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August 25, 2008

By e-filing

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

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

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

Dear Ms Quinlan:

Hereby transmitted is Petitioners' Rebuttal Statement, for filing with the Board in the above referenced matters

Very truly yours,  
*Tom McFarland*

Thomas F McFarland  
*Attorney for Petitioners*

*TMCF kl enc wp8 0\13081efSTB1*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ROSEBURG FOREST PRODUCTS CO ;	)	
TIMBER PRODUCTS COMPANY, L P ,	)	
SUBURBAN PROPANE, L.P., COWLEY	)	FINANCE DOCKET
D&L, INC , SOUSA AG SERVICE and	)	NO 35175
YREKA WESTERN RAILROAD	)	
COMPANY-- ALTERNATIVE RAIL	)	
SERVICE -- CENTRAL OREGON &	)	
PACIFIC RAILROAD, INC	)	
	)	EX PARTE NO 346
RAIL GENERAL EXEMPTION	)	(SUB-NO. 25C)
AUTHORITY -- LUMBER OR WOOD	)	
PRODUCTS	)	

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PETITIONERS' REBUTTAL STATEMENT

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DATE FILED. September 8, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ROSEBURG FOREST PRODUCTS CO.,	)	
TIMBER PRODUCTS COMPANY, L P.,	)	
SUBURBAN PROPANE, L P , COWLEY	)	FINANCE DOCKET
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PACIFIC RAILROAD, INC	)	
	)	EX PARTE NO 346
RAIL GENERAL EXEMPTION	)	(SUB-NO. 25C)
AUTHORITY -- LUMBER OR WOOD	)	
PRODUCTS	)	

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**PETITIONERS' REBUTTAL STATEMENT**

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Pursuant to 49 C F R § 1146 1(b)(3), Petitioners hereby file this Rebuttal Statement directed to the Response of Central Oregon & Pacific Railroad, Inc (CORP), filed on September 3, 2008 (Response) This pleading includes a generally-favorable response to CORP's proposal that the Board hold this proceeding in abeyance while the parties negotiate for a private resolution of the issues raised by the Petition (*see* Response to CORP Proposal, Section II, *infra*)

**I. REBUTTAL**

This Rebuttal Statement consists of Rebuttal Argument supported by the following Rebuttal Verified Statements in the attached Tabs

<u>Witness</u>	<u>Company</u>	<u>Appendix No</u>
Susan S Hart	Timber Products Company, L.P.	1
Andrew E Jeffers	Roseburg Forest Products Co.	2
Erik Vos	Timber Products Company, L.P.	3
Ray Barbee	Roseburg Forest Products Co.	4

Due to the very abbreviated time for filing this Rebuttal Statement, not all of the facts contained in the Rebuttal Verified Statements have been incorporated into the Rebuttal Argument. The Board is respectfully requested to refer to the matter in those Reply Verified Statements in addition to the Rebuttal Argument in resolving the issues presented by the Petition.

The principal thrust of the Response is an attempt to characterize the Petition as a dispute over the level of CORP's rates. That is an unwarranted diversionary tactic, although CORP's exorbitant rate increases are one of many aspects of CORP's deliberate downgrading of the Siskiyou Summit Line. In its unsuccessful effort to cast this proceeding as a rate case, CORP has utterly failed to rebut the extensive evidence that there has been a substantial, measurable deterioration or other inadequacy in rail service provided by CORP, as we next demonstrate.

**A. Inadequacy Of Rail Service**

**1. Failure to Deliver Available Wood Chip Cars**

CORP's attempted defense is that Union Pacific Railroad Company (UP), not CORP, controls the supply of wood chip cars (Response at 24). But the contention is that CORP failed to deliver wood chip cars that UP had supplied, but which were being held on CORP property. The incumbent shortline rail carrier in the *PYCO* case also attempted to blame its connecting Class I rail carrier for failure to supply cars, but the Board properly found that the incumbent shortline failed to deliver cars that had been supplied by the Class I, viz, *PYCO Industries, Inc* --

*Alternative Rail Service – South Plains Switching, Ltd Co*, 2006 STB LEXIS 42 at \*10-11

(Finance Docket No 34802, decision served Jan 26, 2006), emphasis added

. . . 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 . . .

Thus, CORP's failure to deliver wood chip cars supplied by UP constitutes unrebutted evidence of inadequate rail service by CORP *See, also*, Reply Verified Statement of Susan S Hart

## 2. Retaliation By Congesting Tracks With Excess Empty Cars

CORP has completely ignored evidence presented by TPC Witness Hart that CORP retaliated against TPC for complaining to UP about CORP's failure to deliver wood chip cars by congesting the CORP-Yreka Western interchange tracks by spotting more than 60 empty cars on those tracks (Petition, Appdx 2 at 2)

CORP's silence in that respect constitutes acknowledgment in law of the truth of that testimony. *See* 49 C F R § 1112.6 ("Parties filing reply . . . verified statements will be considered to have admitted the truth of material allegations of fact contained in their opponents' statements unless those allegations are specifically challenged") Retaliatory actions of that kind constitute especially persuasive evidence of inadequate rail service Thus, in the *PYCO* case, the incumbent shortline rail carrier contended, as CORP argues in the case at hand, that there can be no finding of inadequate rail service if the rail line is not embargoed, and there is no evidence that the incumbent rail carrier failed to respond to a request for rail service The Board found that on the contrary, retaliation, or the threat of retaliation, itself constitutes persuasive evidence of inadequate rail service, *viz*, *PYCO Industries, Inc -- Feeder Line Acquisition -- South Plains*

*Switching, Ltd Co* , 2006 STB LEXIS 415 at \*9 (Finance Docket No 34844, decision served July 3, 2006), emphasis added

SAW contends that service can be considered inadequate to a shipper only if the rail carrier either is unduly late, or fails altogether, in picking up or delivering a specific shipment as requested by that shipper. We disagree. A shipper's affirmative statement that it fears that it could suffer retaliation in the form of poor service for criticizing its rail service provider is sufficient in our view to constitute a showing of inadequate service to the shipper that makes the statement (footnote omitted)

Thus, evidence of CORP's unrebutted retaliatory action constitutes strong evidence of inadequate rail service. *See, also*, Rebuttal Verified Statement of Susan S. Hart.

### 3. Failure To Provide Schedule Train Service

CORP attempts to explain repeated failures to provide scheduled train service in the summer of 2007 (service on only four of five scheduled days per week) on the basis of "a decline in business" (Response at 24). But CORP has not provided any traffic evidence to substantiate that contention. Nor has CORP provided any explanation or justification for not communicating the failure to provide service to its shippers. These repeated failures to provide rail service and failures of communication constitute additional evidence of inadequate CORP rail service. *See, also*, Rebuttal Verified Statement of Susan S. Hart.

### 4. Bunching and Bottlenecks

CORP's reference to track capacity at TPC's Medford mill (Response at 24-25) is not responsive to evidence that CORP bunched cars, served TPC's Grant's Pass mill with reduced frequency, and concentrated loaded cars north of Siskiyou Summit with few or no empties south of the Summit for loading (Petition, Appdx 2 at 3). The effect of CORP's failure to respond to that evidence is a tacit admission of the truth of that evidence (*see* 49 C.F.R. § 1112.6, *supra*).

Thus, that evidence constitutes additional proof of inadequate CORP rail service. *See, also*,  
Rebuttal Verified Statement of Susan S Hart

**5. Permanent Reduction of Service from Five to Two Days Per Week**

The culmination of CORP's inadequate service was its curtailment of service frequency from five days to two days per week, effective in mid-January, 2008 (Petition, Appdx 2 at 3, Appdx 3 at 3) Petitioners TPC and RFP have provided extensive evidence of the adverse effect that such inadequate frequency of service has had on them in the form of severe plant congestion, reduction of off-loading efficiencies, and measurably increased cycle time per car. (*Id*, Appdx 2 at 4, 6-7, Appdx 3 at 4-5)

CORP's response is blasé CORP does not deny that it substantially reduced service, but it argues that it attempted to mitigate the adverse effect of the service curtailment by "clear(ing) backlogs of cars" (Response at 25) CORP also confirms Petitioners' testimony that the curtailed service frequency caused cars "to wait up to five days," but only "in two instances" (*Id*) However, CORP's own evidence (Exhibit 5 of the Verified Statement of Patrick Kerr) shows cars "left behind" on 13 occasions in the three-month period covered by that evidence Thus, CORP not only cut service by 60 percent, it also regularly failed to transport tendered traffic even under that severely truncated schedule That hardly qualifies as adequate rail service In sum, CORP's response on this subject merely confirms Petitioners' evidence that CORP's curtailed frequency of service was inadequate.

Nor does CORP's Response attempt to justify the reduced service frequency CORP's letter of December 13, 2007 refers to the difficulty and expense of operating over Siskiyou Summit, but for all that appears in the record, it was just as difficult and expensive for CORP to

operate over that Summit during the previous 14 years. The overriding point is that nothing of a physical nature occurred prior to the date of that letter that made it any more difficult or expensive to operate over the Summit than before. What did change was CORP's ownership, and Fortress, as the new owner, adopted a policy of minimal service at maximum charge. That is the reason for this litigation. *See, also*, Rebuttal Verified Statement of Susan S. Hart.

**6. Service Failures Jan. 31 - Feb. 7, 2008**

CORP attempts to excuse its failure to provide scheduled rail service on January 31, February 5, and February 7, 2008 on unusually heavy snow on Siskiyou Summit at the time (Response at 25, 42, 51-61). As set forth in the Rebuttal Verified Statement of Susan S. Hart, that attempted excuse does not comport with the facts. CORP could have cleared the snow to provide rail service, as it had done consistently over the prior 14 years.

**7. Diversion of Traffic To Truck**

CORP argues that TPC's diversion of its traffic to truck in April, 2008 was a voluntary economic decision on the part of TPC that was not in response to CORP's inadequate service. (Response at 25-26). That argument is without merit. The facts are that the combination of CORP's unacceptable curtailment of service, its service disruptions, its poor and ineffective communication, and its rate increases that ranged from 150 to 300 percent made TPC's decision to transition shipments from rail to truck unavoidable. (Rebuttal VS Vos). CORP's argument is further undercut by the fact that TPC had a trucking subsidiary during the period between 2000 and April, 2008, yet TPC utilized rail service for its shipments of veneer throughout that period. *See, also*, Rebuttal Verified Statement of Susan S. Hart.

**8. Cars "Left Behind"**

CORP acknowledges, as it must, that the combination of curtailed service frequency and locomotive tonnage limitations caused CORP to leave cars behind on the reduced train trips, as many as 13 times in three months as shown in Mr Kerr's "Left Behind" column (Response at 26, 63-64) Thus, not only was service frequency cut by 60 percent, available traffic was not transported even on that slashed service level Once again in this respect, CORP's own evidence supports Petitioners' allegation of inadequate rail service See, also, Rebuttal Verified Statement of Susan S. Hart.

9. **Congestion at TPC's Mills**

CORP contends that the congestion at TPC's mills identified in Ms. Hart's statement (at 6-7) is an internal TPC operating problem. (Response at 27) That is not so It is the sporadic, curtailed and bunched CORP deliveries at the mills which disrupted TPC's plant efficiency (Petition, Appdx 2 at 6-7). See, also, Rebuttal Verified Statement of Susan S Hart

10. **Increased Cycle Time Per Car**

CORP claims that TPC desires a specific cycle time per car, which constitutes "special service that . . . goes beyond reasonable service" (Response at 27) That claim is a mischaracterization of Ms. Hart's testimony TPC seeks reasonable car cycle times, i e , the cycle times achieved when CORP provided the requested service five days per week (Petition, Appdx 2 at 4). There is nothing "special" about that level of service from a legal standpoint See, also, Rebuttal Verified Statement of Susan S. Hart

**11. Roseburg Forest Products - Contract Argument**

CORP contends that RFP's evidence of inadequate rail service cannot be considered by the Board because there was a rail transportation contract in effect between RFP and CORP until May 14, 2008, and the Board does not have jurisdiction over service provided under such a contract (Response at 28-29) However, the inadequate service provided by CORP is of a continuing nature Thus, CORP's curtailment of service to two days per week has continued beyond May 14, 2008 to the present The Board clearly has jurisdiction to determine the adequacy of that service in light of RFP's current transportation requirements See, also, Rebuttal Verified Statement of Andrew Jeffers

**12. Roseburg - Claim That Its Concern Is Rates, Not Service**

CORP contends that RFP's real concern is CORP's rates, not its service (Response at 29) That contention unjustifiably ignores extensive evidence provided by Mr. Jeffers that RFP complained to CORP vociferously about CORP's inadequate service performance and its utter lack of communication (Petition, Appdx 3 at 3-6) Consider the following (*id* at 4)

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.

One sure sign of a rail carrier bent on downgrading service is disinterest in new traffic on a rail line CORP fits squarely in that category CORP ignored RFP's request for a rate on a new movement of peeler cores to Saginaw, OR. As a result, the potential receiver of that traffic made other arrangements (Petition, Appdx 3 at 5) CORP's Response does not attempt to rebut that

evidence of its disinterest in new traffic That constitutes additional strong evidence of CORP's inadequate rail service *See, also*, Rebuttal Verified Statement of Andrew Jeffers

**13. Roschburg - Emergency Nature Of Need For Rail Service**

CORP argues that RFP does not have an emergency need for rail service because it has acknowledged its ability to supply its mills by truck in the current unfavorable housing market (Response at 29) That argument misses the point. It is inevitable that the housing market will recover It is essential that rail service be restored immediately well before the housing market turns around (Petition, Appdx 3 at 7-8). *See, also*, Rebuttal Verified Statement of Andrew Jeffers)

**14. Summary - Substantial, Measurable Deterioration And Demonstrated Inadequacy Of Rail Service**

CORP has thus failed to rebut the extensive evidence of substantial measurable deterioration and demonstrated inadequacy of CORP's rail service. Indeed, this record has more evidence of inadequate rail service than existed in the PYCO case, i e ,

- (1) failure to deliver empty cars for loading,
- (2) retaliation against a shipper,
- (3) failure to provide scheduled train service,
- (4) bunching loaded-car deliveries,
- (5) permanent 60-percent reduction of service frequency,
- (6) leaving tendered traffic "behind",
- (7) failure to provide requested rates for new traffic, and
- (8) discouraging traffic by means of exorbitant rate increases

Accordingly, the Board should find that over the past year-and-a-half, there has been a substantial, measurable deterioration and demonstrated inadequacy in the rail service provided by CORP for Petitioners. *See, also*, Rebuttal Verified Statements of Susan S. Hart and Andrew Jeffers

**B. The Relevancy Of CORP's Rate Increases**

The foregoing amply demonstrates that this is a petition directed at inadequate rail service provided by CORP, not at CORP's exorbitant rate increases. Contrary to CORP's contention, Petitioners were forced to utilize inferior truck transportation as a result of inadequate CORP rail service, well before CORP raised its rates. Thus, TPC transitioned its shipments from rail to truck on April 10, 2008. CORP did not raise its rates on TPC's shipments until May 6, 2008. Consider the following statements by Ms. Hart of TPC (Petition, Appdx. 2 at 10, 11).

... (at the time of CORP's rate increase) 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 (at 10)

\* \* \*

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 (at 11)

Nevertheless, CORP's exorbitant rate increases are relevant as additional evidence of downgrading of rail service on the Siskiyou Summit Line. In consideration of the extent of those rate increases in absolute terms, and especially in view of how radically those increased rail rates dwarfed corresponding truck rates, there can be no doubt that the purpose and effect of those rate increases were to ensure that there would be no rail traffic on the Line because CORP made it uneconomic to ship by rail. Thus, rail rate increases of that nature and magnitude are indicative of a pattern of deliberate downgrading of service on a rail line. The Board should find that CORP's rail rate increases constitute additional evidence of inadequate rail service on the Siskiyou Summit Line.

One aspect of rate evidence in CORP's Response deserves brief response here, although it does not bear on the merits of the Petition. CORP has claimed that TPC and RFP misstated the applicable rail rates in the Petition (Supplement to Response, filed September 4, 2008). As the Rebuttal Verified Statements of Messrs. Vos and Barbee show, TPC and RFP accurately identified the rail rates as increased by CORP, effective May 6, 2008. CORP apparently scaled back the increased rates, effective May 28, 2008, but did not inform the affected shippers of the rate change (Rebuttal Verified Statements of Messrs. Vos and Barbee). Indeed, Mr. Kerr of CORP stated to Mr. Barbee of RFP that there had been no further rate change at a time when the rates already had been changed (*Id.*, RVS Barbee). It is a mystery to Petitioners why CORP scaled back its rate increases, but it surely was not to attract the traffic of TPC and RFP, because if that was the intent, CORP would have notified those shippers of the rate change. In any event, even as scaled back, CORP's rates were approximately 100 percent higher than prior to May 6, 2008, and were way out of line compared to truck rates (*Id.*, RVS Vos). Thus, CORP's action

scaling back its rate increases did not negate the overall effect of downgrading of the Siskiyou Summit Line resulting from CORP's increased rail rates

**C. Unlikelihood That CORP Will Restore Adequate Service**

CORP has not attempted to rebut the evidence in the Petition to the effect that it is highly unlikely that CORP will restore adequate service on the Line. (See Petition at 24-25) That being the case, a finding is dictated that it is highly unlikely that CORP will restore adequate service See 49 C F R. §1146 1(b)(1)(ii).

**D. WTL's Alternative Rail Service Would Meet Current Transportation Needs Safely Without Degrading Service To Its Other Customers And Without Unreasonably Interfering With CORP's Overall Ability To Provide Service**

There is no contention in the Response that WTL's alternative rail service would degrade service to WTL's other customers, nor that such service would unreasonably interfere with CORP's overall ability to provide service. The Board should thus make the findings on that subject matter required by 49 C F R § 1146 1(b)(1)(iii)

The criticism of WTL in the Response (at 30-31) is to the effect that WTL's alternative rail service would be unsafe because WTL is not experienced in operating in mountainous terrain WTL is filing an independent Rebuttal Statement in which it will respond to that allegation

**E. Petitioners Have Met The Requirement Of Discussions With The Incumbent Rail Carrier**

CORP contends that Petitioners have not conducted recent negotiations with CORP, and filed their Petition for Alternative Rail Service "out of the blue" (Response at 32)

The Rebuttal Verified Statement of Mr. Ray Barbee of RFP shows that there were discussions between CORP and RFP as recently as July, 2008, approximately two months after CORP's rail rate increases. WTL's Rebuttal Statement shows that WTL's affiliate recently attempted to negotiate a lease assignment and sale with CORP, whereby alternative rail service would be put in place voluntarily. That attempt was referred to at page 11 of the Verified Statement of Ms. Susan S. Hart (Petition, Appdx 2 at 11).

... This petition was filed upon completion of those activities (interviews and background checks of potential alternative rail service providers) 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.

The Board should find that those recent communications satisfy the discussion requirement.

## **II. RESPONSE TO CORP PROPOSAL**

The essential elements of WTL's proposal are (Response at 33-35):

- (1) CORP would agree that WTL would provide service between Black Butte, CA and Medford, OR;
- (2) north of Medford, CORP would either provide haulage for WTL, or would interchange traffic for delivery to Dillard, Riddle, Grant's Pass and White City,
- (3) WTL would pay compensation to CORP based on the formula set forth in *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd Co*, 2008 STB LEXIS 4 at \*12-17 (Finance Docket No. 34889, decision served Jan 11, 2008 at 6),
- (4) WTL would agree to accept liability for any harm caused by its operations and provide sufficient insurance to protect CORP,

- (5) WTL would ensure that its engineers are qualified to operate on the territory and that it has appropriate locomotives to perform the service,
- (6) the agreement would contain standard industry terms for other matters, including advance payment of rental,
- (7) WTL's rental payments would be guaranteed by Iowa Pacific Holdings, LLC, Permian Basin Railways, Inc , Mr Edwin E Ellis, RFP and TPC,
- (8) The Board would hold the proceeding in abeyance after the filing of rebuttal to give the parties an opportunity to negotiate; and
- (9) the parties would report to the Board on the status of negotiations on September 18, 2008, and would be prepared to come to the Board's office on September 19, 2008 if there are any unresolved issues

In Petitioners' view, CORP's proposal provides a sufficient prospect for a voluntary agreement for alternative rail service to warrant holding the proceeding in abeyance to permit the parties to negotiate the terms of such an agreement. That is not to say that agreement is necessarily likely to all of the terms put forth in CORP's proposal. However, Petitioners are willing to negotiate the terms in good faith. Hopefully, there is a similar willingness on the part of CORP.

Although it is in the interest of Petitioners that such an agreement be reached without undue delay, it is Petitioners' view that the negotiating timetable proposed by CORP is inordinately abbreviated. A number of essential details related to the negotiation will take considerable time to determine. One such detail is the rental or interest component of the

*Dardanelle*<sup>1/</sup> compensation formula. In order to arrive at that component, the net liquidation value of the CORP-owned segment of the rail line must be determined. That will require a hi-rail inspection trip over the line to determine the quantity and quality of its track materials and the *across-the-fence characteristics of its right-of-way land*. Petitioners must also obtain and review source documents to determine the quality of CORP's title to that land. Documentation from CORP must be obtained and reviewed to determine the other elements of the *Dardanelle* formula.

In the circumstances, Petitioners suggest that the proceeding be held in abeyance for 30 days from the service date of a Board order providing for such abeyance. The Board's order should require that the parties report to the Board at the end of that 30-day period on the status of negotiations, provided that either party would be able to notify the Board, at any time during that 30-day period, that in its view, further negotiations are unlikely to lead to a voluntary agreement, in which case the proceeding should immediately be returned to active status. The Board's order should also provide that the parties could agree at any time to seek Board mediation or arbitration of any unresolved issues.

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<sup>1/</sup> The reference is to *Dardanelle & Russellville R Co -- Trackage Rights Compensation -- Arkansas Midland R Co*, 1996 STB LEXIS 183 (Finance Docket No. 32625, decision served June 3, 1996).

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, the Board should enter an order holding this proceeding in abeyance for 30 days, and containing the provisions set forth in the immediately preceding paragraph. If for any reason such an order is not entered, the Board should issue a decision granting the Petition for Alternative Rail Service.

Respectfully submitted,

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DATE FILED. September 8, 2008

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**VERIFIED REBUTTAL STATEMENT OF SUSAN HART**

My name is Susan S Hart. As established in my original verified statement, I am Office Manager of Timber Products Company, LP (TPC), P.O. Box 766, Yreka, CA 96097 I have been tasked by my manager to oversee our outbound shipping needs from our facility in Yreka, California to our multi-plant destinations (our customers) in Southern Oregon

I have read the "Response of the Central Oregon & Pacific Railroad (CORP) to our Petition dated September 3, 2008 and offer the following responses which are based upon my personal knowledge.

On page 23, of CORP's Response in their preamble by which they introduce Item # 4 ("TPC"), CORP has characterized TPC as being the most "vociferous" of the Petitioners while at the same time "surprisingly silent" with respect to freight volume They then summarily dismiss TPC's service related claims by mischaracterizations followed with an end run attempt at claiming our petition for alternative service is nothing more than rate related CORP's attempt to spin our plain objective of reacquiring reliable rail service that had historically been based on cooperative and professional management practices, into nothing more than an alleged rate claim, in their words, "Hence TPC's decision is based on rates...", is done with the sole purpose of discounting the Petition rather than addressing the customer's factual claims related to service that were presented in the Petition Further I want to underscore that this Petition has everything to do with the establishment of reliable rail service.

Regarding chip car supplies, item (i), page 24, contrary to CORP's argument, there has in fact been a long standing "service disruption over an identified period of time". The claim that "CORP does not control the car supply and only supplies the cars that are made available by the UP" is a blatant mischaracterization; not unlike a gas station owner claiming to have no fuel when in fact he has failed to call his supplier to order any. TPC has been required to place its chip car orders with CORP since I assumed oversight of rail freight in the mid-1990's.

I do recall multiple occasions in past years, when speaking with CORP personnel in Roseburg, OR, when there were in fact no chip cars available. Early in my tenure I would routinely speak with a CORP employee by the name of Barbara who provided wonderful and gracious assistance in apprising me of rail car order status Later, I recall typically conducting a near daily conversation with CORP chip car manager Don Taylor, (541-957-3920). He would apprise me of where the empty cars were at Eugene, Klamath Falls and Black Butte interchanges, a car count for TPC and their ETA. Based on Mr. Taylor's reports TPC was able to plan in advance for alternative chip transport by truck van when faced with car shortages We worked cooperatively to assure the efficient and seamless shipment of TPC by-products, always with rail as the preferred means and by in large the only means.

As the years passed however, personnel changed at CORP, and as I stated in my VS-Finance Docket No 35175, "A significant decline in car availability was realized beginning in April of 2006". By way of clarification, this comment was in reference to CHIP car availability, (please note loaded car counts below).

<u>Time-Period</u>	<u>Chip Cars</u>	<u>Veneer Cars</u>
2001	982	1153
2002	1015	1102
2003	1392/10 months	1090/10 months
2006	303	1003
2007	75	1189

Chip cars averaged ~98 car/month following the reopening of Tunnel 13. In early spring 2006, a pattern began to emerge wherein we experienced CORP's frequent and unannounced changes relating to chip car ordering procedures. After unsuccessful attempts to ascertain why the sudden lack of chip cars in early spring of 2006, (calls to CORP Roseburg went unanswered), I was able to finally reach a Mr. Robert Cunningham after dialing every number and extension I had accumulated in my Rolodex for CORP, and this was only after reaching some person who was able to successfully transfer my call.

Mr. Cunningham explained that I could no longer order chip cars, (I had been instructed by CORP for years to do so), but that I would need to place my order with Yreka Western Railroad, (YWR). He made it clear to me during this conversation that the YWR was CORP's customer, and that he would only entertain orders placed by YWR. Situations such as this began to occur regularly and represent a string of examples where CORP successfully began to functionally reduce our service. The cars were available, but their access delayed and often functionally denied by a constant and purposefully imposed barriers by CORP

All during this period, I would receive inquiries from Mr Thomas Hawksworth, marketing director of CORP, with respect to why TPC's load counts were diminishing. On several occasions beginning in 2006, I became so frustrated that I contacted John Bullion who had been promoted to CORP's Roseburg management team and with whom I had worked with successfully when he was assigned as the trainmaster in Medford. He listened patiently to my frustrations, agreed with my characterization of the CORP's complete lack of communication and promised to, "See what he could do" yet nothing changed.

Further, we were told by CORP off and on for well over a year that the UP chip cars were no longer available, while at the same time, empty chip cars could be seen stored on lines between Yreka and Weed. Siskiyou County is large and rural where the appearance of a string of empty railcars does not go unnoticed

In the late spring of 2007 in an attempt to gain a solution to the chip car service disruption that TPC had been experiencing for other a year, we were able to ascertain through the direct contacts of YWR with the UP, that CORP's assertion that chip cars were no longer available was simply not true. Indeed YWR reported back to us that UP had responded that CORP simply needed to order the

**cars Based upon my experience, the decline in CORP's chip car availability which began in early April of 2006 represents a clearly avoidable and intentional disruption of service over an identified period**

**Throughout this time period TPC, was in good faith working through all means available in an attempt to secure service with CORP over the Siskiyou line, however, in response, CORP wanted to do nothing but dig their heels in and refuse to "order the gas". Shortly after this chip car episode, in July of 2007 after hearing rumor of the potential loss of our SSW flatcars, (TPC had at our expense outfitted these cars with hardware specific to veneer shipment), I contacted Mr. Bullion who validated the rumor, explaining that the UP was reclaiming all SSW cars back into its fleet effective August 1, 2007. I actually prepared a schedule with Mr Bullion to provide for the final veneer shipments and the reclaiming of all TPC hardware from these cars prior to CORP returning them to the UP by the deadline of August 1<sup>st</sup>. During these discussions it was clearly represented to TPC by CORP that these cars were no longer available and in fact they stated that the UP was reclaiming them for use in some other locale.**

**Eighty percent of our dedicated flatcar fleet was comprised of SSW cars, and the loss of these cars would have essentially shut us out of rail service. Once again, I was informed by YWR that they had been able to ascertain from direct contact with the UP that these cars could indeed be acquired by hire. I immediately called Mr. Bullion to share with him this information that I had received from YWR. I clearly recall his response to my information; it was as though he was thinking, "How did they find this out". In less than a day's time, CORP responded back that we would be able to retain the cars, but new rates would need to be negotiated that would cover the car hire fees to the UP. Thanks to some quick action by the YWR, TPC felt as though we had once again dodged the bullet and were able to retain our rail service. I recall thinking to myself, "Same play, different game; why does CORP continue to turn business away?" Then would come the inquiry from Mr. Hawksworth, "How are you doing, how can we ship more cars?"**

**CORP responded to its own reduced interchanges beginning in the summer of 2007, (page 24, Item (ii)), by simply mischaracterizing this as a specific reflection of reduced traffic caused by the shippers at the Montague interchange. Again, by purposefully omitting details, they have wholly misrepresented the facts.**

**When CORP began dropping days of operation it was done completely without any prior notice to TPC. In fact, the only freight reductions that occurred were not due to TPC's decision to reduce shipping, rather they were due to**

- Lack of chip cars for loading due to CORP's claim of no cars from the UP.**
- CORP's spotting of +/-50 empty chip cars at the Montague interchange at once and immediately following YWR's contact with the UP. Montague is a small rail town with a minimum rail storage capacity. I live east of Montague and my daily commute requires my passage across the Montague exchange. I can account factually for the congestion that occurred due to CORP's action. Not only did this unnecessary and frankly juvenile**

move by CORP completely block all possible rail traffic, (YWR was unable to bring in TPC's loads to Montague's railhead, but additionally, was physically blocked from retrieving TPC's empty cars); it created an inexcusable vehicular traffic hazard for the community

Once the second, unannounced 'drop' in days of operation occurred, I contacted Matt Shaw, CORP trainmaster in Medford, OR. Mr. Shaw stated to me that the drop in interchanges was due to a reduction in bridge traffic. His statement corroborates my assertion that CORP's claim in its Response item (ii) that the interchange reduction "was caused by the shippers at Montague and on the YWRC" is simply not true. In fact, I attempted to work with Mr. Shaw, and then others after his departure from the CORP as well as Mr. Bullion who I had again contacted trying to at least establish a line of communication. Countless times, I simply requested that they call to let me know when a hauler would be dropped so that I could adjust my loading strategies. In fact, I provided CORP personnel with my cellular phone number as well as my home number, asking them not to hesitate to call me in the evening if they had a schedule change. Nothing helped and unannounced hauler drops persisted. What made the challenge difficult from TPC's perspective was not only the loss of freight movement, but the loss of our ability to predict delivery times. TPC began to be forced to move some product by truck, in order to avoid unpredictable delays by rail. Indeed this did result in reduced rail freight claimed by CORP, but by way of clarification, it was the reduced interchanges that led to reduced freight from TPC, and hence a freight reduction realized by the CORP, not the reverse as claimed.

Further, these dropped haulers resulted in bottlenecks and car bunching both on delivery and on returning empties, (Response page 24, item (iii)). CORP is accurate in their assertion that they tried to assist with congestion at TPC's Medford railhead. TPC's Medford dock accommodates more than two cars, but requires boxcar loading of commodity at the same location as off-loading veneer. CORP's cooperation over the years provided for the smooth off-loading and loading of product for years. There were isolated incidents of dock congestion that were often successfully addressed by Yreka's adjustment in its outbound loads to Medford. In fact, we shipped a consistent quantity of veneer loads to our Southern Oregon plants successfully year after year. The only change from years of smooth loading and off loading at Medford was the bunching of north bound cars that had been left at the Montague rail head by an unannounced hauler 'drop' beginning in the summer of 2007, and greatly exacerbated by the service reductions exercised in January of 2008 by the CORP. CORP's claim that they provided TPC with more than adequate service is true when characterizing their pre-2008 performance, but a blatant misrepresentation in the context by which it is stated in their Response.

On page 25, item (iv), CORP claims to have provided reasonable and adequate service based on the 'available' equipment. CORP's repetitious claim of providing reasonable and adequate service based on the "available equipment" is disingenuous since they never supplied sufficient

equipment to handle the loads tendered; leaving cars un-hauled on far more than just a few occasions.

CORP alleges that heavy snowfall prevented it from providing reliable service in the winter months. In fact, had CORP been operating their line in good faith as they had for many years in the past, the snow accumulation which occurred in the winter of 2008 would not have caused the degree of disruption experienced. Trains operate in winter snow conditions worldwide and have done so over the Siskiyou Pass for years. Any reasonable person knows that unlike a mudslide that unavoidably covers a rail or road instantaneously and en masse, snow accumulates gradually and if attended to on the Siskiyou causes only brief and few delays. In fact, TPC has relied on rail for years for winter shipments of its product over the Siskiyou and in particular during hard snow years when vehicular traffic is often shut down or delayed, but rail is not.

CORP's lack of interest in providing customer service is demonstrated by its parent company's website. I had turned to this sight about a year ago, when on one occasion I became so frustrated with my inability to 'reach a human' within the company, I went searching for a contact list on line. I just now tried again at the address below. I followed the links to contacts and found the information below. The information is clearly out of date since I received a very nice note from Mr. Hawksworth last January announcing his retirement. I none the less called the number listed and received the following voice mail: ". Hi, you've reached Lorrie at TLC-West Collections.. " I dialed the number a second time to ensure I had not misdialed. I had not

<http://www.railamerica.com/railmaps/corp.asp>

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Phone	Cell	Fax	
641/887-2520			

In conclusion, I concur with CORP's assertion that TPC is vociferous, and with reasonable cause. CORP's lack of reasonable and adequate service, their lack of communication, their complete lack of measurable customer service, and their lack of any professional management; combined with our honest desire to retain our vital rail connection, has resulted in this Petition.

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.

  
\_\_\_\_\_  
Susan S. Hart  
9/8/08



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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RE: Finance Docket No 35175

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REBUTTAL STATEMENT OF ANDREW E JEFFERS

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*My name, is Andrew E Jeffers, I make the following statement based upon my personal knowledge. I am the Traffic Manager -- Rail for Roseburg Forest Products. In this position I am the primary contact with the various railroads, including, for all rail shipments either coming info or out of our plants. I deal with railroads all over the country*

This rebuttal is being filed in response to CORP's Statement dated September 3, 2008.

In it's response, CORP states that other rail alternatives are available and that shippers still had access to the UP at Black Butte, CA. UP had retained rate making authority on the line leased by CORP and the traffic could move from Weed to Dillard via UP

While this is true it should be noted that prior to CORP's cessation of traffic over the Siskiyou summit, Roseburg attempted to work with UP to establish rates for these

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choice but to wait it out until the tunnel was repaired and line re-opened. At that time everyone was attempting in good faith to reopen the tunnel.

Also in its response, CORP outlined the volumes that RFP represented it could tender to CORP and that we represented that more business was available if we could attain a desired level of service. It's interesting to note in CORP's response, no mention is made of the fact that CORP could not service the volumes we originally tendered. Also no mention is made that it took several meetings and many discussions for them to admit that they were unable to service the tendered volumes. RFP tried to offer these volumes based upon its good faith belief that CORP would have the staffing and equipment needs to handle our business. At no time during these discussions did CORP ever indicate that RFP was trying to give them more business than they could handle.

CORP also asserts in its response that RFP and CORP had a contract for service and the terms of this contract would govern whether or not CORP was providing an adequate level of service. The only contracts RFP had with CORP were rate contracts and there was no mention of level of service required to service our account or dispute resolution processes. While CORP is governed by the common carrier agreement but that cannot be construed as a service agreement. In Kerr's verified statement he asserts that "timber products are a low value commodity". I agree with this assertion but would add that you do not negotiate formal service agreements on low value commodities. Formal service agreements are intended for high value commodities and often contain provisions for car supply guarantees, transit guarantees, volume guarantees, etc. Service agreements also contain clauses for non-performance which are binding against both parties. Rates associated with service agreements are at a premium as well.

RFP and CORP did have multiple discussions around the available traffic and levels of service required for CORP to maximize it's participation in this lane. No formal agreements were ever drawn up around these discussions. During these discussions it was and RFP's goal was to keep the Siskiyou line open and retain CORP as our service provider.

The comments that RFP made about the level of service are valid and illustrate the lengths RFP went to with CORP to try and make the program successful. CORP was given every opportunity to tailor the program but chose not to do so. Instead, they couldn't deliver on the service, resulting in the volumes tapered off, and the operation no longer was viable to them.

CORP discusses that the new rates proposed were designed to meet the market with a cap of 180 percent to represent CORP's revenue to variable cost ratio. I cannot comment on the ratio because I have not seen CORP's revenues or costs. I can comment on their attempt to meet the market. When CORP proposed the new rates, they stated that they were trying to make them truck competitive. For CORP's analysis, it figured a truck rate of \$700 from Weed to Dillard and Riddle and based its rates on that truck haul. The proposal by CORP to RFP would have cost RFP an additional \$50K to \$120K per year over trucking had we kept the business on rail.

RFP presented CORP with a counter-proposal that would equalize CORP's rates with the rates we were paying via truck. It has been my experience that a basic component in rail pricing is to keep rates below truck in recognition of service, inventory levels, etc. RFP's proposal to equalize the rail rates with truck rates was a significant

moves. This traffic would move via UP's Cascade Sub-division line. UP was very candid with Roseburg and said this line was at or very near capacity. We discussed the volumes that we intended to move and UP did quote us some rates but it was very evident they were not comfortable with taking on this additional traffic. The rates proposed by UP were slightly less than the numbers CORP proposed on its 1 year plan but still were not truck competitive. When one compares the rail miles on a haul from Weed to Dillard via CORP versus CORP -Black Butte UP -Eugene CORP, one finds that the UP route is over 150 miles further to get to the same destination. Given the time lost at two interchange points and the additional miles in the haul, UP would not be a viable rail alternative.

Another interesting point in CORP's response is its understanding that SP had stopped serving the Siskiyou Pass for several years before it was leased by CORP. While I will agree that SP was not operating "manifest" traffic over that line, the line was still in operation. Roseburg had the veneer mill in Weed and SP provided rates from Weed to Dillard and Riddle. SP recognized that this movement reduced the number of empty miles a car had to travel to be reloaded. The movement also reduced repositioning costs because the cars were reloaded at the same point they had emptied the car. When CORP took over the line, they recognized the significance of this movement and continued the program.

In its response, CORP also contends that when the line was closed in November 2003 that Roseburg did not formally complain nor did we seek emergency rail service during that closure. My response to that would be what good would it have done? The line was closed and couldn't be reopened until the tunnel was repaired. We had no

departure from the traditional component and illustrates that RFP was serious about retaining rail access.

CORP did prepare a counter-offer but the level of rates were still significantly higher than the prevailing truck rates. CORP acknowledged this but said that rail service was a premium and should be priced accordingly. They were not willing however to provide service or car supply guarantees in association with these premium rates. Given the distance between the two proposals RFP declined the rates. At that same meeting CORP gave us a copy of their new tariff rates that are included with my statement. These rates were not tied to any volume guarantees but were provided in the event we would need to ship anything via CORP.

The rates proposed by CORP were over 250% higher than the present rail rates and were almost 50% higher than the prevailing truck rates.

RFP has been able to source enough trucks however the infrastructure we have in place for truck is at its limit. We are currently in a down market for forest products and I anticipate that once the market returns to a normal level, we will not be able to handle all of our raw materials and finished product by truck given the current limits on our trucking infrastructure.

I note that throughout its response, CORP states over and over again how RFP voluntarily switched from truck to rail. These statements are gross over simplifications. CORP's proposed rate increase was non-competitive and extremely onerous as a result the rate increase and lack of any assurance of service on a regular basis forced us away from rail. I can't think of any situation where a departure such as this would be considered voluntary when faced with these choices.

CORP's filing also has an exhibit 2 of the tariff they allegedly furnished to RFP. However, this is not the tariff they provided us. If you compare CORP's exhibit to the last tariff CORP provided us, you will see some very obvious differences.

First of all, page 2 of my document shows it was issued on April 15, 2008 and was effective on May 6, 2008. CORP's exhibit was issued on May 27, 2008 and was made effective on May 28, 2008. There were three people from RFP involved in the rate negotiation with CORP, Ray Barbee, Mark McLean, and myself. None of us were advised of this new publication nor given a copy of it for our records. The first time I saw the tariff cited by CORP in its Response, was when I received the Response.

Second, my copy of the document has a reference in the upper right-hand corner FT CORP 8000 01. The document in CORP's exhibit is referenced FT CORP 8000 02. When rate documents are supplemented it's generally accepted to use a numbering hierarchy such as this, and the customers made aware of the revision. In this case no one at RFP was provided with a copy of FT CORP 8000.02.

Third, when you compare the rates on my document to the rates on the CORP exhibit there is absolutely no similarity. The rates on my document are nearly twice as high as those on CORP's exhibit.

I've had a couple of conversations with Patrick Kerr subsequent to our April 15 meeting. We've discussed a variety of things but he never mentioned to me the reduction in the tariff rates. At one point he did inquire about getting more business at Weed. The inquiry was not centered around logs or veneer but his interest was in trying to get some additional chip or peeler core cars which move to Black Butte and interchange to UP.

After reviewing the CORP filing in response to our petition, I called the CORP yard office in Roseburg and told them I was looking at moving some veneer from Weed, CA to Dillard, OR and I wanted to double-check the applicable rates. I gave them the tariff authority and asked if they had a copy of it available. The yard office did not have a copy and they said I could request one from Patrick Kcrr or I could go on-line to the Rail America website and I could probably get a copy of it there

I chose to go to the website where I found there are two copies of the CORP 8000 available for viewing. The first copy is for switching and accessorial charges. It's 13 pages long as was issued in January 2006. This tariff deals with special handling charges and things that are not generally considered part of the day-to-day business. The second CORP 8000 is 2 pages long as was issued in April 2005. It deals with the tunnel surcharge that was activated after the Siskiyou line reopened following the tunnel fire. I could not find any reference to any rates for moving product from Weed to Dillard

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



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ANDREW E. JEFFERS

# CENTRAL OREGON & PACIFIC RAILROAD, INC.

A RailAmerica Company



## Freight Tariff CORP 8000.01

PUBLIC PRICE LIST  
CONTAINING PRICES ON LUMBER AND FOREST PRODUCTS

### APPLICATION

This publication applies to only movements local to Central Oregon & Pacific Railroad

Movements are subject to RA 1000, CORP 9002 and other public tariffs as established, by CORP and RailAmerica, Inc., for the movement of railcars

### PRICE LIST

WEED, CA	MEDFORD, OR	\$	2,700
WEED, CA	GRANTS PASS, OR	\$	2,952
WEED, CA	DILLARD, OR	\$	3,157

### TERMS AND CONDITIONS

<b>EQUIPMENT TYPE</b>	Price applies in Box Cars Not Exceeding 5600 Cubic Feet
	Price applies in Box Cars Exceeding 5600 Cubic Feet not Exceeding 7000 Cubic Feet
	Price applies in Box Cars Exceeding 7000 Cubic Feet
	Price applies in Flat Cars Not Exceeding 63 ft
	Price applies in Flat Cars Exceeding 63 ft not Exceeding 74 feet
<b>TERMS AND CONDITIONS</b>	Payable in U.S. funds
	No transit or stopoff allowed.
	Diversion and Reconsignment not included in the price
	Price applies only when shipped on one day from one consignor at one location at one origin via one route to one consignee at one location at one destination at one time on one bill of lading
	Shipments reaching destination but not unloaded for reasons other than carrier error may be returned to original shipping point via reverse route at the same price or at the price normally applicable for such return movements, if lower.
	Prices subject to rules and conditions of Railway Equipment Register, STCC 6001, OPSL 6000, UFC 6000 and CSXT 8100 unless otherwise noted.
	Carriers' maximum liability for lading loss or damage will not exceed \$100,000 per carload
<b>APPLICABLE STCC(S)</b>	24-XXXX-XX

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**ISSUED: APRIL 15, 2008**

**EFFECTIVE: MAY 6, 2008**

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**ISSUED BY:**  
Central Oregon & Pacific Railroad, Inc  
333 S.E. Mosher  
Roseburg, OR 97470 USA



**VERIFIED STATEMENT OF ERIK VOS**

My name is Erik Vos. I am a business analyst and representative for the Gonyea family, the owners of Timber Products Company (TPC). In my position, I am responsible for financial analysis, mergers and acquisitions, land use issues, media relations, oversight of management of the Timber Products Trucking division of our company, and of course certain other transportation issues such as rail.

The purpose of this statement is to briefly rebut and address several comments disclosed in the Response of the Central Oregon & Pacific Railroad (CORP) to our Petition.

On page 7 of CORP's Response, they note that the only reason CORP does not serve TPC between Yreka and our mills in Medford and Grants Pass, Oregon is because TPC has *voluntarily* elected to divert our traffic to truck. Contrary to Mr. Kerr's statement, TPC has transitioned to trucks as a direct result of CORP's combination of unacceptable service curtailments, disruptions in service, poor & ineffective communication and finally CORP's statements that the rate would increase from between 150% to near 300% (depending on several term lengths). TPC clearly did not voluntarily make the decision to transition the rail deliveries to truck. The decision was the direct result of our view that the service was not likely to improve and that the rates did not justify the uncertainty and the inability of CORP to reliably provide service.

Similarly, Mr. Kerr's statement that based on his interaction with RFP and TPC, "they have stopped using CORP's service over the Siskiyou pass for one reason only, they believe that the rates are too high" (V.S. Patrick Kerr, p. 43), is simply wrong. Timber Products Co.'s decision to stop using CORP's service is based upon a lack of service on a regular basis, lack of ability to receive information from CORP in a timely manner and generally a lack of professional management on the part of CORP; we simply could not depend upon them for service

On page 8 of CORP's Response, they note that TPC does not need to rely on rail service over the short distances between Yreka and our plants in southern Oregon. They further note that TPC owns and operates its own trucking company and based on our Trucking Division's marketing brochure that states "we can provide a cost effective solution to any shipping challenge for any goods, to any destination in North America", they interpret this to mean that if we can do that for our Trucking customers, we could do that for

ourselves. While it is true that TPC owns a Trucking Division and that our Trucking division has been able to accommodate some of the transitioned rail deliveries, that transition has come at a significant cost due to (a) a less effective cost structure that truck deliveries have compared to rail, (b) escalating truck rates, and (c) shortage of trucks in the region between northern California and southern Oregon. The balance of transportation logistics between rail and truck is relatively inelastic. An imbalance between truck and rail supply will force regional demand adjustments and higher costs. Additionally, as both the overall economy and our industry begin to show recovery, and demand for deliveries for both rail and truck begin to escalate, this situation will certainly become even worse. TPC has already experienced truck shortages in the last six weeks and been forced to ship late to outside veneer customers from our Yreka facility. CORP's characterization and view of alternatives to rail are both simplistic and untrue

On page 11 of CORP's Response, they note the TPC declined to enter into a contract with CORP because the parties could not agree on rates. This comment fails to acknowledge several other factors that TPC clearly made known to CORP during its contract negotiations. As clearly stated in my letter to Mr. Patrick Kerr at CORP on April 18, 2008 (see page 46 of CORP's Response), TPC was unwilling to agree to CORP's proposal due to several critical factors beyond their proposed extraordinarily high and unreasonable rates. We clearly stated in that letter, as well as in phone conversations, and in several face-to-face meetings we had with Mr. Kerr (on March 20, 2008 and April 15, 2008), that TPC's objections were also clearly centered on unacceptable service levels and the unsubstantiated capital contributions that CORP was asking us, and other shippers, to fund in order to offset what they claim were serious, time sensitive and costly capital repairs on the Siskiyou rail line which they characterized as having the ability to shut down the line. I specifically requested on several occasions from Mr. Kerr that he provide me with answers to the following reasonable requests relative to their requested funding needs for the alleged capital repairs

1. provide a descriptive list of those needed capital repairs
2. provide estimated costs of those needed capital repairs
3. Since CORP stated the capital contributions were embedded in their proposed rate structure, state what the capital repair revenue component would equate to on a per car basis
4. provide an estimate of when the repairs would be completed

5. What would protect the shippers in the event that CORP collected these capital repair contributions from the shippers in advance and then didn't make the alleged needed repairs? Would CORP reimburse any unspent monies?

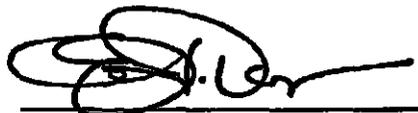
Mr Kerr never provided answers to any of the above requests. However, in our April 15, 2008 meeting, Mr Kerr stated that if CORP collected these needed capital contributions from us, and the other shippers, and didn't spend the monies (all or any part), they would not return any monies back to the shippers and that any excess funds would be retained by CORP in what Mr. Kerr described as "the system" Thus it is nonfactual and disingenuous for CORP to characterize our complaints and our Petition to be solely about the rates when in fact our complaints were directed to a far broader range of concerns

On page 49 of CORP's Response, they provide a May 27, 2008 Tariff table for service from Weed, California to our plants in southern Oregon. The fact is that this is the first time CORP made this Tariff schedule known to TPC. Reading this Tariff schedule in their Response is the very first time any TPC representative has seen or even heard about these tariff rates. It is disturbing and suspicious that CORP would have allegedly issued these tariff rates shortly after we rejected their proposal on April 15, 2008 and yet never notified us of these "new" rates. Although the Tariff rates now listed on their schedule on page 49 are approximately one-half of the rates previously proposed to us, these rates would still represent a near 100% increase over the rates charged by CORP prior to the April 15, 2008 meeting we had with Mr Kerr. The "new" May 27, 2008 rate, would equate to an annual increase in our transportation costs of nearly \$500,000 compared to current truck rates, assuming there will be adequate supply of trucks which we have already experienced is not the case. Despite this newly disclosed set of Tariff rates, and the financial impact it would have to our company, and based on the actions and behavior of CORP over the past 12 months, we are naturally skeptical that CORP will be able to, or be willing to, provide the level of service and schedules that we believe are necessary and reasonable, a level of service that we received from CORP for years only to see that service and schedules deteriorate to unacceptable levels over the months leading up to April 15, 2008

On page 12 of CORP's Response, they indicate that they did in fact increase their rates and that increase was based on two factors. (a) CORP sought to price to the market, and (b) CORP believes that its rates are no more than a revenue to variable cost ratio of 180 percent. Although the rationale for filing our

Petition is not based primarily or solely on rates, it is worth vetting out CORP's comments on their "factors" noted above. First, this is a contradiction to statements made by CORP in prior statements wherein they made it clear to us during the same meetings and conversations noted in the preceding paragraph, that a significant component and compelling reason for their rate increases were for some alleged and significant capital repairs. CORP has suddenly and inexplicably changed their rationale. Secondly, CORP claims now in their Response that part of their rationale to increase rates was to "price to the market". It is common sense and widely acknowledged that a true market price is *that* price (along with certain other factors such as service, quality, etc)) where a willing seller is able to sell their product or service to a willing buyer. As in this case, if there are no willing buyers for the seller's price point, it is clear that a "market price" has not been met. And thirdly, since TPC had historically shipped veneer both by rail and by truck, we are very knowledgeable as to the comparable shipping costs. It has been TPC's experience that the rates for both has been very comparable based upon the freight cost per unit basis, with rail rates having a slightly favorable rate structure. Therefore, a sudden 297% rate increase from approximately \$680 per car from Montague to Medford to \$2700 per car (based on tariff rate schedule provided to us by CORP on April 15, 2008) can hardly be explained by CORP's stated factor that their proposed rates are no more than a variable cost ratio of 180%. It is not reasonable for anyone to believe that CORP's variable costs suddenly jumped nearly 300%. It has been and remains clear that CORP had or has no intention of offering any sort of adequate service at virtually any reasonably acceptable price point.

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.



Enk J. Vos

Signed. September 8, 2008



**VERIFIED STATEMENT OF RAY BARBEE**

I, Ray Barbee, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

I am the Vice President for Sales & Marketing with Roseburg Forest Products. Roseburg Forest Products is an Oregon corporation, with forest products manufacturing facilities throughout the United States but heavily concentrated in southern Oregon and northern California.

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

I have been directly involved in negotiations with CORP relative to the rates for shipping forest products to and from our facilities in California and Oregon. I have had frequent discussions relative to rail service on the Siskiyou line with Patrick Kerr, a representative of CORP.

In reviewing the verified statement of Mr. Kerr, I find several comments that simply do not fully and accurately reflect our discussions.

On page 40 of the CORP's response, Mr. Kerr states it adopted new tariff rates

effective May 6, 2008 and referenced the attached Exhibit 2 as these new rates. First, I note the exhibit 2 attached to his verified statement references that the rates were effective May 28, 2008, not May 6, 2008 as Mr. Kerr states. Secondly, I was never provided a copy of this purported rate. The first time I ever saw this rate was in reviewing the response filed by CORP in this proceeding. The last rate that I was quoted by CORP prior to termination of negotiations was the rate of \$2700 from Weed to Medford, \$2952 from Weed to Grants Pass, and, \$3157 from Weed to Dillard. (See attachment 1). I have inquired of our staff responsible for rail shipping and they have confirmed they also have not seen the May 28, 2008 rate sheet nor any correspondence reflecting the May 28, 2008 rates, prior to the CORP response in this case. The last rates we were given by CORP were those set forth in the April 15, 2008 rate sheet that became effective May 6, 2008. The April rates were given to us by Patrick Kerr after we presented counter offers which were rejected by CORP. I subsequently communicated with Patrick Kerr on June 24, 2008 and at that time advised him that the rates CORP had proposed were 3.5 times what we were paying and asked if he had made any progress in finding an option on the Siskiyou line that would work for shippers. He responded on July 3<sup>rd</sup> by noting that CORP was at the same rate.

I find it clearly a lack of good faith by CORP to provide us with one rate sheet and then shortly thereafter file a second rate sheet yet not provide us with a copy or even let us know in any way that a different rate was in effect.

I also take issue with Mr. Kerr's statement on page 40, that the rates were the sole reason we stopped shipping over the Siskiyou mountain pass on May 6, 2008. While the rates were unreasonable, our ability to obtain rail service in a timely manner and the lack

of communication with CORP on critical issues, in combination led us to seek other more reliable shipping options

Likewise, I disagree with his statement on page 40 that the rates adopted by CORP reflect the market for moving timber products. This statement is not true. In the counteroffer that we presented to CORP in April 2008, we set forth a rate that was equal to the prevailing trucking rates, CORP rejected that offer. At that time the single truck rate from Weed to either Dillard or Riddle would have been \$428 which is a rail car equivalent of \$1284 (3 trucks per rail car). His rate that was presented to us as being effective May 6, 2008 was \$3157 to Dillard, a rate that was clearly not reflecting the market for moving timber products.

In addition, I strongly take issue with Mr. Kerr's statement on page 43 wherein he states that RFP stopped using CORP's service over the Siskiyou pass solely because we believed the rates are too high. This is clearly not the case, the horrendous rate increases presented to us in April by Mr. Kerr were the icing on the cake. Our decision was based on the high rate increase, as well as the fact that CORP was providing very poor service. We continuously offered additional rail car shipments but CORP's inconsistent service wouldn't allow them to accept the incremental business because they couldn't take care of what they had on the Siskiyou. The decision was also based on CORP's insistence on incremental capital costs being built into a proposed either 5 year or 3 year contract, yet CORP was not willing to or able to provide us with a justification for the millions in capital they were demanding. On numerous occasions we requested that they provide us with the justification yet they never provided us with the justification. Over the last few years CORP has suffered from a lack of local management and has demonstrated a lack of

**interest in increased traffic or for that matter in maintaining the existing business. Our decision to stop shipping on this line was based on a combination of CORP's lack of responsiveness to customers, poor service, and, the horrendous rate increases**

**Dated September 8, 2008**

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**Ray Barbee**

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.

  
RAY BARBEE

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2008, I served the foregoing document, Petitioners' Rebuttal Statement, by e-mail and UPS overnight mail, on the following

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Thomas F. McFarland