

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F MCFARLAND

August 25, 2008



By UPS overnight mail

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

223311

35175
Re Finance Docket No. ~~35177~~, *Roseburg Forest Products Co., Timber Products Company, L.P., Suburban Propane, L.P., Cowley D&L, Inc., Sousu Ag Service and Yreka Western Railroad Company -- Alternative Rail Service -- Central Oregon & Pacific Railroad, Inc.*

Ex Parte No. 346 (Sub-No. 25)^e, *Rail General Exemption Authority -- Lumber or Wood Products*

223319

Dear Ms. Quinlan

Enclosed please find an original and 10 copies of Petition Under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1 for Alternative Rail Service and Petition Under 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f) For Partial Revocation Of Commodity Exemption, for filing with the Board in the above referenced matters.

Also enclosed is a check in the amount of \$200 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioners

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**SURFACE
TRANSPORTATION BOARD**

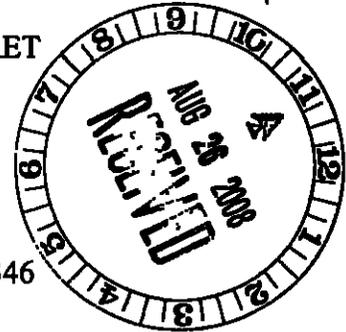
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AUG 26 2008

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

ROSEBURG FOREST PRODUCTS CO ,)
TIMBER PRODUCTS COMPANY, L P ,)
SUBURBAN PROPANE, L P , COWLEY) FINANCE DOCKET
D&L, INC , SOUSA AG SERVICE and) NO ~~35172~~
YREKA WESTERN RAILROAD) FD - 35778
COMPANY-- ALTERNATIVE RAIL)
SERVICE -- CENTRAL OREGON &)
PACIFIC RAILROAD, INC)
RAIL GENERAL EXEMPTION) EX PARTE NO 346
AUTHORITY -- LUMBER OR WOOD) (SUB-NO 25)-C
PRODUCTS)



**PETITION UNDER 49 U.S.C. § 11123(a) AND
49 C.F.R. § 1146.1 FOR ALTERNATIVE RAIL SERVICE
and
PETITION UNDER 49 U.S.C. § 10502(d) AND 49 C.F.R. § 1121.4(f)
FOR PARTIAL REVOCATION OF COMMODITY EXEMPTION**

ROSEBURG FOREST PRODUCTS CO.
P O Box 1088
Roseburg, OR 97470

TIMBER PRODUCTS COMPANY, L.P.
P O Box 766
Yreka, CA 96097

SLBURBAN PROPANE, L.P.
212 State Street
Yreka, CA 90697

COWLEY D&L, INC.
701 Highway A-12
Grenada, CA 96038

SOUSA AG SERVICE
861 South 11th Street
Montague, CA 96064-9298

YREKA WESTERN RAILROAD COMPANY
300 East Minor Street
Yreka, CA 90697

Petitioners

FRITZ R KAHN
FRITZ R KAHN, P C
1920 N Street, N W , 8th fl
Washington, DC 20036

THOMAS F McFARLAND
THOMAS F McFARLAND, P C
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner
Yreka Western Railroad Company

Attorney for Petitioners other than
Yreka Western Railroad Company

DATE FILED August 26, 2008

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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**PETITION UNDER 49 U.S.C. § 11123(a) AND
49 C.F.R. § 1146.1 FOR ALTERNATIVE RAIL SERVICE
and
PETITION UNDER 49 U.S.C. § 10502(d) AND 49 C.F.R. § 1121.4(f)
FOR PARTIAL REVOCATION OF COMMODITY EXEMPTION**

Pursuant to 49 U S C § 11123(a) and 49 C F R § 1146 1, ROSEBURG FOREST PRODUCTS CO (RFP), TIMBER PRODUCTS COMPANY, L P (TPC), SUBURBAN PROPANE, L P (SP), COWLEY D&L, INC (CDL), SOUSA AG SERVICE (SAS), (referred to collectively as Shipper Petitioners), and YREKA WESTERN RAILROAD COMPANY (YWR), a Class III connecting rail carrier, hereby petition for an order prescribing alternative rail service for Shipper Petitioners' traffic as identified herein, over a rail line operated by CENTRAL OREGON & PACIFIC RAILROAD, INC (CORP) between Black Butte, California and Dillard, Oregon, a distance of approximately 218 miles (the Black Butte-Dillard Line) A map of the southern portion of CORP's rail system is attached to this Petition as Appendix 1 The Black

Butte-Dillard Line has been shaded in yellow on that map YWR's connecting rail line has been drawn on that map, shaded in pink

In addition, pursuant to 49 U S C § 10502(d) and 49 C F R § 1121 4(f), Petitioners RFP and TPC seek partial revocation of the commodity exemption for rail transportation of lumber and wood products to enable the Board to entertain the Petition for Alternative Rail Service as applied to their rail shipments of those commodities

THE ALTERNATIVE RAIL SERVICE PROVIDER

Petitioners request that alternative rail service be provided by WEST TEXAS AND LUBBOCK RAILWAY COMPANY (WTL), a Class III rail carrier, in conjunction with YREKA WESTERN RAILROAD COMPANY ("YWR"), a Class III rail carrier, which will act as WTL's agent Pursuant to the agency agreement between WTL and YWR, WTL will administer the alternative rail service, with YWR handling local rail transportation matters WTL will issue the bills of lading and collect the freight charges on shipments not involving YWR YWR will handle all traffic on its line to and from its interchange at Montague, CA, will provide its ALPHA and Numeric codes, and will maintain its interchange agreements and relationships with connecting rail carriers on all traffic originating or terminating on YWR

WTL has an important advantage of experience in that it provided alternative rail service for 20 months at Lubbock, Texas in the well-known *PYCO* case, *PYCO Industries, Inc -- Alternative Rail Service -- South Plains Switching, Ltd Co*, 2006 S T B 42 (Finance Docket No 34802, decision served January 26, 2006) YWR has important advantages under the alternative rail service arrangement by virtue of having provided rail service to Shipper Petitioners TPC and SP and its knowledge and experience with local transportation conditions WTL will defer to

YWR on all rail transportation matters relating to shippers located on YWR. For convenience, only WTL, as principal, will be referred to in this Petition as the alternative service provider. However, in all instances that reference should be understood to include YWR as WTL's agent.

OVERVIEW

In early 2007, CORP began "slow-motion abandonment" of the southern portion of its Siskiyou Line that extends over the Siskiyou Mountain Summit near the Oregon-California border to connection with Union Pacific Railroad Company (UP) at Black Butte, California. The timing of CORP's downgrading of service coincided with acquisition of CORP's parent company by Fortress Investment Group LLC (Fortress). Fortress has no history of commitment to operating railroads. As an investment company, Fortress instead is focused on the short-term "bottom line."

Declining CORP service performance culminated, in January, 2008, in a drastic curtailment of rail service from five days to two days per week for large volumes of raw materials shipped by Petitioners RFP and TPC from facilities in northern California over Siskiyou Summit to their production mills in southern Oregon. In notifying Shipper Petitioners of that diminished service, CORP threatened that before long rail service would be discontinued altogether *viz* (VS Hart, Appdx SH-1)

. . . If we are unable to secure the necessary economics to profitably operate the subdivision, we will discontinue all service over the Siskiyou Mountain pass on April 15, 2008

At the same time, CORP rerouted volume shipments of finished wood products that had been transported southbound from the RFP and TPC mills over Siskiyou Summit to connection with

UP at Black Butte, CA By virtue of these actions, CORP sent an unmistakable message that the south Siskiyou Line no longer fit into its planning for the future

Twice-per-week service for raw materials is wholly inadequate for RFP and TPC Consequently, after unsuccessfully attempting to convince CORP to restore adequate rail service, RFP and TPC began to transition their raw materials to truck transportation Apparently, that was precisely what CORP desired, in order to make sure that such traffic would not return to the Rail Line, CORP increased RFP's and TPC's rail rates by 400 percent and more, to levels that dwarfed corresponding truck rates CORP well knew that its huge rate increases would stifle rail transportation CORP's refusal to restore adequate rail service and its exorbitant rates have resulted in a *de facto* embargo that is every bit as effective in prohibiting rail traffic as if CORP had imposed a formal embargo on conventional grounds In that manner, the unauthorized discontinuance of rail service threatened by CORP came to pass

The remedy of alternative rail service is specifically tailored to short-circuit such a drawn-out and painful slow-motion abandonment Where, as here, a rail carrier is not performing its common carrier service obligation, the alternative-service remedy provides swift temporary relief, permitting replacement of a recalcitrant carrier with a carrier that will enthusiastically perform the needed rail service In that manner, the broader public interest in efficient rail transportation in northern California and southern Oregon will take precedence over the narrow self-interest of Fortress-CORP in withholding adequate rail service for economic reasons

IDENTITY AND INTEREST OF PETITIONERS

Petitioner RFP is a significant manufacturer of lumber, plywood, particleboard, and engineered wood products. RFP has seven facilities served by CORP. Involved in this proceeding are RFP's veneer mill located on CORP at Weed, California, RFP's plywood mill, stud mill, and particleboard mill located on CORP at Dillard, Oregon; and RFP's plywood mill located at Riddle, Oregon. RFP ships veneer and logs as raw materials over Siskiyou Summit from Weed, CA to its mills at Dillard and Riddle, OR. RFP shipped thousands of carloads per year in that manner before CORP's curtailment of rail service. Plywood, studs and particleboard produced at RFP's mills at Dillard and Riddle were transported over Siskiyou Summit to connection with UP at Black Butte until CORP rerouted that traffic north from Dillard and Riddle at the beginning of 2008. (VS Jeffers)

Petitioner TPC is a significant manufacturer of lumber and wood products. As here pertinent, TPC operates a veneer mill on YWR at Yreka, California. YWR's sole connecting rail carrier is CORP at Montague, California. TPC also operates manufacturing mills for wood products at Medford, Oregon, Grant's Pass, Oregon, and White City, Oregon. The Medford and Grant's Pass facilities are solely rail-served by CORP. The White City facility is served by WCTU Railway, but CORP transports shipments for that mill from Montague to White City, where they are interchanged to WCTU for a short haul to the mill. TPC ships veneer as raw material over Siskiyou Summit from Yreka, CA to its mills at Medford, Grant's Pass and White City, OR. TPC was also a very substantial shipper of those commodities over CORP prior to curtailment of service. Wood products produced at those mills were transported over Siskiyou

Summit to connection with UP at Black Butte until the CORP rerouting described above (VS Hart)

Petitioner YWR is a Class III rail carrier. It operates approximately eight miles of rail line from Yreka, California to point of connection with CORP at Montague, California. CORP is YWR's sole rail connection. YWR has originated or terminated rail traffic for two Shipper Petitioners, i.e., TPC and SP. They are the only shippers served by YWR. Historically, YWR transported between 1,500 and 1,900 carloads per year, primarily for TPC. That traffic was taken off the railroad by TPC when CORP curtailed rail service over Siskiyou Summit, and Petitioners were unable to convince CORP to restore adequate service. YWR has been deprived of virtually all of its income since that time. YWR would also act as agent of WTL as alternative rail service provider. (VS C Hammond)

Petitioner SP received propane in tank cars at its facility at Yreka. While the volume of its rail traffic has been modest, use of rail service was increasing because of receipt of more propane from distant origins, for which rail is the preferred mode of transportation. SP experienced a decline in CORP service as a result of delays and lack of switches for YWR at Montague. (VS Cummins)

Petitioner CDL is a fertilizer distributor. It maintains a place of business at Grenada, California, solely served by CORP. CDL receives rail shipments of fertilizer from points in Idaho and Canada. Its rail traffic has been modest to date, but it would look at other product lines to receive by rail if it had adequate service. CDL fears that the reduction of CORP service from five days to twice per week will cause railcars to bunch up. (VS Cowley)

Petitioner SAS is a fertilizer dealer with a place of business located on YWR at Montague, California CORP participates in rail transportation of fertilizer for SAS from Idaho and Texas (VS Sousa)

NATURE AND EXTENT OF ALTERNATIVE RAIL SERVICE SOUGHT

Alternative rail service over CORP between Black Butte, CA and Dillard, OR is sought solely for traffic originated or terminated at the facilities of Shipper Petitioners in California, or handled in interchange at Montague, CA for Shipper Petitioners, with respect to traffic for Shipper Petitioners RFP and TPC, alternative rail service is sought only for their traffic from Weed, CA and Yreka (Montague), CA to their mills in Oregon or to interchange with UP at Black Butte, CA Alternative rail service is not sought for traffic from their mills in Oregon that formerly was transported to the UP connection at Black Butte, but which has been rerouted north from the mills Alternative rail service is not sought for traffic originated or terminated by any other shippers between Black Butte and Dillard

Shipper Petitioners are the only shippers located on a roughly 85-mile segment of CORP between Black Butte, CA and Ashland, OR (including interchange traffic at Montague) However, there are shippers other than Shipper Petitioners located on the roughly 133-mile segment of CORP between Ashland and Dillard, OR Inasmuch as under the alternative rail service here sought, both WTL and CORP would be providing rail service on the line between Ashland and Dillard, an operating protocol for that dual service would have to be negotiated by WTL and CORP, or would be imposed by the Board in the absence of agreement Dual operations over the rail line involved in the *PYCO* case were safely conducted pursuant to the operating protocol imposed by the Board in that case

INTEREST OF UNION PACIFIC RAILROAD COMPANY

Petitioners are informed and believe that UP owns, and leases to CORP, approximately 80 miles of the involved rail line between Black Butte, CA and a point known as Belleview, OR. Petitioners are informed and believe that CORP owns the remaining 138 miles of rail line between Belleview and Dillard, OR.

If this Petition were to be granted, therefore, WTL would replace CORP as operator of the UP-owned line between Black Butte and Belleview, and WTL would operate over trackage owned by CORP between Belleview and Dillard. Accordingly, Petitioners are serving a copy of this Petition on UP, as well as CORP. In addition, Petitioners are required to serve a copy of this Petition on the Federal Railroad Administration.

NEED FOR REVOCATION OF THE COMMODITY EXEMPTION FOR RAIL TRANSPORTATION OF LUMBER AND WOOD PRODUCTS

Petitioners RFP and TPC ship lumber and wood products over the CORP rail line involved in this proceeding. Rail transportation of lumber and wood products has been exempted from Board regulation 49 C.F.R. § 1039.11 (STCC 24), *Rail Exemption - Lumber or Wood Products*, 71 C.C.2d 673 (1991). It will be necessary for the Board to partially revoke the commodity exemption for lumber and wood products in order to entertain the portion of the Petition that seeks alternative rail service for rail transportation of those commodities. The commodities shipped by the other Petitioners are regulated by the Board (fertilizer and propane).

Pursuant to 49 U.S.C. § 10502(d), the Board may revoke an exemption in whole or in part if it finds that regulation of particular transportation is necessary to carry out the national rail policy set out in 49 U.S.C. § 10101. In adopting regulations to implement the alternative rail

service statute in *Expedited Relief for Service Inadequacies*, 3 S T B 968 (1998) (*Expedited Relief*), the Board said that partial revocation of exemptions will be granted in order to prescribe alternative rail service in appropriate cases, viz (at 976)

. . . We will do so (revoke exemptions) to the extent required to provide relief shown to be justified under these rules

Accordingly, the Board should partially revoke the commodity exemption for rail transportation of lumber and wood products in order to prescribe alternative rail service, if shown to be justified in the case at hand. In support of that partial revocation, the Board should find that regulation of CORP's transportation of those commodities to that extent is necessary to carry out the national rail policies of 49 U S C § 10101(4) ("to ensure the development and continuation of a sound rail transportation system"), and 49 U. S C § 10101(9) ("to encourage honest and efficient management of railroads")

FORMAT OF THE PETITION

Petitioners first identify the Board's authority to prescribe alternative rail service and the substantive legal standards that govern whether or not alternative rail service should be prescribed

The pertinent facts and circumstances are set forth in the following verified statements that are attached to this Petition in the Tabs corresponding to their Appendix numbers

<u>Witness</u>	<u>Company</u>	<u>Appendix No.</u>
Susan S Hart	Timber Products Company, LP	2
Andrew E Jeffers	Roseburg Forest Products Co	3
Court Hammond	Yreka Western Railroad Company	4
Brian Cowley	Cowley D&L, Inc	5
Darrel Sousa	Sousa Ag Service	6
John M Cummins	Suburban Propane, LP	7
Jim Cook	Siskiyou County, California	8
John Hammond	City of Montague, California	9
Edwin E Ellis	West Texas and Lubbock Railway Company	10

Petitioners then submit argument that applies the legal standards to those facts and circumstances

**THE BOARD'S AUTHORITY TO
PRESCRIBE ALTERNATIVE RAIL SERVICE**

The statutory basis for the Board's authority to prescribe alternative rail service is found in 49 U S C §§ 11123(a)(1)-(4), *viz*

(a) When the Board determines that . . . a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days ^{1/} -

^{1/} Pursuant to 49 U S C § 11123(c)(1), the Board can extend alternative rail service beyond 30 days if it finds that the transportation emergency that warranted its initial action continues to exist. In accordance with 49 C F R § 1146.1(c), there is a rebuttable presumption that the transportation emergency that warranted relief will continue for more than 30 days. However, no alternative rail service under this statute can remain in effect for more than 240 days beyond the initial 30-day period (total of 270 days). 49 U S C § 11123(c)(1). There are other legal remedies that can be pursued to obtain relief extending beyond 270 days and to obtain permanent relief.

- (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines,
- (2) require joint or common use of railroad facilities;
- (3) prescribe temporary through routes, or
- (4) give directions for--
 - (A) preference or priority in transportation,
 - (B) embargoes, or
 - (C) movement of traffic under permits

Pursuant to 49 U S C § 11123(b)(1), the Board is authorized to prescribe alternative rail service immediately, without prior notice to the incumbent rail carrier and without opportunity for comment. However, the Board's practice is to provide for notice and comment on an accelerated basis (5 business days for the incumbent carrier's reply, 3 business days for Petitioner's rebuttal) 49 C F R §§ 1146.1(b)(2)-(3)

SUBSTANTIVE LEGAL STANDARD

The substantive legal standard for prescription of alternative rail service is set out in 49 C F R § 1146.1(a), *viz*

Alternative rail service will be prescribed under 49 U S C 11123(a) if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier

The required content of a Petition for Alternative Rail Service is identified in 49 C F R § 1146.1(b)(1)(i)-(iv), *viz*

(b)(1) Petition for Relief. Affected shippers or railroads may seek the relief described in paragraph (a) of this section by filing an appropriate petition containing

(i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief contained in paragraph (a) of this section is met,

(ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time,

(iii) A commitment from another available railroad to provide alternative service that would meet current transportation needs (or, if the petitioner is a railroad and does not have an agreement from the alternative carrier, an explanation as to why it does not), and an explanation of how the alternative service would be provided safely without degrading service to the existing customers of the alternative carrier and without unreasonably interfering with the incumbent's overall ability to provide service, and

(iv) A certification of service of the petition, by hand or by overnight delivery, on the incumbent carrier, the proposed alternative carrier, and the Federal Railroad Administration

The Board adopted those regulations in *Expedited Relief, supra*. The Board there declined to attempt to delineate in the abstract what constitutes inadequate rail service within the meaning of that regulation, but it stated that the "substantial measurable deterioration" language in that regulation describes "serious, objectively determinable service declines" (3 S T B at 975)

The legal standard has been clarified in Board decisions applying the standard, most recently in the *PYCO* case, *supra*. The Board there said (2006 STB LEXIS 42 at *10-11)

. . . Here, the daily shortfall of 14 carloads for switching at Plant No. 1 (more than half of the 26 carloads that PYCO previously could load there), the continued lack of delivery of sufficient boxcars to serve Plant No. 2, and the period in November, 2005 during which SAW performed no switching at all at Plant No. 2 indicate a serious deterioration in SAW's service to PYCO . . .

On the basis of the language in the applicable regulation, the Board's explanation of that regulation in the proceeding in which it was adopted, and the Board's application of that regulation in the *PYCO* case, it can reasonably be concluded that "inadequate rail service" to which statutory relief is directed is not an isolated service failure, but rather a pattern of unresponsive and worsening rail service

ARGUMENT

The verified statements that are part of this Petition establish conclusively that shortly after CORP's parent company was acquired by Fortress at the beginning of 2007, the theretofore adequate rail service provided by CORP began to significantly decline. The diminished service became wholly inadequate at the beginning of 2008 when CORP slashed service from five days to two days per week. Because that reduced service level falls far short of meeting the transportation requirements of Shipper Petitioners, they were forced to transition their shipments of raw materials from rail to truck service. CORP responded by quadrupling Shipper Petitioners' rail rates to levels several times higher than corresponding truck rates, effectively ensuring that Shipper Petitioners' traffic would not return to the rails. Truck transportation is not a logistically nor economically feasible alternative to rail transportation for Shipper Petitioners. Consequently, when CORP refused to voluntarily restore adequate rail service, nor to roll back its exorbitant rate increases, Shipper Petitioners were required to file this Petition for alternative rail service relief.

It may be that CORP curtailed service and jacked-up rates "to secure the necessary economics to profitably operate," as its letter to the shippers threatened. However, CORP's successful operations for more than a decade cast doubt that the Siskiyou Line is a money-loser. It is much more likely that operation over Siskiyou Summit was profitable for CORP, but not profitable enough for Fortress' liking, so a decision was made to downgrade the service and to eventually exit from the market altogether. While that may benefit the "bottom line" of Fortress, it would severely harm YWR, Shipper Petitioners, and the overall economies of northern California and southern Oregon -- in other words, CORP's action would be directly contrary to

the broader public interest in development and continuation of a sound rail transportation system
See 49 U S C § 10101(4) It is that broader public interest that is served by prescription of
alternative rail service under 49 U S C § 11123(a) and 49 C F R § 1146.1

I. THERE HAS BEEN A SUBSTANTIAL, MEASURABLE DETERIORATION OR OTHER DEMONSTRATED INADEQUACY IN RAIL SERVICE PROVIDED BY CORP

1. Inadequacy of CORP's Rail Service

CORP has provided rail service to Petitioners for approximately 14 years. For most of that time, CORP's service was satisfactory. Indeed, CORP exhibited a "get it done" attitude during that period. (VS Hart at 2-3)

At the beginning of 2007, CORP's parent company, Rail America, Inc., was acquired by Fortress Investment Group, LLC. Fortress has no history of commitment to operating railroads. Instead, as an investment company, Fortress is focused on "the bottom line."

CORP's rail service began to deteriorate after that acquisition. For example, TPC was told by CORP at that time that UP woodchip cars were not available, while at the same time, empty chip cars could be seen stored on CORP's lines. In late Spring, 2007, after contacts with UP proved the availability of chip cars, CORP brought more than 60 empty cars into the Montague rail head at one time in apparent retaliation for TPC's contact with UP, completely congesting the trackage and in essence shutting down local access to the YWR-CORP interchange at Montague. Similar incidents causing shipping delays became commonplace. (VS Hart at 3)

Car supply issues were coupled with declining service during 2007. Beginning in the Summer of 2007, CORP would typically drop a hauler, which reduced rail service from five days

per week to four. During one stretch, there were six "drops" in as many weeks (i.e., failures to serve). Concurrently, CORP began to bunch cars, and then haul to TPC's Grant's Pass mill at reduced frequency. Bottlenecks occurred chronically, and it was not uncommon to have most cars under load north of Siskiyou Summit, with no empty cars for TPC to load at Yreka. (VS Hart at 4)

CORP's service deteriorated to a wholly unacceptable level in the current year. Effective January 16, 2008, CORP curtailed scheduled northbound service for raw materials to the manufacturing mills from five days to two days per week, a 60-percent reduction. At the same time, finished goods traffic from those mills that had moved south over Siskiyou Summit to interchange with UP at Black Butte was rerouted north to interchange with UP at Eugene, OR. In combination, those actions reflected a very substantial downgrading of rail service over the southern portion of the Siskiyou Line. (VS Hart at 4-5)

Downgrading of rail service over Siskiyou Summit was accompanied by a threat of unauthorized discontinuance of all service over the Summit, thus, in notifying Shipper Petitioners that their five-days-per-week service was being cut to two days per week, CORP said (VS Hart, Appdx SH-1, at 1).

... If we are unable to secure the necessary economics to profitably operate the subdivision, we will discontinue all service over the Siskiyou mountain pass on April 15, 2008

Note that CORP did not say that "we will file at the STB for discontinuance authority on April 15, 2008", CORP said that it would actually discontinue service on that date. As will be shown, CORP utilized a combination of deplorable rail service and exorbitant rate increases to effectively discontinue service over Siskiyou Summit on or about that target date.

The service curtailment for raw materials traffic was not a mere reduction of a service schedule, it was a reduction of actual rail service provided. RFP and TPC had consistently availed themselves of scheduled rail service every weekday, Monday through Friday. As curtailed, service was provided only on Tuesday and Thursday. There were four consecutive days each week during which no rail service was available (Friday, Saturday, Sunday, Monday). Rail service that had enabled RFP and TPC to provide a consistent and orderly supply of raw materials to their mills was slashed by 60 percent such that supply of raw materials to the mills became sporadic and undependable. The drastically-reduced level of rail service provided by CORP has been inadequate to meet the transportation needs of TPC and RFP (VS Hart at 4-5)

Worse yet, CORP has not abided by even that drastically-reduced service level. CORP failed to provide scheduled train service on Thursday, January 31, 2008, and again on Tuesday, February 5, 2008, and yet again on Thursday, February 7, 2008. As a result, shippers who have a need for service at least five days per week received no service at all for two consecutive weeks! In the first 12 days of February, 2008, TPC would have shipped 48 carloads of veneer if CORP had operated on Tuesday and Thursday as scheduled, TPC was able to ship only 19 carloads, a 60-percent reduction of ability to ship by rail, coming on top of CORP's 60-percent reduction of frequency of service! (VS Hart at 5)

Moreover, CORP could not or would not handle increased tonnage per train trip on its twice-per-week schedule to at least partially compensate for not operating five days per week because it was unwilling or unable to provide sufficient locomotive power to transport that increased tonnage over Siskiyou Summit. RFP's mills require approximately 50 carloads per week of logs and veneer from its Weed facility. CORP is limited to transporting 36 of those

carloads per week. As a result, railcars that were loaded and tendered to CORP sat idle in Weed for the next four days because CORP could not get them over the Summit. (VS Jeffers at 3-5)

TPC had the same experience. On Tuesdays, TPC would tender 18 cars to YWR for interchange to CORP. CORP would pull 12 of the 18, leaving 6 loaded cars at Montague for the next train two or five days later. That situation repeated itself each Tuesday. When TPC complained about that practice, CORP merely began to hold the loaded cars on a more distant track at Hornbrook, CA, in the hope that they would not be as readily detectable by TPC. Thus, CORP is not hauling anywhere near the freight traffic available to it. (VS Hart at 5-6)

CORP's downgrading of rail freight service to Petitioners is evident in its failure to respond to an opportunity for increased traffic presented to it by RFP. In December, 2007, RFP contacted CORP about a new opportunity to transport peeler cores from Weed, CA to Saginaw, OR via CORP direct over the Siskiyou rail line. CORP never provided a rail rate for that traffic despite several follow-up contacts by RFP. RFP's customer at Saginaw became frustrated with the lack of response and cancelled the movement. (VS Jeffers at 5)

RFP's rate contract with CORP expired in the Spring of 2008. In anticipation of expiration of that contract, CORP offered contract rates conditioned on RFP signing a 1, 2, 3 or 5-year commitment as to volume of rail traffic. Even under the yearly commitment most favorable to RFP, RFP would be paying CORP over \$100,000 per month more than RFP would pay to motor carriers for corresponding transportation. Moreover, CORP rail service under the contract rates would have been only three-days-per-week instead of the five-days-per-week service required by RFP. (VS Jeffers at 6)

RFP counteroffered with rates that would have increased CORP's revenues by 150 to 200 percent. CORP refused that counteroffer. (*Id*)

In May, 2008, CORP increased RFP's rate from Weed, CA to its primary mill at Dillard, OR from \$650 per car to \$3,150 per car, an increase of nearly 400 percent! CORP well knew that the increased rates greatly exceeded corresponding truck rates. The clear purpose and effect of that huge rate increase was to ensure that no rail traffic would be tendered to CORP for transportation over Siskiyou Summit. RFP has not shipped by rail from Weed to Dillard since (*Id*)

TPC experienced even greater rate increases by CORP. It, too, has discontinued use of rail transportation. (VS Hart at 11)

In the foregoing manner, the total discontinuance of all rail service threatened by CORP came to pass in the Spring of 2008. That discontinuance constituted a *de facto* embargo implemented by means of deplorable service and exorbitant rates specifically designed to discourage rail traffic, rather than a conventional embargo due to congestion or unsafe track conditions, but it was an embargo that prevented transportation of all rail traffic no less effectively. At that point, the Petitioners were forced to plan for alternative rail service.

Over the next several weeks, Petitioners investigated the availability of potential alternative rail service providers, and interviewed prospective candidates for that function. Petitioners ultimately selected WTL. WTL has the important advantage of experience in providing extensive alternative rail service in Lubbock, Texas in the *PYCO* case, *supra*. WTL has specifically committed to provide the five-days-per-week rail service that is essential for the proper functioning of RFP's and TPC's manufacturing mills. As WTL's agent, YWR has the

important advantage of knowledge of local rail transportation conditions by virtue of providing rail service to two of the Shipper Petitioners

In the period shortly prior to the filing of this Petition, a representative of WTL's parent company attempted unsuccessfully to negotiate a private solution whereby CORP would voluntarily assign its lease of the portion of rail line between Black Butte and Belleview to WTL, and would sell its rail line between Belleview and Dillard to WTL. Even though CORP shows no inclination whatsoever to provide rail service over Siskiyou Summit itself, CORP refused to discuss such a lease assignment and sale.^{2/} This Petition was not filed until Shipper Petitioners exhausted all reasonable means for a private sector solution to CORP's inadequate rail service, and until service and rate arrangements were finalized with a reliable and enthusiastic alternative rail service provider

Petitioners submit that the foregoing evidence establishes emphatically that over a period of more than a year, there has been a substantial and measurable deterioration and other inadequacy in rail service provided by CORP. To briefly recap

- (1) CORP failed to provide available empty cars for woodchip loading,
- (2) CORP congested trackage with excess cars in retaliation against TPC for complaining to UP about CORP's refusal to furnish available cars,
- (3) CORP bunched loaded cars into production mills,
- (4) CORP failed to provide reasonably prompt transportation of tendered rail traffic,

^{2/} CORP's refusal brings to mind Aesop's Fable of "The Dog in the Manger," which is used to illustrate a person who selfishly and unreasonably withholds from others something that is useless to himself. The dog in the Fable prevented an ox from eating hay that the dog did not want itself.

- (5) CORP repeatedly held loaded cars on tracks near origin for days at a time,
- (6) CORP failed to provide available empty cars for loading veneer,
- (7) CORP ignored RFP's request for transportation of peeler cores to Saginaw, OR,
- (8) CORP failed to provide scheduled rail service on numerous occasions, one of which encompassed a two-week period,
- (9) CORP curtailed service on northbound shipments of raw materials over Siskiyou Summit from five to two days per week, knowing that Petitioners RFP and TPC require service at least five days per week for that traffic, and
- (10) CORP established exorbitant rates for that raw materials traffic for the purpose of ensuring that such traffic would not be shipped by rail (Normally rate levels are not at issue in an alternative rail service proceeding, here, however, the evidence shows that CORP's rates were increased to levels specifically designed to avoid providing rail service over the Line That effort to stifle service is very relevant in an alternative rail service case)

These service failures by CORP mirror the service failures of the incumbent rail carrier that caused the Board to prescribe alternative rail service in the *PYCO* case, *supra* (see the quotation from that case, *supra*, at page 13) In both cases, the service failures resulted in shortfalls of shippers' rail traffic requirements In the *PYCO* case, rail service continued to be held out on a daily basis, but a lesser number of cars per day were switched In the case at hand, the service failure is far more severe, i.e., a 60-percent reduction in service frequency, from five days to two days per week, plus service failures even under that greatly-reduced schedule

In both cases, there were instances in which no switching at all was performed. In the *PYCO* case, the incumbent rail carrier failed to provide scheduled service for a three-day period over a Thanksgiving weekend. In the case at hand, the service failure again was more severe, i.e., CORP failed to provide even its diminished schedule of service on a number of occasions for as much as a two-week period.

In both cases, there was evidence of harmful retaliation by the incumbent rail carrier against its shippers, as well as a failure to deliver sufficient empty cars for loading.

Petitioners submit that the service failures by CORP in the case at hand compel prescription of alternative rail service as much or more so than did the service failures in the *PYCO* case. Accordingly, consistently with 49 C.F.R. § 1146.1(a), the Board should find that over a period of at least one year, there has been a substantial, measurable deterioration and other inadequacy in rail service provided by CORP to Petitioners in California that warrants prescription of alternative rail service by WTL over a rail line operated by CORP between Black Butte, CA and Dillard, OR.

2. Adverse Effect Of Inadequate Rail Service

CORP's failure to provide adequate rail service is having a serious adverse effect on Petitioners. The adverse effect is especially severe on Petitioner YWR, who is CORP's connecting carrier at Montague. CORP's failure to provide adequate rail service has forced TPC to ship by truck rather than rail. As a result, YWR has lost virtually all of its rail freight traffic -- between 1,500 and 1,900 carloads per year -- and has been deprived of the substantial revenues from that traffic. That corresponds to substantially all of YWR's income (YWR derives a small amount of income from a local passenger excursion train). That deprivation of income has

continued for months as Shipper Petitioners negotiated unsuccessfully for CORP to provide adequate rail service and steps were taken to secure an alternative rail service provider. That prolonged loss of income is having a severe adverse financial effect on YWR. Alternative rail service must be implemented promptly to alleviate that serious financial effect. (VS C Hammond at 1)

CORP's inadequate rail service is also seriously harming Shipper Petitioners, RFP and TPC. The manufacturing mills of those shippers functioned efficiently when CORP provided reliable delivery of raw materials every weekday. In contrast, the drastic reduction of service frequency and poor CORP service performance produced chaos at the mills. Sporadic and curtailed CORP deliveries of raw materials, combined with bunching of more railcars per train, made it extremely difficult for mill personnel to coordinate unloading of inbound raw materials and loading of outbound finished products. (VS Hart at 7)

That difficulty led to unavoidable delays in furnishing finished goods to RFP's and TPC's customers. Not shipping on time is the single greatest complaint from finished goods customers. If a supplier of wood products is not reliable in meeting its delivery commitments, the supplier loses credibility with its customers. That credibility loss leads to business loss to a more reliable supplier. That is especially the case in regard to the many customers who require just-in-time deliveries. (VS Hart at 7-8, VS Jeffers at 6)

In order to mitigate that congestion in their mills, TPC and RFP were forced to ship raw materials from Yreka and Weed to the mills by truck rather than rail. For example, TPC is producing a finished specialty product at its White City mill that requires specific weekly volumes of substrate produced at Yreka, as well as a tightly maintained production schedule.

Due to production parameters and product tolerances, this product is produced every Monday and Tuesday, and typically can be loaded by rail at Yreka for delivery to the White City mill for Friday swing shift processing. As a direct result of CORP's unreliable rail service, TPC was unable to utilize rail as a freight option for those shipments. If Petitioners cannot plan a delivery date with reasonable assuredness, they are forced to use trucks for shipments that normally would be railed, resulting in increased costs. (VS Hart at 7-8)

That already-serious situation worsened when CORP imposed a *de facto* commercial embargo of rail traffic over Siskiyou Pass as a result of deplorable service and exorbitant rail rate increases. Those huge rate increases, in combination with drastically curtailed rail service, were intended to constitute, and have in fact constituted, a commercial embargo of rail traffic as effective to eliminate rail traffic as any official embargo published for conventional reasons

CORP's behavior forced Petitioners to use trucks as the only means to ship their commodities to destination. Truck transportation is not a logistically nor economically feasible alternative to rail transportation for RFP's and TPC's shipments of veneer and logs to their production mills. See, e.g., *Georgia Public Service Comm'n v United States*, 704 F.2d 538, 545 (11th Cir. 1983). Logistically, it takes approximately four trucks to transport the equivalent volume of veneer that can be accommodated in one railcar. That has resulted in service congestion and greatly increased handling at the mills. Moreover, there is not an adequate supply of trucks in the area to meet the demand for transportation of raw materials to RFP's and TPC's mills. In addition, truck transportation is much more costly than rail rate levels that existed before CORP took steps to drive traffic off the rails. Petitioners are rail-oriented and rail-

dependent. The lack of rail service has had a serious adverse effect on their businesses. (VS Hart at 7-9, VS Jeffers at 7)

The added costs associated with truck transportation are making RFP less competitive in the market for wood products. That puts RFP at serious risk of losing valuable market share. (VS Jeffers at 7)

Although RFP has been harmed in the serious respects here described, it has been able to continue to supply its mills by truck in the recent weeks only because of the current very soft market conditions due to the severe downturn in housing starts. Once the housing market recovers, it will be extremely difficult, if not impossible, to meet the resulting increased demand for products as a result of limited available truck transportation options, combined with no rail transportation. In the area in which RFP operates, there simply is not the number of trucks available, nor are its facilities designed to handle such a large volume of trucks. If RFP were to be faced with normal market levels without rail service, there would be a transportation gridlock. Accordingly, it is absolutely essential that adequate rail service be restored immediately well before the housing market turns around. (VS Jeffers at 7-8)

II. IT IS HIGHLY UNLIKELY THAT CORP WILL RESTORE ADEQUATE SERVICE

As clearly established in the foregoing, CORP's behavior has been designed to pave the way for its exit from the southern portion of the Siskiyou Line. Restoration of adequate rail service on that Line is contrary to CORP's game plan.

Before coming to the Board for relief, Petitioners diligently attempted private resolution of CORP's inadequate rail service. All of Petitioners' efforts in that respect have been to no avail.

Petitioners contacted CORP on numerous occasions to complain and to seek improved service as CORP's service was deteriorating during 2007. Those contacts did not result in improvement. (VS Jeffers at 3-4)

Petitioners negotiated extensively with CORP when CORP rail service was curtailed to an unacceptable level in 2008. CORP refused to provide any increase in service frequency, let alone restoration of the required five-days-per-week service, unless RFP and TPC would agree to a quadrupling of their rates to a level that would dwarf corresponding truck rates. CORP well knew that there was no way that Petitioners could ship on those exorbitant rates. (VS Hart at 10-11)

Even after CORP imposed a *de facto* embargo of rail service on the Line, Petitioners attempted to reach a negotiated arrangement for restoration of rail service. However, CORP refused to voluntarily relinquish its right to provide rail service on the Line, notwithstanding that all of CORP's actions have been clearly designed to divorce itself from providing that service. (VS Hart at 13, VS Jeffers at 7) (*see note 2, supra at 20*)

Based on the foregoing, the conclusion is inescapable that CORP has absolutely no intention of restoring adequate rail service on the Line at any time in the future. Consequently, the Board should find, in the words of 49 C.F.R. § 1146.1(b)(1)(ii), that CORP is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time.

III. WTL HAS COMMITTED TO PROVIDE ALTERNATIVE RAIL SERVICE THAT WOULD MEET CURRENT TRANSPORTATION NEEDS SAFELY WITHOUT DEGRADING SERVICE TO ANY OF ITS OTHER CUSTOMERS AND WITHOUT UNREASONABLY INTERFERING WITH CORP'S OVERALL ABILITY TO PROVIDE SERVICE

WTL has committed to provide the five-days-per-week rail service that RFP and TPC require (VS Ellis at 4) WTL is ready, willing, and able to provide that service (*Id* at 1) WTL has an important advantage in providing that service inasmuch as it has provided alternative rail service at Lubbock, TX over a 20-month period in the *PYCO* case, *supra* YWR as agent of WTL has the important advantage of knowledge of local rail transportation conditions by virtue of having provided rail service to two of the Shipper Petitioners (*Id*)

Inasmuch as all other customers of WTL are located in far-away Texas, the proposed alternative rail service in California and Oregon is extremely unlikely to degrade rail service to any other WTL customer (VS Ellis at 4) All of YWR's customers are Petitioners in the matter at hand Consequently, the provision of alternative rail service would not affect any other YWR customer

WTL's alternative rail service would not unreasonably interfere with CORP's overall ability to provide rail service On the contrary, alternative rail service would free CORP from what it claims to be money-losing operation, according to CORP itself, "(w)e lost money operating over the Siskiyou Subdivision " (VS Hart, Appdx SSH-1) Furthermore, CORP would be entitled to compensation for use of its property in alternative rail service 49 U S C § 11123(b)(2)

Nor would alternative rail service adversely affect CORP operationally Both WTL and CORP would operate between Ashland and Dillard, but as in the *PYCO* case, *supra*, operating

protocols to be negotiated by the parties, or to be imposed by the Board in the absence of agreement, would ensure that such operations would be performed safely without unreasonably interfering with CORP's ability to serve its other customers located between those points (VS Ellis at 5)

Based on the foregoing, the Board should make the findings required by 49 C F R § 1146 1(b)(1)(iii)

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, inasmuch as the evidence supports all of the findings required by 49 C F R § 1146 1, the Board should prescribe alternative rail service by WTL over a rail line operated by CORP between Black Butte, CA and Dillard, OR on traffic originated or terminated at the facilities of Shipper Petitioners in California, or handled in interchange at Montague, CA for Shipper Petitioners

Respectfully submitted,

ROSEBURG FOREST PRODUCTS CO.
P O Box 1088
Roseburg, OR 97470

SUBURBAN PROPANE, L.P.
212 State Street
Yreka, CA 90697

SOUSA AG SERVICE
861 South 11th Street
Montague, CA 96064-9298

TIMBER PRODUCTS COMPANY, L.P.
P O Box 766
Yreka, CA 96097

COWLEY D&L, INC.
701 Highway A-12
Grenada, CA 96038

YREKA WESTERN RAILROAD COMPANY
300 East Minor Street
Yreka, CA 90697

Petitioners

Fritz R Kahn

FRITZ R KAHN Tm
FRITZ R KAHN, P C
1920 N Street, N W , 8th fl
Washington, DC 20036

Attorney for Petitioner
Yreka Western Railroad Company

DATE FILED August 26, 2008

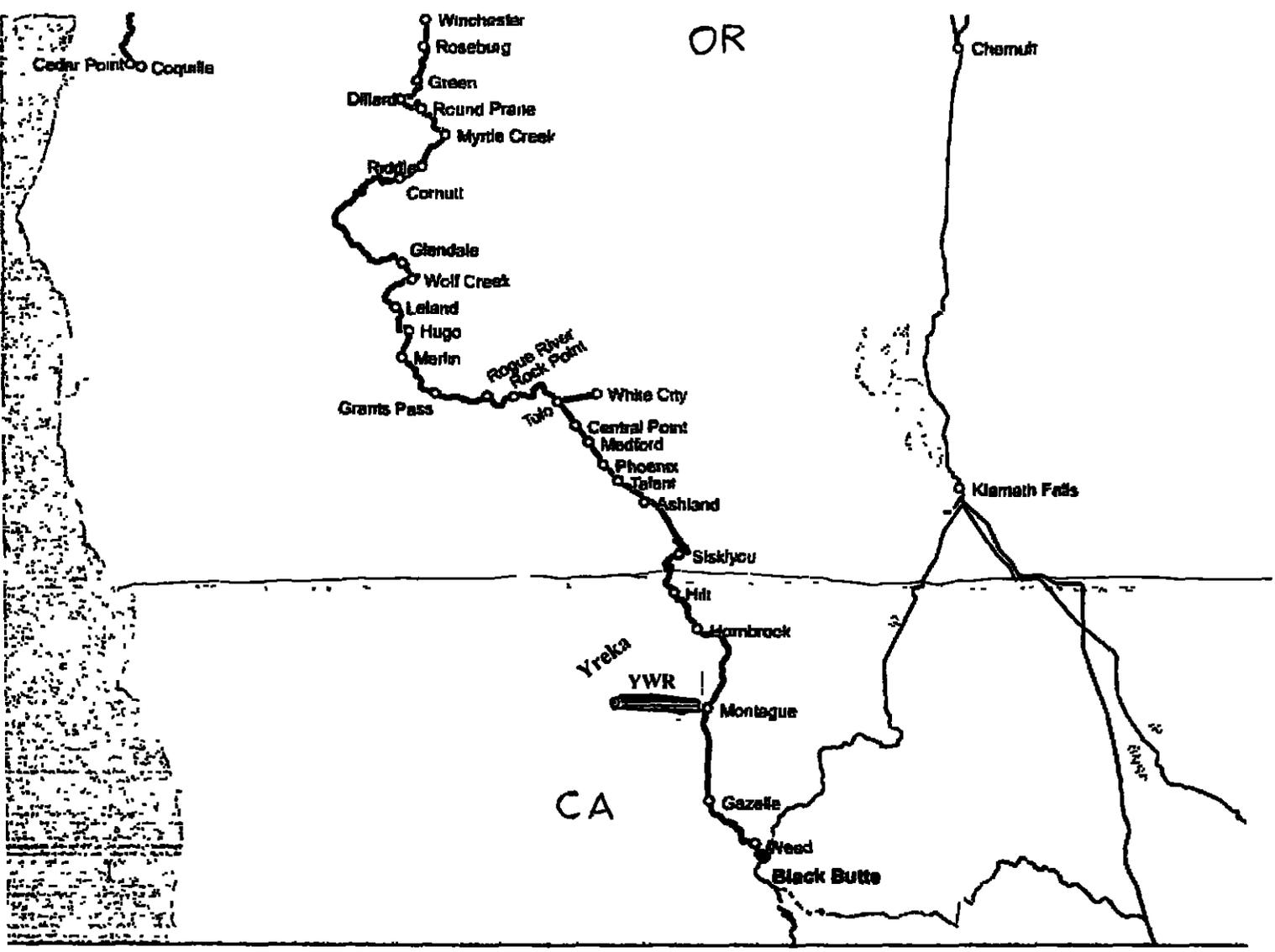
Thomas F McFarland

THOMAS F McFARLAND
THOMAS F McFARLAND, P C
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioners other than
Yreka Western Railroad Company

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VERIFIED STATEMENT OF SUSAN S. HART

My name is Susan S Hart I am Office Manager of Timber Products Company, LP (TPC), P O Box 766, Yreka, CA 96097 I began my employ with TPC in 1994 as a mill office coordinator I have coordinated and managed our outbound freight since early 1994 and currently provide the primary interface with all transportation from our Yreka facility, both rail and truck

As here pertinent, TPC operates a green veneer facility at Yreka, CA, which is rail-served by Yreka Western Railroad Company (YWR) YWR interchanges TPC's rail shipments with Central Oregon & Pacific Railroad, Inc (CORP) at Montague, CA CORP is the sole rail carrier serving TPC's manufacturing complex at Medford, OR, as well as TPC's hardwood manufacturing facility at Grant's Pass, OR CORP also transports TPC's traffic to White City, OR where it is interchanged to WCTU Railway Company for short haul to TPC's plywood plant in White City TPC's Yreka plant along with its timberlands division employs 95 persons, as well as providing numerous indirect jobs associated with its operations

Veneer produced by TPC's Yreka facility is transported to TPC's lay-up plants in Medford, Grant's Pass and White City as well as to customers along the I-5 corridor as far north as Eugene, OR Wood chips produced at Yreka are transported to pulp mills as far north as St Helens, OR Veneer shipped from Yreka provides TPC's lay-up plants with approximately 70 percent of their substrate requirements Collectively, TPC's Oregon facilities employ approximately 700 persons

During the 1990's and for the first six years or so of the current decade, the rail service provided to TPC by CORP, in connection with YWR, was adequate for the most part. There were ups and downs as in any long-term service arrangement, but CORP seemed interested in responding to TPC's transportation requirements to the best of its ability.

A significant decline in car availability was realized beginning in April of 2006. Staff changes were made at CORP and our once cooperative, "get it done" working partnership began to deteriorate. While trying to arrange for chip cars, CORP contact personnel would be changed regularly without notification to TPC. Once those delays were met, TPC would be told car order procedures had been changed, again without notice, and so the pattern went

We were told by CORP off and on for well over a year that LP chip cars were no longer available, while at the same time, empty chip cars could be seen stored on CORP's lines. In the late Spring of 2007, after contacts with UP proved the actual availability of the cars, CORP brought well over 60 empties into the Montague rail head one night. I recall Mr. Hawksworth and Mr. Gomez of CORP meeting at TPC's Yreka office during the time of this occurrence, they had come to discuss how to INCREASE our car counts and through put by rail. TPC explained that CORP had in essence shut down local access to the Montague rail head by its placement of chip cars that completely congested the tracks. Similar incidents causing shipping delays by CORP became commonplace.

Car supply issues were coupled with declining service issues during the same time frame. TPC received six interchanges weekly in Montague prior to tunnel closure. Following the tunnel repair, CORP provided five interchanges, however, beginning in the early Summer of

2007, CORP would typically 'drop' a hauler reducing the service to 4 interchanges. This 'drop' was never communicated to TPC, and seemed to occur sporadically with respect to the day of the week, though during one stretch there were 6 'drops' in as many weeks.

Concurrently, CORP began to 'bunch' cars, and then haul to TPC's Grant Pass mill at reduced frequency. Bottlenecks occurred chronically, and it was not uncommon to have most cars under load north of the Siskiyou, with no empties in Yreka to load.

TPC was contacted by CORP in mid-July 2007, with notification that UP was recalling all SSW series cars for use, and that TPC would not be able to use them after 7/31/07. Following a series of direct inquiries with UP, the story was that these cars were available, just that they would now come with a daily/mileage fee.

Upon meeting with CORP, TPC was able to renegotiate rates, car use fees and ensure our continued use of the flatbed cars. In the face of multiple customer discouragements forced on TPC's shipping arrangement by CORP, TPC met the challenges by aggressively shipping as much veneer as before.

TPC received CORP's service curtailment announcement (reduction in service from five to two days per week), dated December 13, 2007, in which CORP stated that it was committed to "working with our shippers to determine if we can secure enough revenue commitments to continue operating the line on a reduced schedule." Additionally, CORP stated they would evaluate some combination of higher rates and/or additional volume in the interim period in an effort to "achieve the necessary economics." CORP threatened to discontinue service altogether ("If we are unable to secure the necessary economics to profitably operate the subdivision, we

will discontinue all service over the Siskiyou mountain pass on April 15, 2008") A copy of that letter is attached to my Statement as Appendix SSH-1

Since the receipt of that notice from CORP, TPC has made a good faith effort in continuing its aggressive rail loading but has experienced the following since CORP initiated its curtailment schedule on January 16, 2008

- CORP failed to run scheduled hauler on Thurs 1/31, Tues 2/5 & Thurs 2/7
- Loss of efficient transit time resulting in unnecessary use of trucks
- In the first 12 days of February, TPC would have shipped 48 loads of veneer if CORP would have run each Tues and Thurs as scheduled TPC shipped 19 loads, a 60% reduction in service as measured using the curtailed service (only 2 haulers a week) as a baseline
- CORP has left loaded cars at its Montague rail-head on at least 3 occasions By way of example There were 18 cars waiting to be pulled, CORP came in and pulled 12 of the 18 leaving 6 for the next train (5 days later)
- CORP is grouping cars into TPC's receiving mills, causing severe congestion and reducing off-loading efficiencies
- The grouping of cars combined with missed trains is leading to measurably increased cycle time per car

On February 11, 2008, CORP did not return sufficient empty cars for TPC to load On February 28, three loaded veneer cars were left in Montague These cars were held over until

March 4 On March 4, six loaded veneer cars were left in Montague until March 6 On March 4, in addition, CORP did not return sufficient empty cars for TPC to load

On more than two occasions after March 5, 2008, rather than leaving full loads of veneer in Montague, CORP left such loads on a track north of Montague in the vicinity of a small community called Hornbrook Loaded cars were observed on that track on April 2, 2008 by TPC employees and by Court Hammond of YWR On Monday, April 7, 2008 and without notice to TPC, CORP ran its train but did not run on the regularly scheduled Tuesday, April 8, 2008, again without notice

CORP runs a southbound and northbound train over the Siskiyou Pass that trade consist on the track near Hornbrook By leaving loads on that track, CORP was able to avoid my complaints about loads being left in Montague CORP's ploy in that respect was successful until reports began to be provided to me of loads on the Hornbrook track, and TPC mills began to complain that their loads were not being received On at least one occasion loads that had been shipped after others to our White City plant were received first, leaving the prior unaccounted for

CORP's statement that they will "look for additional volume" appears disingenuous in as much as they are not hauling anywhere near the available freight Through no one's actions but their own, CORP is functionally causing the forced abandonment of rail freight opportunities, while at the same time increasing net costs to themselves and their shippers by leaving available freight behind

CORP's drastic curtailment of service since January, and its failure to live up to even that minimal reduced service, have led to TPC's inability to load commodity by rail because delivery dates are unreliable. If TPC cannot plan a delivery date with a reasonable amount of assuredness, it is forced to use trucks for shipments that normally would be railed, resulting in increased costs.

CORP's service curtailments and service failures has been deleterious to TPC's ability to provide on time finished goods shipments. Not shipping on time is the single greatest complaint from our finished goods customers. If a supplier of wood products is not reliable in meeting its delivery commitments, the supplier loses credibility with its customers. This credibility loss leads directly to business loss to a more reliable supplier, (competitor). That is especially true as to TPC's many just-in-time customers. If TPC is late in deliveries, those customers run out of stock. Those customers cannot afford that loss of business, so they do business with a supplier who can make just-in-time deliveries.

The sporadic (and at times unknown) and curtailed delivery schedules by CORP of TPC's veneer coupled with a larger number of delivered cars at a time (bunching) has posed considerable challenges for the mills in trying to coordinate empty box cars in to load up finished products for outbound product, while at the same time trying to get incoming flatcars of veneer unloaded and out of the way. These unnecessary coordination challenges have in some cases resulted in delays of finished goods to some TPC customers. These delays, (production volumes are presently reduced due to market conditions), would be worse if we were in fact running normal operating schedules.

CORP's service curtailments and failures have created a coordination juggernaut for TPC facilities in meeting their delivery commitments to customers, while at the same time attempting to keep substrate freight costs in check. Additionally, in the competitive and difficult times we operate under, the congestion forced on our docks by CORP's service failures has led to unnecessary and more costly movements of freight by truck. In order to mitigate congestion in our receiving mills, we have been forced to move green veneer from Yreka by truck rather than rail.

The sporadic and unreliable delivery schedule imposed by CORP's service reduction from five to two weekly trains forced even more rail freight to truck. TPC produces a finished specialty product at our White City facility that requires specific weekly volumes of substrate produced in Yreka, as well as a tightly maintained production schedule. Due to production parameters and product tolerances, this product is produced every Monday and Tuesday, and typically can be loaded by rail for delivery to our White City facility for Friday swing shift processing. TPC is currently unable to utilize rail as a freight option for these products, a direct result of the unreliable and uncertain service now in effect.

In order to rectify that unacceptable rail service situation, TPC is actively supporting this Petition for alternative rail service, so that an alternative service provider can restore the efficient rail service that we enjoyed from CORP in the past.

TPC has had numerous discussions and other communications with CORP during recent months about the service problems that I have described. All of those contacts have been to no avail. TPC concluded unsuccessful negotiations with CORP for restoration of service that has

convinced TPC that CORP's intent is to completely discontinue service south of Siskiyou Summit. During those discussions, CORP stated its intent to raise rail rates to a level substantially higher than corresponding truck rates. CORP well knows that such action would drive all potential rail traffic permanently to truck transportation. It is clear from all of CORP's actions in recent months that it has absolutely no intention of restoring a reasonable level of service to TPC at any time in the future.

TPC ceased using rail service on April 8, 2008. Following CORP's initial proposal on March 20, 2008, TPC sent a counterproposal on March 25, 2008 (CORP had insisted on a response within 8 days). As of April 1, 2008, we had not received any response to our counterproposal by any CORP representatives at which time we resent the counterproposal electronically to Mr. Patrick Kerr and included several questions with that transmission. Among the questions asked were what was CORP's action to consist of if we were not able to come to terms by April 15, 2008 (the expiration date of the last contract)?

By April 7, 2008, we still had not received any correspondence from CORP. It was on that day we decided we needed to plan to transition all projected rail deliveries of veneer to truck (approximately 100 rail cars per month or 390 trucks) due to the following reasons:

- (1) There was a tremendous pricing gap between CORP's proposal (consisting of up to a 350% increase) and our counterproposal (consisting of a 25% increase) which we did not reasonably believe would be settled prior to April 15, 2008.

- (2) CORP was not responding to our requests regarding our counterproposal and other questions, including what action they would take if we didn't resolve our contract pricing by April 15, 2008
- (3) We needed to ensure that approximately 36 rail cars that we had spent about \$26,000 for special rigging were accounted for in our or YWR's possession so that in the event there was virtually no reasonable notice provided by CORP, those cars would be easily located for any future operator
- (4) We anticipated that based upon the 24 hours notice of embargo that CORP provided to the Coos Bay line shippers, we had no reason to believe that CORP would provide us with any more notice than that

It wasn't until April 10, 2008 that Patrick Kerr finally made contact with us at which time he wanted to schedule a meeting at their offices the following week, on April 15, 2008. We asked him again during our conversation "what would CORP do if we were not able to come to terms on April 15, 2008?" Mr Kerr responded that he and the other CORP representatives would address that and any other questions at the requested meeting. We informed Mr Kerr that we need adequate lead time to be able to transition 100+ cars of veneer per month to truck. Mr Kerr provided no reasonable assurance as to any action prior to the meeting on April 15, 2008. Mr Kerr's lack of commitment to provide any definitive lead time notice to us provided us the evidence we needed that transitioning immediately to trucks was the appropriate and only decision for our Company.

Then, the following day (April 11, 2008), Mr Kerr called us to inquire why CORP trains had no cars to pull for our company the prior evening We informed Mr Kerr that due to a number of factors, but primarily due to their non-responses and non-commitment of sufficient notice, we had made the decision to begin transitioning all rail cars to truck, albeit at a higher cost, in order to ensure we could transport our veneer to our mills in southern Oregon Mr Kerr stated that if TPC and RFP only had a handful of cars ready on any scheduled operating day, CORP would not go to the trouble and expense of pulling just a few cars over the Siskiyou Line

In May, 2008, CORP implemented its exorbitant rate increases on TPC's veneer shipments For example, CORP's rate on veneer from Montague to Medford went from \$368 per car to \$2,700 per car, an increase of 634 percent CORP's rates as increased were many times higher than corresponding truck rates It was obvious to all concerned that the purpose and effect of CORP's rail rate increase were to divert all potential rail traffic to truck transportation As I have noted, all of TPC's traffic had already been diverted to motor carriage because of CORP's inadequate rail service CORP's rate action ensured that such traffic would not return to rail transportation

Truck transportation for TPC's shipments of veneer is highly inefficient Southbound transportation from our mills to Yreka involves a high portion of deadheading because backhaul volumes are very limited due to the short distances involved (50-80 miles) That is resulting in only 50 percent capacity efficiency for many of those hauls That is lowering margins for TPC's motor carrier division that performs

much of the truck transportation. In addition, we are required to dedicate trucks to that short-haul transportation that otherwise would be able to operate over more lucrative hauling routes

TPC decided to petition for alternative rail service primarily because CORP's curtailed twice-per-week service is wholly inadequate for TPC's transportation requirements, and because CORP was failing to provide reliable service even under that inadequate schedule. When CORP reduced rail service from five days per week to two days, CORP well knew that the reduced service level was inadequate for TPC's needs. CORP's subsequent exorbitant rate increases provided an additional reason that rail transportation was not available to TPC. However, TPC would have petitioned for alternative rail service because of CORP's inadequate rail service regardless of CORP's rail rate increases. Twice-per-week rail service is inadequate for TPC's needs, even at the rate levels prior to CORP's rate increases.

A number of weeks elapsed between our unsuccessful efforts to negotiate service improvements with CORP and the filing of this petition for alternative rail service. During that period of time, the affected shippers interviewed potential candidates to become the alternative rail service provider, and negotiated rate and service arrangements with the rail carrier ultimately selected to be that alternative rail service provider. This petition was filed upon completion of those activities and when efforts to convince CORP to voluntarily assign its lease of the rail line to a rail carrier eager to provide the service were not successful.



CENTRAL OREGON & PACIFIC RAILROAD, INC.

333 S.E. Mosher Ave • P.O. Box 1083 • Roseburg, OR • 97470 • 541-957-5966 • Fax 541-957-0686

*JKTS
CORP*

To: Shippers That Move Traffic Via The Siskiyou Subdivision of CORP

From: Tom Hawksworth

December 13, 2007

CORP has a business problem. We lose money operating over the Siskiyou Subdivision. In order to try to stem our losses we will be making several changes in our service offering.

Effective January 15, 2008, all traffic that originates or terminates north of Belleview, OR will be interchanged at Eugene. Today a portion of this traffic moves south over the Siskiyou Subdivision via the Black Butte interchange. We have talked with UP about service schedules and have been told that total car cycle times should be roughly comparable to the cycle times today, even though some of these cars may travel further than they do today. We are also told that you will not see a change to your rate as a result of this routing change. You will not have to alter your bills of lading or do anything differently for the change to take place. We will make all the arrangements with UP. This change will reduce most of the tonnage moving over the Siskiyou Subdivision.

All traffic that originates or terminates south of Hombrook that is interchanged with UP at Black Butte will continue to be interchanged at that point.

For traffic that originates and terminates in the Weed area on CORP, we will continue to operate over the Siskiyou Subdivision on a reduced service schedule effective January 15th. Our plan is to operate twice a week in each direction, but we will modify our schedule as appropriate for the traffic. And we will be working with our shippers to determine if we can secure enough revenue commitments to continue operating the line on a reduced schedule. We will seek some combination of higher prices and / or additional volume in an effort to achieve the necessary economics. If we are unable to secure the necessary economics to profitably operate the subdivision, we will discontinue all service over the Siskiyou mountain pass on April 15, 2008.

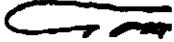
We are in the railroad operating business, so anytime we consider discontinuing service it is painful for us. But we do not want to be in the business of losing money, so we are prepared to make some changes. The Siskiyou Subdivision is difficult, expensive terrain for rail operations. Shifting most of the traffic to the Eugene interchange and reducing our days of service will help us reduce our costs. We hope that we will be able to offer you a value proposition that is sufficiently attractive to you to allow us to maintain operations over the segment while still providing you savings compared with alternative transportation and / or shipping patterns. We understand that you will only favor us with your business if we earn it by providing you with the best service and rate option for you. We trust that you will understand that we will only be able to continue operations over the Siskiyou Sub if the line can become economically viable.



We will continue to keep you apprised if there are any changes to this plan.

I will ask for a meeting with you in the near future to discuss this change more fully. In the meantime, if you have any questions please let me know.

Thank you,

A handwritten signature in black ink, appearing to be a stylized name or set of initials.



VERIFIED STATEMENT OF ANDREW E. JEFFERS

My name is Andrew E Jeffers I am Traffic Manager - Rail for Roseburg Forest Products Co (RFP) I have held my present position for 11 years I am responsible for managing the rail operations at RFP My duties include monitoring empty car flows, monitoring movement of loaded cars to the customer, negotiating rail rates, reviewing loading practices, assisting with damage claims, payment of freight bills, etc Prior to working for RFP, I spent 20 years in the rail industry working both in operations and marketing and sales

RFP is a significant manufacturer of lumber, plywood, particleboard, and engineered wood products In total, we operate 16 mills located in Oregon, California, Montana, Mississippi, Georgia and South Carolina

Since the focus of this proceeding is on issues dealing with Central & Oregon Pacific Railroad (CORP), I will address the mills we operate that are serviced by CORP We presently have seven locations located on CORP and we ship over 60 railcars per day from these facilities We have 3 plywood mills at Coquille, OR, Dillard, OR and Riddle, OR There is an engineered wood facility at Riddle, OR A stud mill and particleboard mill are also located at Dillard Last but not least, we have a veneer mill at Weed, CA RFP employs approximately 3,500 persons

All of our production facilities in Oregon and California are a significant distance from our consuming markets The only viable means to reach these markets is to move as large a quantity as possible to a given destination, making rail the preferred mode of transportation Over 60% of our outbound production moves via rail In addition, we bring carloads of logs and other intermediate products inbound to our facilities for use in production of finished goods Inbound carloads are presently averaging 10-15 cars per day

Our facility at Weed is unique in that no finished goods are manufactured there. Raw logs are brought into Weed for sorting and grading. Some of these logs are then sent to Dillard, OR for use in our stud mill. The remaining logs are peeled into veneer at Weed after which the veneer is sent to our plywood or engineered wood products mills.

When the Siskiyou line was operated by Southern Pacific (SP), RFP partnered with that carrier to bring veneer from Weed, CA to our mills in Dillard. Boxcars are a mainstay for shipping plywood and particleboard, and SP flowed a lot of boxcars north to Oregon to supply the various mills. By stopping a few of these cars in Weed and loading them with veneer, SP was able to cut some empty miles off these cars and the veneer car was usually reloaded so this eliminated or reduced the additional switching. RFP benefitted because SP used "backhaul" economics to price the move and the end rate was less than we were paying to truck the material. We also benefitted because 1 inbound rail car meant 3 less trucks to deal with.

CORP recognized the benefits of this partnership and continued to move veneer from Weed, CA to destinations all over the CORP system. Union Pacific Railroad Company (UP) is aware of this arrangement and has continued to provide CORP with empty boxcars for use in this movement. On any given month, these veneer loads have given CORP approximately \$30,000 in additional revenue. In 1996, CORP secured some equipment, we equipped it with log bunks, and we started moving logs from Weed to Dillard and Riddle. This was the first time in well over 70 years that logs were actually handled on the Siskiyou line. The volumes have fluctuated and equipment ownership has changed over the years but the log movement has stayed 100% with CORP. This arrangement has proven beneficial for both the CORP and RFP.

Nevertheless, in a letter dated December 13, 2007, copy attached as Appendix AEJ-1, CORP announced plans to curtail service on the Siskiyou line from five days to two days per week. In the letter, CORP said they were committed to "working with our shippers to determine if we can secure enough revenue commitments to continue operating the line on a reduced schedule. We will seek some combination of higher prices and/or additional volume in an effort to achieve the necessary economics "

After that letter came out, we had several meetings with CORP to discuss our Weed business. The attendees at the meetings varied but they've included Tom Hawksworth, Larry Gomez, Patrick Kerr, Bud Shirley, John Bullion and Kevin Spradlin for CORP. The message that CORP had given us at each meeting was that they needed volumes of business to keep the line open and how much business can RFP give? Each time this question was asked, we would answer "how much do you need?" We would go on and outline our present rail requirements, which are 5 carloads of logs per day, 3-5 carloads of veneer, up to 14 chip cars, and 1 centerbeam for peeler cores. The chip and centerbeam loads do not move via the Siskiyou, but rather interchange to UP at Black Butte, CA. We would also tell them that we are prepared to double our log volumes (contingent upon getting additional equipment) and we are trucking large amounts of veneer that could move via rail if we can work out the logistics of switching, car supply, etc. CORP would tell us they need to review their economics, determine what kind of rates/ volumes are needed and come back to us. CORP has yet to tell us how much volume they want from RFP.

About 6 months prior to CORP's announcement, we offered them 5 log cars per day and for a few weeks they were able to keep these cars moving and attain the 5-car-per-day volume. Shortly after that, the volumes dropped and cars started sitting idle at various places. We followed up with CORP on numerous occasions and reminded them of the revenue they were missing. We really got no response to our numerous queries. Occasionally, someone would mention that they thought the fleet was undersized and we would counter with the fact that it had been attained before and CORP would say nothing further.

CORP's performance since the curtailment has been totally unsatisfactory. We made numerous calls to CORP, sent lots of e-mails and we heard nothing. One thing RFP has always emphasized to CORP is communication. We have given CORP management means of getting in touch with RFP Traffic during and after normal business hours and have emphasized that we need to be kept apprised. After the curtailment, communication was zero and no explanations were offered for service failures.

Another issue was concerning the log cars that we had pooled to run between Dillard or Riddle and Weed. We have 37 cars assigned to this pool and we figured we could easily load 25 log cars per week if this equipment made 1 round trip every 7-9 days. Prior to the service curtailment, CORP reviewed our fleet size and calculated turn times and agreed this volume was attainable. At this and subsequent meetings, CORP and RFP continually reviewed the volume that RFP could give to CORP. We also stressed that we would work with them and develop additional volume should it be necessary.

After the service curtailment went into effect, we noticed that many of our pool cars were taking longer than 9 days to make a round trip and we were not able to ship all the volume we had committed to. Upon further investigation, we found that often cars would get loaded and tendered to CORP and sit in Weed for 4 or more days. This is about twice as long as we originally figured it should take.

One of our employees approached a CORP employee about this situation and he was told that CORP had enough locomotives to handle about 36 RFP cars per week and since we were loading more than 36 cars, they had no choice but to leave loads behind. We had several meetings with CORP prior to the service curtailment and there was no mention what so ever about any limitations CORP may have on handling Siskiyou line traffic.

In December, 2007, we came to CORP with a potential movement of peeler cores from Weed, CA to Saginaw, OR with a volume potential of 4-5 cars per month. This is business that would move CORP direct via the Siskiyou Line. CORP said they would get some rates together and get back with us. I followed up with CORP on a couple of occasions and never got a response - in the meantime this business was being trucked to destination. In February, 2008, a railcar did get loaded due to administrative oversight and CORP gave the car to UP. I reminded CORP we were still waiting on a rate and I asked why the car was given to UP instead of moving CORP direct. The response I got was admonishing me for shipping a car without having a rate in place. I told CORP that UP had rates published and I would use those on this and future shipments. Our customer was pretty frustrated with how this got handled and decided to cancel the movement.

CORP's service curtailments and failures are unacceptable RFP must be able to supply sufficient quantities of raw materials to its manufacturing facilities, or those facilities cannot meet their delivery commitments to customers If those delivery commitments are not met, the customers do business with other suppliers who can deliver on time This loss of business is extremely harmful to RFP's competitive and financial condition It is a situation that RFP cannot tolerate

Our rate contract with CORP expired in the Spring of this year Prior to that expiration, CORP offered us some contract rates conditioned on us signing a 1, 2, 3, or 5-year commitment as to volume of rail traffic The longer the term of the contract, the lower would be the rate However, even under the scenario most favorable to us, we would have been paying CORP over \$100,000 per month more than we would have paid motor carriers for corresponding transportation Moreover, CORP rail service in conjunction with the proposed rates still would have been less than the daily weekday service that we require

We countered with rates that were the same as our truck rates, plus a volume guarantee That would have resulted in an increase in CORP's rail rates of 150 to 200 percent CORP refused that counteroffer

In May, 2008, CORP increased the rail rate from Weed, CA to Dillard, OR from \$650 per car to \$3,150 per car That was an increase of nearly 400 percent The clear purpose and effect of that huge rate increase was to ensure that no rail traffic would be tendered to CORP for transportation over Siskiyou Pass RFP has not tendered any traffic for such transportation since that increase

RFP has had to alter its manufacturing processes due to the unavailability of rail transportation. Prior to the deterioration of service and the rate increase, we were able to source both raw and intermediate materials from the Weed, CA facility to our manufacturing mills. Transporting the raw materials by truck requires some specialized equipment. Many drivers cannot accommodate both raw materials and finished goods.

Being able to ship both types of products enabled RFP to get a better product mix into its mills and better utilize all of our resources for processing raw materials. The processing is now done at one location. That burdens that one mill, while our other mills are underutilized. It is also very difficult to get an adequate supply of trucks moving southbound to handle this product. We need four trucks for each rail carload that we formerly shipped.

The added costs associated with truck transportation are making RFP less competitive in the market for wood products. That puts RFP at serious risk of losing valuable market share.

Although it has been harmed in the serious respects here described, RFP has been able to continue to supply its mills by truck in the recent weeks only because of the current very soft market conditions due to the severe downturn in housing starts. Once the housing market recovers, it will be extremely difficult, if not impossible, to meet the resulting increased demand for products as a result of limited available truck transportation options, combined with no rail transportation. In the area in which RFP operates, there simply is not the number of trucks available, nor are its facilities designed to handle such a large volume of trucks. If RFP were to be faced with normal market levels without rail service, there would be a transportation gridlock.

Accordingly, it is absolutely essential that adequate rail service be restored immediately well before the housing market turns around

In light of CORP's totally unsatisfactory rail service and its punitive rate increases, RFP has joined other adversely affected shippers in petitioning for alternative rail service by a rail carrier interested in providing adequate service at reasonable rates. The filing of that petition was somewhat delayed as the shippers interviewed and negotiated with potential alternative rail service providers. When an alternative service provider was selected, an attempt was made to convince CORP to allow a willing and able rail carrier to provide the required service. When that attempt was unsuccessful, the Petition for Alternative Rail Service was filed.



CENTRAL OREGON & PACIFIC RAILROAD, INC.

333 S.E. Mosher Ave • P.O. Box 1083 • Roseburg, OR • 97470 • 541-957-5966 • Fax 541-957-0686

A handwritten signature in black ink, appearing to read "JKS" followed by a stylized flourish.

To Shippers That Move Traffic Via The Siskiyou Subdivision of CORP

From: Tom Hawksworth

December 13, 2007

CORP has a business problem. We lose money operating over the Siskiyou Subdivision. In order to try to stem our losses we will be making several changes in our service offering.

Effective January 15, 2008, all traffic that originates or terminates north of Belleview, OR will be interchanged at Eugene. Today a portion of this traffic moves south over the Siskiyou Subdivision via the Black Butte Interchange. We have talked with UP about service schedules and have been told that total car cycle times should be roughly comparable to the cycle times today, even though some of these cars may travel further than they do today. We are also told that you will not see a change to your rate as a result of this routing change. You will not have to alter your bills of lading or do anything differently for the change to take place. We will make all the arrangements with UP. This change will reduce most of the tonnage moving over the Siskiyou Subdivision.

All traffic that originates or terminates south of Hornbrook that is interchanged with UP at Black Butte will continue to be interchanged at that point.

For traffic that originates and terminates in the Weed area on CORP, we will continue to operate over the Siskiyou Subdivision on a reduced service schedule effective January 15th. Our plan is to operate twice a week in each direction, but we will modify our schedule as appropriate for the traffic. And we will be working with our shippers to determine if we can secure enough revenue commitments to continue operating the line on a reduced schedule. We will seek some combination of higher prices and / or additional volume in an effort to achieve the necessary economics. If we are unable to secure the necessary economics to profitably operate the subdivision, we will discontinue all service over the Siskiyou mountain pass on April 15, 2008.

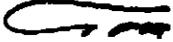
We are in the railroad operating business, so anytime we consider discontinuing service it is painful for us. But we do not want to be in the business of losing money, so we are prepared to make some changes. The Siskiyou Subdivision is difficult, expensive terrain for rail operations. Shifting most of the traffic to the Eugene Interchange and reducing our days of service will help us reduce our costs. We hope that we will be able to offer you a value proposition that is sufficiently attractive to you to allow us to maintain operations over the segment while still providing you savings compared with alternative transportation and / or shipping patterns. We understand that you will only favor us with your business if we earn it by providing you with the best service and rate option for you. We trust that you will understand that we will only be able to continue operations over the Siskiyou Sub if the line can become economically viable.



We will continue to keep you apprised if there are any changes to this plan.

I will ask for a meeting with you in the near future to discuss this change more fully. In the meantime, if you have any questions please let me know.

Thank you,

A handwritten signature in black ink, appearing to be a stylized name or set of initials.

VERIFIED STATEMENT OF COURT HAMMOND

My name is Court Hammond I am President of Yreka Western Railroad Company (YWR) I have held that position for four years I have 18 years of experience in the railroad industry in management, operations and maintenance of way

YWR is a Class III rail carrier Its office is located at 300 East Minor Street, Yreka, CA 96097 YWR operates approximately eight miles of rail line between Yreka and Montague, CA YWR's sole connection to the national rail system is with Central Oregon & Pacific Railroad (CORP) at Montague

YWR serves the facilities of two of the five Shipper Petitioners Timber Products Company, L P (TPC) and Suburban Propane, L P (SP) YWR consistently transported between 1,500 and 1,900 carloads per year for those shippers, primarily for TPC

YWR has a dual role in this proceeding First, as connecting carrier of CORP, YWR has joined a number of shippers in seeking alternative rail service over CORP YWR has done so because CORP's rail service failures and exorbitant rates have caused TPC to divert all of its former rail shipments to truck transportation Rail transportation for TPC provided the overwhelming majority of YWR's income Loss of that income is having a very serious adverse financial effect on YWR

Secondly, as connecting carrier of West Texas and Lubbock Railway Company (WTL) at Montague, CA under the proposed alternative rail service, YWR has agreed to act as WTL's agent in regard to local rail transportation matters Pursuant to the agency arrangement between WTL and YWR, WTL would administer the alternative service, with YWR handling local-rail

transportation matters WTL would issue the bill of lading and collect the freight charges on shipments not involving YWR YWR would handle all traffic on its line to and from its interchange at Montague, CA, would provide its ALPHA and Numeric codes, and would maintain its interchange agreements and relationships with connecting carriers on all traffic originating or terminating on YWR

YWR is also being harmed by CORP's failure to deliver railcars Four railcars that were to be transported by CORP to connection with YWR at Montague have been detained on CORP at Black Butte for more than three weeks These are railcars acquired by YWR that were transported by Union Pacific from Sacramento, CA to Black Butte, CA under through revenue billing to YWR at Yreka Three of those railcars are flat cars The fourth is a woodchip car When I complained to CORP about its failure to deliver those cars, CORP claimed that it was not aware that the railcars were being held at Black Butte That is difficult to believe In any event, the railcars still have not been delivered after CORP was put on specific notice that they were detained at Black Butte

VERIFICATION

STATE OF CALIFORNIA)
) SS
COUNTY OF SISKIYOU)

COURT HAMMOND, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct



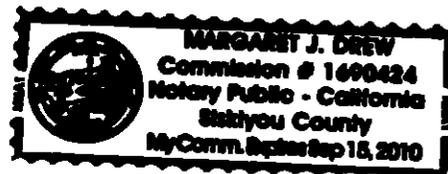
COURT HAMMOND

SUBSCRIBED AND SWORN to
before me this 9th day
of July, 2008



Notary Public

My Commission Expires Sept 15, 2010



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VERIFIED STATEMENT OF BRIAN COWLEY

My name is Brian Cowley I am the owner of Cowley D&L Inc (D&L), 704 Highway A-12, Grenada, CA 86038 D&L supplies fertilizer in the local area near Grenada

D&L is rail-served by Central Oregon & Pacific Railroad, Inc (CORP) at Grenada D&L receives shipments of dry fertilizer by rail from points in Idaho and Canada Our volume has been modest to date (15 to 20 carloads per year), but we would look at other product lines for rail shipment if we had good rail service

CORP reduced its rail service to D&L from five days per week to two days per week, effective on January 16, 2008 Switching only twice per week will cause railcars to bunch up That may well be harmful to D&L because we can spot only one or two cars at a time in our sidetrack CORP has not been service-oriented in the past year or so

Accordingly, D&L has joined with other shippers in the area of Grenada in petitioning the Surface Transportation Board to order an alternative rail service carrier to replace CORP as operator of a rail line between Black Butte, CA and Dillard, OR

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Siskiyou

On July 16, 2008 before me, T. Louie / Notary Public
(Please insert name and title of the officer)

personally appeared Brian Cowley

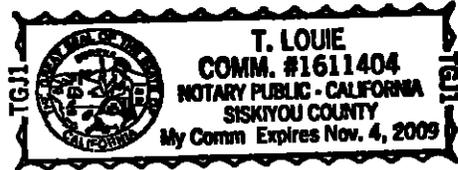
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

T. Louie
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage, as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

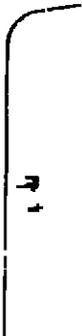
DESCRIPTION OF THE ATTACHED DOCUMENT	
<u>Verified Statement of</u> <small>(Title or description of attached document)</small>	
<u>Brian Cowley</u> <small>(Title or description of attached document continued)</small>	
Number of Pages <u>1</u>	Document Date <u>7-16-08</u>
<small>(Additional information)</small>	

CAPACITY CLAIMED BY THE SIGNER	
<input checked="" type="checkbox"/> Individual (s)	
<input type="checkbox"/> Corporate Officer	
<small>(Title)</small>	
<input type="checkbox"/> Partner(s)	
<input type="checkbox"/> Attorney-in-fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed
- The notary public must print his or her name as it appears within his or her commission to follow by a comma and then your title (notary public)
- Print the name(s) of document signer(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges reveal a sufficient area permits otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk
 - ◆ Additional information is not required but could help to ensure this acknowledgment is not attached to a different document
 - ◆ Indicate file or type of attached document, number of pages and date
 - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document



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VERIFIED STATEMENT OF DARREL SOUSA

My name is Darrel Sousa I am the owner of Sousa Ag Service (SAS), 861 South 11th Street, Montague, CA 96064-9298 SAS is a supplier of goods used in agricultural service

Central Oregon & Pacific Railroad (CORP) transports shipments of dry fertilizer over its rail line that originate in Idaho and Texas and are delivered to SAS at Montague

SAS hereby joins with other shippers in the Montague area in petitioning the Surface Transportation Board to order an alternative rail service provider to take CORP's place in providing rail service between Black Butte, CA and Dillard, OR

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



DARREL SOUSA

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VERIFIED STATEMENT OF JOHN CUMMINS

My name is John Cummins I am Director of Shipping Operations for Suburban Propane, LP (Suburban) My business address is P O Box 206, Whippany, NJ 07981 Suburban has a place of business located at 212 State Street, Yreka, CA 90697

Suburban's Yreka facility is rail-served by Yreka Western Railroad Company (YWR) YWR's sole connection to the national rail system is with Central Oregon & Pacific Railroad, Inc (CORP) at Montague, CA

Suburban receives carloads of propane in tank cars at Yreka Our current volume is modest (15 to 20 cars per year) However, Suburban expects rail traffic growth in the future To that end, Suburban has just completed upgrading of its sidetrack at Yreka Rail transportation is on the rise for Suburban because we have begun to receive propane from distant origins, from which rail transportation is far more economical than truck transportation

In recent months, we have experienced delays and lack of switches from CORP at Montague That could result in serious harm to Suburban and its customers because we depend on rail transportation for receipt of propane that is needed in more volume during winter months

Accordingly, Suburban has joined in the Petition for Alternative Rail Service by a different rail carrier in connection with YWR at Montague

VERIFICATION

STATE OF New Jersey)
) SS:
COUNTY OF Morris)

JOHN M Cummins, being duly sworn on oath, deposes and states that he has read the foregoing responses, that he knows the contents thereof, and that the facts therein stated are true and correct

John M Cummins

SUBSCRIBED AND SWORN to
before me this 5 day
of ~~April~~, 2008
August

Susan G Delia
Notary Public

My Commission Expires

SUSAN G. DELIA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb 15, 2009

VERIFIED STATEMENT OF JIM COOK

My name is Jim Cook I am Supervisor, District 1 of Siskiyou County, California My business address is P O Box 750, Yreka, CA 96097 I am an elected official for Siskiyou County

The facilities of Roseburg Forest Products at Weed, CA and the facilities of Timber Products Company at Yreka, CA are located in Siskiyou County Those companies are the two largest employers in Siskiyou County

I am familiar with the adverse effects on those companies as a result of the curtailment of rail service by Central Oregon & Pacific Railroad, Inc (CORP) from five to two days per week that was implemented in January of this year

The County has met with CORP in an attempt to rectify the service decline That meeting was unsuccessful Several recent actions show that CORP is pulling back its operations, such as scaling back track maintenance, not maintaining its grade crossings, and not seeking new rail traffic

The County will suffer serious harm if Roseburg Forest Products and Timber Products Company are harmed as a result of inadequate CORP rail service I am familiar with the petition that is being filed by those companies and others to obtain an alternative rail service provider that would restore adequate service Siskiyou County strongly supports that effort

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Siskiyou }

On 7-14-08 before me, Sandra L Hamilton, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James C. Cook
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature Sandra L Hamilton
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document Verified Statement of Jim Cook

Document Date 7-14-08 Number of Pages One

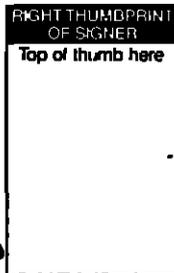
Signer(s) Other Than Named Above none

Capacity(ies) Claimed by Signer(s)

Signer's Name James C. Cook

- Individual
- Corporate Officer — Title(s) _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other Elected

Signer Is Representing Siskiyou County



Signer's Name _____

- Individual
- Corporate Officer — Title(s) _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other _____

Signer Is Representing _____



VERIFIED STATEMENT OF JOHN HAMMOND

My name is John Hammond I am a Council Member for the City of Montague, California My business address is 100 South 11th Street, Montague, CA 96064

I am aware of the curtailment of rail service by Central Oregon & Pacific Railroad, Inc (CORP) from five to two days per week in the past few months CORP is the only connection to the national rail system for Yreka Western Railroad Company (YWR) at Montague CORP's service curtailment is having a serious adverse effect on YWR

The City of Montague is concerned over that adverse effect YWR operates the Blue Goose tourist train that brings over 5,000 persons to the Yreka-Montague area each year That provides a vital stimulus to the local economy The City would be seriously harmed if YWR were to be unable to operate that tourist train because of the adverse effect of CORP's service curtailment

The City is aware of the Petition being filed by YWR and others to obtain the services of an alternative service provider to provide the adequate service that CORP is unwilling or unable to provide The City strongly supports that Petition

**VERIFIED STATEMENT
OF
EDWIN E ELLIS**

Edwin E. Ellis, being duly sworn, deposes and states as follows:

My name is Edwin E Ellis I am President of Iowa Pacific Holdings, LLC (“IPH”) and its wholly owned railroad operating subsidiary, Permian Basin Railways, Inc. (“Permian”). IPH is a Chicago-based short line railroad holding company with offices at 118 South Clinton Street, Suite 400, Chicago, IL 60661. I have been asked to provide this verified statement in support of the Petitioners who are seeking a Board order for the provision of Alternative Rail Service (ARS) over a line of the Central Oregon & Pacific Railroad, Inc., (“CORP”) between Black Butte, CA, and Dillard, OR.

As background, IPH through Permian currently owns six class III short line railroads located in Chicago and in the States of Arizona, Colorado, New Mexico, Oregon, and Texas. IPH and its subsidiaries generate railroad operating revenues exceeding \$30,000,000 annually. As President of IPH and Permian, I am familiar with and responsible for all aspects of the business of Permian including railroad operations, marketing, finances, and administration Before establishing IPH and Permian in 2001, I spent over 25 years working in the railroad industry including positions with the Chicago And North Western Transportation Company, short line owners Chicago

West Pullman Railroad and Rail-Tex, Inc., and as Vice President-Mail and Express for Amtrak.

West Texas & Lubbock Railway (“WTL”) is a class III short line railroad that Permian established in 2002 to acquire and operate about 100 miles of track near Lubbock, TX, formerly owned by RailAmerica, Inc. Since then, WTL has expanded significantly by acquiring the Dimmitt Branch of BNSF Railway in 2007 and increasing annual car counts overall from 3900 at the time we acquired this line to today’s figure of 9500, a 143% increase. WTL’s annual operating revenues now exceed \$5,000,000. We have done this through a combination of intense customer-focused marketing, careful attention to costs and operations, and improvement in inadequately maintained track and facilities

As the Board will remember, WTL and its corporate officers are well familiar with ARS under 49 CFR 1146. It was WTL that rail shipper Pyco Industries, Inc. (“PYCO”) engaged in 2006 to provide ARS to its facilities in Lubbock, TX, when the incumbent rail carrier South Plains Switching, Inc (“SAW”), failed to provide an adequate level of rail service. WTL functioned as PYCO’s rail service provider and contractor for the 30 day period beginning Jan. 26, 2006, and ending Feb 25, 2006. Subsequently, the Board at the behest of PYCO extended that ARS utilizing WTL’s rail service for the

full 270 day period allowable under the law until November 22, 2006, and upon expiration of that service, the Board granted PYCO's request under 49 CFR 1147 for emergency alternative service with WTL continuing to provide that service as PYCO's contractor. WTL continued providing service for PYCO after it acquired the railroad properties that were the subject of PYCO's successful feeder application during the Fall of 2007 until the Spring of 2008 when PYCO opted to provide the service itself. WTL provided service to PYCO and certain other customers in Lubbock formerly served by SAW on an "as needed" basis with a service frequency of no less than daily. Per agreement with BNSF Railway Company ("BNSF"), WTL picked up inbound traffic destined for PYCO and other customers covered by the Board's ARS order at BNSF's yard, switched PYCO and delivered other customers' traffic to SAW. Per that agreement WTL also returned to BNSF's Yard with the outbound ARS traffic. Altogether, WTL handled about 7,000 car loads of freight per year for these ARS customers without adversely affecting its own operations, those of SAW, or those of BNSF.

PYCO chose WTL as its ARS provider in part because of its superior reputation for customer service, the fact that WTL's operations are based nearby in Lubbock, and the high comfort level that BNSF had with WTL. PYCO complemented WTL officers on numerous occasions for the quality of

service provided during the one and one half years of ARS BNSF officials were impressed with WTL's efficiency and elimination of the traffic bottleneck that developed in the rail facilities supporting PYCO.

Simply stated, WTL commits to providing rail shippers Roseburg Forest Products and Timber Products Company on CORP's line between Black Butte and Dillard on a five days per week basis.

WTL is prepared to provide ARS to rail shippers Roseburg Forest Products and Timber Products Company on CORP's line between Black Butte and Dillard safely and efficiently without affecting either WTL's existing Texas operations or CORP's service. There is no operational conflict between the proposed WTL ARS in northern California and southern Oregon and WTL's Texas operations because the two rail lines are easily one thousand miles apart and have little in common in terms of traffic or other needs. WTL has adequate motive power and management to devote to this ARS operation. To the extent appropriate, it will employ train and engine personnel and maintenance crews who formerly worked on the CORP line and are well familiar with the line's capabilities and short-comings. WTL is also confident with its ability to work with CORP and to avoid any interference or disruption to CORP service. Should the Board grant this ARS request, WTL will, as a practical matter, become the sole provider of rail

service between Black Butte and Ashland, CA, as there is no other local traffic of interest to the CORP and it does not handle any overhead traffic between these points. As to the trackage north of Ashland (to Dillard, OR), WTL would expect to negotiate an operating protocol with CORP to avoid any operational conflicts. WTL is well familiar with such operating protocols having worked with one in place with SAW in Lubbock. When I was with RailTex during 1992-1996, I personally participated in the acquisition and startup of CORP when it was bought from Southern Pacific and managed the IT and car supply transitions. I am familiar with the line and its customers. The train service frequency on CORP will not be impacted by the addition of a short local-service train of the type to be operated by WTL. WTL's operating supervisors will work with CORP's supervisors to develop train service windows that prevent delays to either party.

WTL's operating personnel are qualified on the same rulebook as CORP uses, and since we have bought four railroads from RailAmerica, our employees are very familiar with RailAmerica operating practices. We expect to provide mountain-qualified operating personnel to work in the grade territory, and we expect to provide them with proper training and territorial qualification prior to startup. WTL will provide an on-site qualified operating supervisor to ensure safety, rules compliance and service adequacy.

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 8/15/08.



[signature]

EDWIN E ELLIS

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008, I served the foregoing document, Petition Under 49 U S C § 11123(a) And 49 C F R § 1146 1 For Alternative Rail Service and Petition Under 49 U S C § 10502(d) And 49 C F R § 1121 4(f) For Partial Revocation Of Commodity Exemption, by UPS overnight mail on the following

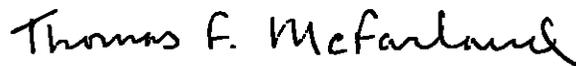
Scott Williams, Esq
Senior Vice President & General Counsel
Rail America - Central Oregon & Pacific Railroad, Inc
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

J Michael Hemmer, Esq
Senior Vice President & General Counsel
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Mr Court Hammond, President
Yreka Western Railroad Company
300 East Minor Street
Yreka, CA 96097

John Heffner, Esq
Attorney for West Texas and Lubbock Railway Company
John D Heffner, PLLC
1750 K Street, N W , Suite 350
Washington, DC 20006



Thomas F McFarland