduce our company's profitability and ultimately reduce the total asset value of our timberland

Menasha Forest Products Corporation wholly opposes the abandonment of the Coos Bay Line proposed by CORP and supports the Feeder Line Application submitted by the Port of Coos Bay This transportation link from Coquille to Eugene is essential for the economic viability of the entire Southern Oregon Coast The line between Coos Bay and Eugene bisects our property in numerous locations and based on my experience with the geology and topography in this region of the state, any extended period of non-use could jeopardize the possibility of ever reopening this line. Not only are the tunnels in need of immediate repair, but hillslopes and stream crossings require regular maintenance, without which the costs to repair could make reopening this vital transportation link uneconomical Action must be taken immediately to reopen the Coos Bay Line and restore service to our communities

Furthermore, if CORP can not operate the entire line, they should be required to sell the entire length from Coquille to Eugene to the Port of Coos Bay The Port should be given every opportunity to make the line profitable, and the retention by CORP of short segments that are more lucrative, and allow control of the entire line, will only cause

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logistical problems and delays for shippers on the line This will undermine the Port's good faith effort to reopen this line to full service

In summary, I would like to emphasize the enormous financial strain the lack of rail service is currently imposing on companies like Menasha, and the long term negative impact on timberland values across the region if Southwestern Oregon loses rail service permanently

This concludes my remarks and I thank you for this opportunity to comment on the Abandonment Petition and Feeder Line Application before the board

ORAL TESTIMONY OF

BILL GOODMAN

ON BEHALF OF

GEORGIA-PACIFIC WEST, INC.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Central Oregon & Pacific Railroad, Inc - Coos Bay Bay Rail Line	)))	Docket No AB 515 (Sub-No 2X) Finance Docket No 35160

ORAL TESTIMONY OF BILL GOODMAN

My name is Bill Goodman I am the Group Manager – Western Lumber for Georgia-Pacific West, Inc (GPW), a wholly owned subsidiary of Georgia-Pacific LLC (GP) I have been with GP for 22 years and currently have manufacturing and sales / marketing responsibility for the western lumber group GP and its subsidiaries operate 56 wood products manufacturing facilities throughout the United States employing over 10,000 employees I am here to speak in support of the Port of Coos Bay's Feeder Line Application to reestablish rail service on the line embargoed by the Central Oregon & Pacific Railroad (CORP)

GPW operates a sawmill at Coos Bay, OR which produces Douglas fir lumber Until the embargo by the CORP, the Coos Bay facility was the largest shipper on the line, receiving up to 40 carloads of logs per month and shipping up to 275 carloads of finished lumber and wood chips per month

As with most wood products companies, we are heavily dependent on the rail freight network This is especially true of the Coos Bay sawmill, due to its geographic location on the Oregon coast and the markets served Coos Bay is 80 to 90 miles from the Interstate 5 corridor, affecting the cost and availability of motor carrier capacity Primary destinations are the population centers in the

West where length of haul and volumes requires the strategic advantage of rail to compete effectively

When the rail embargo was first imposed by the CORP on September 21, 2007 with only one day's notice, it created immediate and significant issues for our supply chain Candidly, we were surprised at the lack of communication as GP had developed an effective business relationship over the years with the CORP

While the GP logistics team was able to quickly develop transportation alternatives - - predominantly rail service via a Eugene, OR area reload and additional motor carrier capacity - - the impact of the short notice period for the embargo caused us to temporarily shut-down production at Coos Bay putting 125 people out of work for several weeks

On an ongoing basis, the impact of the rail embargo has resulted in a transportation cost increase on finished lumber of 17 to 21% over what we were paying prior to the embargo The sawmill is currently operating at around 60% of capacity resulting in a freight cost impact of approximately $1 5 million in 2008 At full production, this would translate to a cost impact of approximately $2 5 million per year on finished lumber

In addition, the rail embargo has adversely affected the freight cost on wood fiber - - the inbound shipment of logs and outbound shipment of wood chips At current production levels, the cost impact on wood fiber is approximately $550,000 per year At full production, the cost impact would be

approximately $935,000 per year This volume is moving via motor carrier in the absence of rail service

There are ancillary effects as well increased highway congestion on two-lane coastal and mountain roads such as Highway 101 and the environmental and safety impact of additional trucks on the highway

In summary, the absence of direct rail service will seriously jeopardize the GP Coos Bay sawmill's long-term ability to compete and sustain profitable operations We strongly support the Port of Coos Bay Feeder Line Application as the vehicle to restore rail service to the region

Upon the restoration of rail service, the GP Coos Bay mill operation would be considered by the company as a platform for growth This could lead to capital investment and production expansion

I want to thank Surface Transportation Board Chairman Nottingham, Vice-Chairman Mulvey, Commissioner Buttrey and the Surface Transportation Board staff for traveling to Oregon to hear from the shippers and other interested parties

Thank you

VERIFIED STATEMENT OF

JASON SMITH

ON BEHALF OF

SOUTHPORT FOREST PRODUCTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

Central Oregon & Pacific Railroad, Inc – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, Oregon Coos Bay Rail Line)	))))	Docket No. AB-515 (Sub-No. 2)

VERIFIED STATEMENT OF JASON SMITH

My name is Jason Smith and I am the Operations Manager of Southport Forest Products, along with a co-owner of the company.

Southport Forest Products is a small sawmill and log chipping company that started up in 1998, specializing in the conversion of small logs into wood chips and lumber. As the company grew, considerations were given to invest in growing the existing facility by investing in new machinery and technology. An in-depth analysis of the business identified that it was not prudent to continue to invest money in the current location due to a lack in the necessary transportation infrastructure.

Southport, at that time, decided to look for a new location to build a new state of the art sawmill that had access to all of the required transportation infrastructure in order to stay competitive in an increasingly competitive global economy. The two transportation items that we identified were direct access to rail and access to a marine shipping terminal At that time we were transloading approximately 60% of our lumber shipped out through a rail reload in Coos Bay

Southport reached a deal with the Port of Coos Bay, whereas the Port of Coos Bay sold a parcel of land to Southport on the North Spit, with the understanding that the Port of Coos Bay was required to build a rail line connecting the new Southport sawmill site

with the CORP line. This process went off without a hitch and by the summer of 2005, the rail spur was completed. With the startup of the new sawmill in the late summer of 2005, Southport started shipping lumber via rail from the North Spit

Southport struggled with the startup of the new sawmill. It took well over a year before the new sawmill was starting to reach production levels intended Next came a slowdown in the housing market that further reduced the value that sawmills received for their finished products By the fall of 2007, certain lumber prices had reached historically low prices that they had not seen in over 20 years. This is unadjusted for inflation This created conditions that made in nearly impossible for sawmills to operate profitably

The last straw was when CORP suddenly announced an embargo the Coos Bay line. Southport was immediately hit with huge lag times between when we called orders ready to ship and when they actually shipped out This was caused by a number of items, but mostly due to a lack of alternative transportation systems available to us and the other shippers in the area.

There were only a certain number of trucks available to ship our product to existing reloads in the Willamette Valley. In addition, the reloads did not have the man power and equipment to handle the additional work load

The end result was that all inventories of finished goods swelled. This caused cancelled orders and frustrated customers that were reluctant to do business with Southport due to unreliable shipping practices.

This rippled through the sawmill industry in Southern Oregon At Southport we immediately went into pure survival mode. We imposed a wage freeze, did away with

our production bonus system and reduced benefits on our employee medical plans In addition, we eliminated all non-essential jobs, cutting our workforce by 15% Sawmill hours were reduced and extended shutdowns were taken around holidays

This has been the way that we have operated since the embargo Right now we are surviving It is hard to say how long we can hold out Currently we are paying an additional $70 000 00 per month in transportation expenses to transload our lumber to reloads in the Willamette Valley

If rail service is not returned to the Southern Oregon coast the long term viability of our business is suspect It will no longer make sense to continue to invest in our sawmill facility that has no long term viability Strategic decisions to continue to build that business will not be made and eventually the doors will close This will have an immediate effect on the employees at Southport Forest Products and the hundreds of job that are created by and dependant on the forest products business

VERIFICATION

I, Jason Smith, 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

JASON SMITH

Executed on Aug 27, 2008

ORAL TESTIMONY OF

FRED JACQUOT

ON BEHALF OF

AMERICAN BRIDGE MANUFACTURING

Comments for STB Hearing 8-21-08, Eugene, OR

Chairman Nottingham, Vice Chairman Mulvey, and Board Member Butrey, thank you for taking time to hold this hearing today. My name is Fred Jacquot, and I am the Plant Manager for American Bridge Manufacturing's Reedsport Oregon Facility I've asked to speak before the board today to explain the devastating effects that the Central Oregon and Pacific's 2007 embargo has had on our operations, and the long term impacts we will experience if the Coos Bay Line is abandoned

American Bridge Company selected the current Reedsport plant location because the site was shovel ready with an existing rail spur and barge slip With help and support from Douglas County, the City of Reedsport, the State of Oregon and the United States Economic Development Agency, American Bridge broke ground in June, 2002 and operations began in March, 2003. American Bridge Company has invested over $16 million in plant, equipment, and operations to bring the plant to its current capacity.

To date, our plant has sold over $28 million dollars in railroad, highway, and pedestrian bridges for projects throughout the middle and western United States We are currently fabricating steel for the Hoover Dam Bypass Bridge; an elevated intermodal railyard in Chicago, and the supporting structures for the erection of the San Francisco Bay Bridge in San Francisco, CA The bulk of our products have been bridges for class I

railroads Our 80 person work force is comprised of displaced timber, construction, and shipyard workers from depressed industries in the region, many of whom would traditionally have left the area. Our 2008 projected payroll is $2 3 million

Since we began shipping by rail in 2005, we have processed close to 100 cars on our spur before the embargo. Current projections for full capacity use would be approximately 90-150 cars per year. Much of this traffic had been incoming raw material from steel producers east of the Mississippi River. Much of the time, our cars were misrouted on CORP's line, and often were delivered 1-2 weeks later than expected. Ordering empty cars for outgoing shipments was also problematic. Often we could not contact the CORP car manager to place an order; we would not receive confirmation when cars were ordered; or we would not receive accurate delivery date estimates Additionally, we often experienced the same long deliveries or routing problems we had with incoming material cars

Service issues culminated in October 2006, when a tunnel collapse resulted in loaded railcars being stranded in our yard. This collapse resulted in extraordinary unanticipated costs to American Bridge Manufacturing for transloading and truck shipping.

When we received notification of the CORP's pending embargo 24 hours before it was imposed, it was quite clear that CORP had no detailed plans or timeline to lift the embargo. In November, 2007, CORP announced their "Public/Private" partnership to restore service on the

embargoed line Repeated attempts to negotiate a lifting of the embargo resulted in an impasse and CORP's eventual application for abandonment

This embargo has seriously impacted our operations, resulting in both direct and indirect costs. Prior to the embargo, raw material was delivered to our site by rail for 5.8 cents per lb Under the embargo, we are forced to rail our incoming material to Portland, transload, and truck to Reedsport, resulting in a current delivered per pound cost of 9 cents. Additionally, the sudden and continued nature of the embargo forced us to re-organize work in process to address impacts associated with the loss of rail service. Due to the increased costs resulting from the embargo, we have been unsuccessful in bidding for over $18 million dollars in new contracts Finally, much of the market we have relied on since our operation began is no longer available to us due to the lack of rail access.

Abandonment of the Coos Bay line will have even more drastic impact to our plant Markets we successfully competed in before the embargo will be closed to us for good. The competitive advantage we enjoyed because we could receive raw material by rail will be lost Limitations on the weight and size of work pieces we can ship will become permanent. Increased operating expenses and decreased profitability will make further investment in our plant by American Bridge Company less attractive. Ultimately, abandonment of the Coos Bay Line threatens our immediate and long term viability

American Bridge Manufacturing strongly supports the Port of Coos Bay's efforts to restore service to this line. We have suffered consistently poor service, and have incurred significant and unexpected costs because of the 2007 embargo. Therefore, we urge the Board to grant the Port of Coos Bay's application as expeditiously as possible. Additionally, we ask the Board to carefully consider the line's valuation. Further, we believe it is reasonable and within the Board's authority to require CORP to pay for the repairs of the conditions that resulted in the September 2007 embargo. And finally, American Bridge Manufacturing requests the Board deny CORP's application to abandon the Coos Bay Line, regardless of the outcome of the Port of Coos Bay's Feederline Application.

In closing, I wish to express American Bridge Company's gratitude to the Board for taking the time to hear our issues; for you and your staff's responsiveness to our questions, and for your continued high level of interest in our case. I also wish to thank the Port of Coos Bay for their leadership and efforts in preparing the feederline application Additional thanks to Congressman Defazio and Senators Wyden and Smith for their ongoing advocacy on our behalf, and to Governor Kulongoski and our state and local legislators and communities for their continued support of American Bridge Manufacturing Thank you

VERIFIED STATEMENT OF

RAY BARBEE

ON BEHALF OF

ROSEBURG FOREST PRODUCTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

Central Oregon & Pacific Railroad, Inc - Coos Bay Rail Line	)	Finance Docket No 35130

VERIFIED STATEMENT OF RAY BARBEE

I, Ray Barbee, 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

I am the Vice President for Sales & Marketing with Roseburg Forest Products Roseburg Forest Products, is an Oregon corporation, with forest products manufacturing facilities throughout the United States but heavily concentrated in southern Oregon and northern California We employ over 3,500 employees in our line of engineered wood products composite panels, plywood, lumber, and in the management of our own timberlands Most of our facilities are located in rural areas and represent the principal employer in these communities

As with most wood products companies we are heavily dependent upon the ability to ship both our raw material and finished product by rail As a result of our dependence on rail transportation, Roseburg Forest Products has had a close relationship over the years with the various railroads, including in 2004 assisting Central Oregon & Pacific Railroad ("CORP") with the reopening of the line between Winston, Oregon and Dillard, Oregon when the line was closed due to a major landslide, in 2006 assisting CORP in repairing tunnels on the Coos line, and, in providing CORP with financial assistance for repairing tunnels and thereafter reopening the Siskiyou Line

I have been closely monitoring the shipping and the impacts on our company as a result of the CORP's September 21, 2007, embargo of the Coos Line (See Embargo No CORP 000107) The embargo was imposed with only one days' notice by CORP and as a result left us scrambling not only to find alternative shipping but also to keep our businesses operating My company had orders awaiting shipment and targeted for delivery on specific dates, and as a result of the short embargo notice we were placed in the difficult situation of having to scramble to find timely transportation

At the time of the embargo, CORP's own analysis, which was not made available to the shippers until several weeks later, identified that the tunnels could be repaired within four months at an expenditure of $2,865,000 00 However, rather than make the repairs on the three tunnels and reinstitute service, CORP stated it would not open the line unless the shippers State of Oregon, Port of Coos Bay, and the Union Pacific agreed to pay three-quarters of not only the immediate tunnel repair costs but also what Rail America described as the neglect and deferred maintenance that has taken place on the line over the past twenty years The proposed solution was for an investment of approximately $23 million to bring CORP's rail line up to safe standards This funding was to be derived from the State of Oregon ($4 66 Million), Port of Coos Bay ($4 66 Million), Union Pacific Railroad ($4 66 Million) shippers ($4 66 Million) and the CORP ($4 66 Million) In addition, CORP also stated that even if these monies were forthcoming, CORP would not reopen the line unless the State of Oregon provided an additional "operating subsidy" of $2 Million/year in maintenance subsidies, as well as $1 5 Million/year in revenue subsidies CORP steadfastly refused to do anything to fix

the tunnels unless all of these financial commitments were agreed to by all of the parties Since the State of Oregon has refused, CORP has not moved forward with the tunnel repairs

After the embargo, CORP offered Roseburg Forest Products a $200 per car allowance if our shipments were reloaded elsewhere on the CORP line However, we were not able to avail ourselves of this allowance since CORP never provided us with a contract, rate item or any type of publication outlining what they would pay, how one was to file for the allowance or other information as to how the allowance would operate My Traffic Manager for Rail requested a written agreement from CORP several times however CORP never issued one

At my request my Transportation and Logistics Director has estimated that the annual financial impact of the closure of the Coos Bay Line has resulted in an additional $208,000 to $250,000 per month ($2 5 to $3 0 Million/year) in hard transportation costs due to trucking instead of rail In addition there are additional costs that we have not quantified but are clearly additional costs, for such items as increased wear and tear on our private transportation infrastructure (i e truck loading docks scales and roads) administrative costs, and inventory carrying costs

In addition, the loss of rail transportation for our finished product from our facility in Coquille, Oregon has increased our transportation costs from this facility to the point that we are no longer cost competitive in some of our markets out of the West Coast While we have traditionally been able to access markets throughout the United States, we are no longer able to competitively serve those markets from this facility

I, Ray Barbee, 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.

RAY BARBEE

Executed on June 2, 2008

The Coos-Siskiyou Shippers' Coalition[1] respectfully submits this Protest and Response to the "Application of Central Oregon & Pacific Railroad, Inc for Authority to Abandon[2] Railroad Lines and Discontinue[3] Rail Service" ("CORP Application")

INTRODUCTION

The Central Oregon & Pacific Railroad. Inc ("CORP")[4] has filed for authority under 49 U S C § 10903 to allow it to abandon and to discontinue its common carrier obligations on the Coos Bay Subdivision lines known as the Coos Bay Branch, Coquille Branch and LPN Branch [5 6]

The common carrier obligation is a high public trust and as result thereof. an application to abandon or discontinue service over a rail line is limited to those situations wherein "the present or future public convenience and necessity require or permit the abandonment or discontinuance" (49 U S C § 10903(d)) Conversely. an abandonment application should be denied if. as in this case, the present or future public convenience and necessity require continuation of service

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[1] The Coos-Siskiyou Shippers' Coalition is a coalition consisting of shippers and local governments Included among its members are Roseburg Forest Products, Southport Lumber, American Bridge & Manufacturing, Inc , and, Georgia Pacific, which are all shippers on the Coos Bay line

[2] The line to be abandoned is the Coos Bay Branch

[3] The lines for which the common carrier service is to be discontinued are the Coquille Branch and the LPN Branch It is notable that in contrast to a previous abandonment involving part of the original Coos Bay Line, wherein the Union Pacific Railroad had a similar interest as herein, the Union Pacific Railroad Company did not join with CORP in this abandonment proceeding (*See Union Pacific Railroad Company - -Abandonment Exemption – In Coos County Oregon* S I B Document No AB-33, (October 30. 2000))

[4] CORP is a railroad carrier controlled by RailAmerica, Inc (*See RailAmerica Inc -Control Exemption-RailTex Inc*, S I B Finance Docket No 33813, January 7, 2000) As demonstrated in this proceeding and the prior Show Cause, CORP is not independent of its parent Lacking any indicia of independence the two companies are so intertwined as to be properly considered a single entity (*See Iowa, Chicago & Eastern Railroad Corporation-Acquisition and Operating Exemption—Lines of I&M Rail Link, Inc*, S I B Finance Docket No 34177, p 3, January 17, 2003)

[5] While CORP owns the Coos Bay Branch, it only leases the other two branches

[6] At the public hearing in Eugene, CORP represented that it would not oppose a feeder line application for these branches as well as the remaining portion of the Coos Bay Branch

CERTIFICATE OF SERVICE

I hereby certify that I have caused the COOS-SISKIYOU SHIPPERS' COALITION PROTEST AND RESPONSE TO THE APPLICATION OF CENTRAL OREGON & PACIFIC RAILROAD, INC. FOR AUTHORITY TO ABANDON RAILROAD LINES AND DISCONTINUE RAIL SERVICE, Docket No. AB-515 (Sub-No. 2) to be mailed to the parties of record by first class mail on August 28, 2008

Kimberly Parrett
Legal Assistant