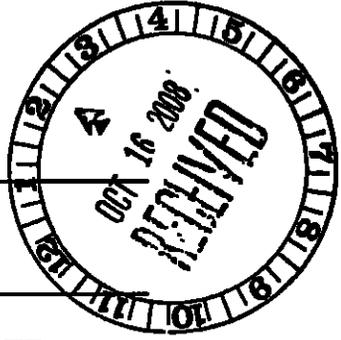


223775

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 35164

PETITION OF BNSF FOR DECLARATORY ORDER

**ENTERED
Office of Proceedings
OCT 16 2008
Part of
Public Record**

**KESSLER'S REPLY TO
BNSF'S MOTION TO STRIKE**

1. Edwin Kessler ("Kessler"), herewith files Kessler's Reply to BNSF's Motion to Strike.¹

BACKGROUND INFORMATION

2. On **September 23, 2005**, BNSF filed a Notice of Exemption ("NOE") to abandon 2 95 miles of the Chickasha rail line, between MP 539.96 and MP 542 91, all in Oklahoma County, OK. See *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK*, STB Docket No. AB-6 (Sub-No. 430X) ("Abandonment Exemption"). This portion of the Chickasha line is the subject of the above entitled proceeding. Since the NOE contained false and misleading statements, on June 5, 2008, the Board rejected the NOE as void *ab initio*.

3. In the months prior to the Board's **June 5, 2008** decision rejecting BNSF's NOE as void *ab initio*, the following salvaging activities occurred:

- A. The turn out connecting the Chickasha Line with the Shields Spur at MP 540 15, was removed, thereby disconnecting this end of the Chickasha Line from the National Rail System;

¹ Even though the Board rejected BNSF's Motion to Strike, Kessler would ask that the Board include this Reply in the record, since BNSF's Motion to Strike contains additional false and misleading statements, which the Board accepted as gospel truth, then reiterated in its October 2, 2008 Decision

- B About 900 feet of the Chickasha Line between the removed Shields Spur turnout at MP 540.15, and near MP 540.35, were removed;**
- C. Several hundred feet of the Chickasha Line near Lee Street (near MP 540 8), were removed, to facilitate construction of a culvert under the line. Construction of the portion of the culvert that was directly under the Chickasha rails, was completed several months ago (circa June, 2008). To date the rails have not been replaced.**
- D The turnout that connected the Chickasha Line with the adjacent Union Pacific Line via a crossover track near MP 540 8, was removed, to facilitate construction of the aforementioned culvert. This turnout has not been replaced. Removal of this turnout disconnected the middle segment of the Chickasha Line from the National Rail System**
- E. The joint bars and other track connectors near Boardman's turnout near MP 541.75, were removed, and the rails were cut in several places**
- F. Approximately 15 feet of track was removed near MP 541.80, thereby disconnecting the portion of the Chickasha line that lies between MP 540.8 and 541 80, (and Boardman's spur) from the National Rail System.**
- G A diamond that permitted the Packingtown Lead to cross the Chickasha Line near MP 542.8 (immediately west of where the Chickasha line crosses Agnew Avenue), was removed, as was an additional 60 feet or so of Chickasha line. Removal of the diamond and Chickasha line track on both sides of the former diamond, disconnected the portion of the Chickasha Line that lies to the east of MP 542.8, from the National Rail System.**
- H. A signal mast was installed on the west side of Agnew Avenue, in the middle of where the Chickasha track had been, thereby preventing passage on the Chickasha Line past this point.**

4. On July 15, 2008, the BNSF Railway Company ("BNSF") filed a Petition for Declaratory Order ("Petition"), asking the Surface Transportation Board ("Board") to institute a declaratory

order proceeding for the purpose of:

A. Declaring that BNSF's proposed abandonment and removal of that portion of its Chickasha Line that lies between MP 539.96 and MP 540.15 ("Eastern Segment"), which is located in Oklahoma County, OK, constitutes an unregulated 'relocation' of, rather than an abandonment of, a portion of its Chickasha line;

B. Declaring that BNSF's proposed abandonment and removal of that portion of its Chickasha Line that lies between MP 540.15 and MP 541.69 ("Middle Segment"), which is located in Oklahoma County, OK, constitutes an unregulated 'relocation' of, rather than an abandonment of, a portion of its Chickasha line;

C. Declaring that the United States District Court for the Western District of Oklahoma ("District Court"), does not have the jurisdictional authority to enjoin BNSF from attempting to implement its proposed "relocation projects," without prior Board approval

5. In its Declaratory Order Petition, BNSF states that it intends to institute an abandonment proceeding at some unspecified future date, to abandon that portion of its Chickasha Line that lies between MP 541.69 and 542.91, which is located in Oklahoma County, OK. Petition at 8.

6 On August 5, 2008, Kessler filed Comments. Included with Kessler's Comments was a Verified Statement of Joseph T. Merry, General Manager of Boardman, Inc., a shipper with a rail spur on the Chickasha Line at MP 541.75.² Mr. Merry makes it abundantly clear that Boardman desires to utilize rail freight service, and explained that the reason Boardman had not requested rail service for the past several years, was because of the abysmal service BNSF had offered following the merger of the Burlington Northern with the AT&SF.

7. In his Comments, Kessler points out that the portion of the Chickasha Line that is the subject of this proceeding, was (prior to BNSF's salvaging of the Line, starting in December, 2007) connected to the National Rail System at three points: On the eastern end, near MP

² In paragraph 16 of Mr Merry's V S , Mr Merry stated Boardman's switch was "near MP 541 5 " On page 10 of BNSF's August 25, 2008 Amendment to Petition, BNSF stated Boardman's switch is actually located at MP 541 75

540.15, where the Shields Spur intersected the Chickasha Line near Shields Blvd; In the middle, near MP 540.8, where the Chickasha Line connected to the adjacent Union Pacific line via a crossover track, On the western end, at MP 542.91, or just west of where the Packingtown Lead crossed the Chickasha Line via a diamond, near MP 542 8, or just west of Agnew Avenue.

8. On August 25, 2008, BNSF filed an Amendment to Petition (“Amendment”). In its Amendment, BNSF correctly stated that Kessler’s civil Complaint against BNSF had been dismissed by the U S. District Court for the Western District of Oklahoma. Dismissal of the Complaint mooted BNSF’s request to have the Board rule that the court does not have the jurisdictional authority to enjoin BNSF from violating a Board order. (The Complaint was dismissed owing to the fact that the Board order Kessler was asking the court to enforce, was rendered moot by the Board’s June 5, 2008 decision rejecting BNSF’s NOE as void *ab initio*.)

9. On September 3, 2008, Kessler filed his Reply to BNSF’s Amendment to Petition, a Motion to Compel and a Motion to Cease and Desist.

10. In Kessler’s Reply to BNSF’s Amendment to Petition, Kessler pointed out that:

- A. On p. 11 of BNSF’s Amendment, BNSF **misrepresents** that the Shields Spur turnout had not been removed. The photographic evidence submitted by Kessler in the Abandonment Exemption (see Tom Elmore’s March 20, 2008 Verified Statement, filed in the Abandonment Exemption, and attached as Exhibit 2 to BNSF’s Motion to Strike), clearly shows that the Shields Spur turnout no longer exists.
- B. On p.11 of its Amendment, BNSF states that it did not sanction removal of the crossover track connecting the Chickasha Line with the Union Pacific Line near MP 540.8. In its February 22, 2008, at p.4, and May 20, 2008, at p.4, decisions in *Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, STB Docket No. AB-103 (Sub-No. 21X), the Board made it clear, a rail carrier is ultimately responsible for ensuring that its rail assets remain in place, and the Board made it clear that a rail carrier is ultimately responsible for the cost to replace any rail assets unauthorizedly removed.
- C Attached to its Amendment as Exhibit 3, is an undated photograph that BNSF states

depicts the crossover track near MP 540.8 on the BNSF Chickasha line. Since the photograph was undated, was unsupported by a verified statement, and did not accurately depict the crossover track near MP 540 8, Kessler asked the Board to strike this exhibit from the record

- D. On p.12 of its Amendment, BNSF states that rail access to Boardman has not been permanently severed from the west. BNSF acknowledges that a signal mast has been erected in the middle of where the Chickasha tracks had been, and acknowledges that a portion of the Chickasha rail has been removed.
- E. On p.12 of its Amendment, BNSF further represents that providing rail service to Boardman from the west (via the Western Segment,) “would be more economical and operationally efficient than the routing Kessler has chosen ” Kessler **has not chosen** a particular route to access Boardman. Kessler, in his Comments, identified four possible ways to access Boardman, one of which was “from the west.” Accessing Boardman exclusively “from the west,” without granting Boardman trackage rights over BNSF’s Packingtown Lead and Red Rock Subdivision lines, (in order to access Union Pacific’s line where it connects with BNSF’s line in east Oklahoma City), deprives Boardman of the access it has had to Union Pacific’s line at the MP 540.8 crossover track. Boardman having access to Union Pacific is very important to Boardman, since, as discussed below, BNSF’s service continues to be abysmal
- F. On p.6 of its Amendment, BNSF states that by rerouting **overhead traffic** previously routed over the **Middle Segment**, onto the Packingtown Lead, **local service** to the Producers Co-Op and Mid-States Lumber Company (both of which are located on the **Eastern Segment**), has been preserved. BNSF’s logic in making this statement eludes Kessler. What does **overhead traffic** on the **Middle Segment** have to do with **local service** on the **Eastern Segment**? And how does refurbishing the Packingtown Lead improve local service to Producers Co-Op and Mid-States Lumber Company, neither of which are even remotely near the Packingtown Lead?
- G. On p 6 of its Amendment, BNSF attempts to justify its decision to reroute overhead traffic onto the Packingtown Lead from the Middle Segment, by stating “moving the

former right-of-way 200 feet to the south would have been much more difficult from an engineering standpoint and would have involved destroying a public baseball field and erecting crossings over several city streets.” BNSF did not provide any insight as to why it would have been more difficult from an engineering standpoint. More significantly, BNSF uttered another falsehood when it stated a public baseball field would have been destroyed. There are no public baseball fields in the portion of the Middle Segment where ODOT proposes to build its freeway.

- H. On p.6 of its Amendment, BNSF incorrectly states that BNSF’s proposed relocation projects would adversely affect only two shippers. Given what BNSF proposes to do, only one shipper will be adversely affected. **Boardman.** Under BNSF’s proposal, Boardman would permanently lose its access to rail service. It does not appear that Producers Co-Op and Mid-States Lumber, the two shippers BNSF refers to, will be adversely affected by BNSF’s proposed activities, since BNSF is proposing to continue to provide rail service to these two shippers.
- I. On p.7 of its Amendment, BNSF argues that the Board does not have jurisdiction over highway projects, it is not the responsibility of the Board to assess the propriety of building a highway, and the Board has no authority to review the proposed alignment of a proposed highway. Kessler stated he agreed with these BNSF arguments. However, Kessler also stated that when a proposed highway alignment impacts a line of railroad, the Board’s jurisdiction is invoked
- J. On p.7 of its Amendment, BNSF correctly states that the rerouting of **overhead traffic** is within the managerial discretion of a railroad and does not require Board approval. Kessler agrees, BNSF’s decision to reroute its overhead traffic onto the Packingtown Lead, versus the Middle Segment of the Chickasha line, is not subject to Board review. Kessler then opined that since the Stillwater Central Railroad (“SLWC”) never had authority to operate on the Middle and Western Segments of the Chickasha Line, SLWC’s use of the Packingtown Lead for its overhead traffic, rather than the Middle and Western Segments of the Chickasha Line, merely brought SLWC’s operations within the ambit of its authority. Kessler then pointed out that the only way SLWC can access the Red Rock Subdivision line at MP 540.15, is over the

portion of the Chickasha line that lies between MP 539.96 and 540.0, and the only way SLWC can access the Chickasha line that lies west of MP 542.91, from the Packingtown Lead, is over the portion of the Chickasha line that lies between MP 542.0 and MP 542.91

K. On p.8 of its Amendment, BNSF makes the following statement

“Moreover, the relocation of the Middle Segment does not affect service to local shippers since there are no shippers located on that 1.54-mile segment of track.”

L. Kessler pointed out that in delineating the boundaries of the Middle Segment, BNSF was careful to make the cut mark at MP 541.69, which is at the intersection of the Chickasha line with the eastern side of S. McKinley Avenue. Boardman’s plant is on the west side of S. McKinley Avenue. By careful selection of its cut mark, BNSF could truthfully make the statement that no shippers were located on the Middle Segment. However, the portion of its statement that states no local shipper would be affected by relocating the Middle Segment, is not truthful. Boardman’s spur is at MP 541.75, or about 300 feet west of the Middle Segment cut mark. If the Chickasha line is abandoned east of MP 541.69, there would only be 300 feet of track left east of / past Boardman’s turnout. Boardman ships 20+ 200-foot long units per year. These 200-foot long units require the use of four flat cars. If, prior to delivering a string of rail cars to Boardman, the carrier must first remove the rail cars that are on Boardman’s spur, then the tracks past Boardman’s spur must be long enough to accommodate whatever cars are on Boardman’s spur. Boardman’s spur tracks are about 600’ long. Therefore, at a minimum, there should be at least 600 feet of track past Boardman’s turnout. And if the switching carrier does not wish to block McKinley Avenue while it is shuffling cars into / out of Boardman, there needs to be 700 feet of track on the east side of McKinley Avenue, to accommodate whatever cars are on Boardman’s spur, plus the length of a locomotive. Anything less than 700 feet of track on the east side of McKinley Avenue, would adversely affect a switching carrier’s ability to service Boardman.

11. In Kessler’s Motion to Compel and Motion to Cease and Desist, Kessler stated that:

- A. Railcar HTTX 93507 had been way-billed to Kessler, to be delivered to Boardman's spur, and that BNSF refused to deliver this railcar to Boardman's spur;
- B. Salvaging of the Chickasha line between MP 541.0 and 542.91 continues.

12. In Kessler's Motion to Compel, Kessler asked the Board:

- A. To issue an order compelling BNSF to replace all track and all track infrastructure that has been removed from the Chickasha line between MP 539.96 and MP 542.91;
- B. To issue an order compelling BNSF to deliver railcar HTTX 93507 to Boardman's spur,
- C. To issue an order compelling BNSF to pay to Kessler monetary damages for each day Kessler has been deprived of the use of his locomotive, which is on railcar HTTX 93507; and
- D. To issue an order compelling BNSF to pay all demurrage charges associated with railcar HTTX 93507.

13. In Kessler's Motion to Cease and Desist, Kessler asked the Board:

- A. To issue a Cease and Desist Order, directing BNSF, SLWC, and their agents, employees, contractors, and all entities acting with, or without, BNSF or SLWC authority, to cease and desist from all further activities on the Chickasha Line between MP 539.96 and MP 542.91, which in any way would diminish the rail assets associated with this portion of the Chickasha Line; and
- B. To issue a Cease and Desist Order directing BNSF to cease and desist from failing to deliver railcar HTTX 93507 to Boardman's rail spur.

14. On September 24, 2008, BNSF filed a Motion to Strike, asking the Board to strike Kessler's Reply to BNSF's Amendment, and to strike Kessler's Motions to Compel and Cease and Desist.

KESSLER'S REPLY TO BNSF'S MOTION TO STRIKE

15. In its Motion to Strike, BNSF made the following **false or misleading statements**:

A. On p. 13, BNSF made the following statement "Mr. Merry refused to accept the shipment stating that the car was ordered for political reasons Fn6 " The Board reiterated this false statement in its October 2, 2008 Decision, accepting this false statement as gospel truth.

1 Mr. Craig Morgan, BNSF's regional economic development person, visited Mr. Merry. During the course of their conversation, Mr. Merry responded "This matter has become political " Mr. Merry was referring to the fact that ODOT's proposed Crosstown freeway project has become politically controversial. [Four nearby Oklahoma City suburbs, Norman, El Reno, Chickasha and Shawnee (the hometown of the Oklahoma Governor), and the Shawnee Chamber of Commerce, have recently passed resolutions opposing the abandonment of the Union Station rail yard. Copies of these resolutions are attached.] BNSF's counsel was not privy to this conversation BNSF's counsel failed to support this statement with a verified statement from Mr. Morgan BNSF's counsel maliciously, and with intent to defraud the Board, misstated Mr. Merry's innocent comment regarding how politically unpopular ODOT's proposal to raze the Union Station rail yard, has become. A verified statement from Mr. Merry regarding his conversation with Mr. Morgan, will be sent to the Board as soon as Mr Merry returns from his vacation.

ii. On p.13 of its Motion to Strike, BNSF stated that it had "offered to deliver the shipment to Boardman by transload." What BNSF failed to disclose to the Board, is that Kessler's response to this offer was: Kessler would accept deliver via transload **only if** BNSF agrees to pay the full costs associated with the transload, and further agrees to pay the full costs associated with transloading Kessler's locomotive onto a railcar at some time in the future, if Kessler elects to ship his locomotive to some other location.

- B. On p.5, BNSF made the following statement: “Kessler states that he has suggested four alternative **highway** routes.” In Kessler’s **Comments**, in ¶35, Kessler identified four alternative **rail line** routes, any one of which would ensure Boardman remained connected to the National Rail System. Kessler **has never filed a comment** suggesting alternative routes for ODOT’s proposed highway
- C. On p. 5, BNSF stated Kessler’s Reply to BNSF’s Amendment Petition was an impermissible reply-to-a-reply. BNSF’s Amendment Petition was not a reply, it was a new pleading. Consequently, Kessler has a right to reply to BNSF’s Amendment Petition, and Kessler’s Reply to that Amendment would not constitute a reply-to-a-reply
- D. On p. 6, BNSF alleges Kessler’s Reply is iterative. Kessler’s Reply addressed issues presented in BNSF’s Amendment, and were not iterative.
- E. On p. 6, BNSF stated: “Kessler proudly boasts in the Kessler Comments that he filed 14 times in the OK Abandonment Proceeding.” BNSF’s Motion to Strike was directed at Kessler’s Reply to BNSF’s Amendment, not Kessler’s Comments. It was BNSF that counted how many filings Kessler had made in the OK Abandonment Proceeding, not Kessler. Kessler merely pointed out that had BNSF not provided the Board with false and misleading information, that proceeding would have been resolved without the need for Kessler to file 14 pleadings.
- F. BNSF habitually accuses Kessler of abusing the Board’s Rules of Practice (BNSF’s Motion to Strike at 4, 6 and 7), without citing either the Rule it believes Kessler has violated, or the portion of any of Kessler’s pleadings, that it believes is not permitted by the Rules. BNSF, on the other hand, habitually violates / ignores the Board’s Rules, by filing false and misleading statements, in violation of Rules 1103.21 and 1103.27, and by uttering false, scandalous, immaterial and irrelevant accusations about Kessler, thereby violating Rules 1103.25 and 1103 27

16. Missing Shields Spur Turnout. On p.7 of its Motion to Strike, BNSF reiterated its false and misleading statement that the Shield’s Spur turnout has not been removed. The top picture in BNSF’s Exhibit 2, which is a photograph taken by Tom Elmore on February 26, 2008,

clearly shows the Shields Spur track on the right, and the turnout that connected the Chickasha Line to the Shields Spur at MP 540.15. The bottom photograph, which is a photograph taken by Tom Elmore on March 17, 2008, clearly shows the turnout has been removed, and an additional 100 feet or so of Chickasha Line has been removed. The bottom photograph also clearly shows the Shields Spur presently is directly connected to the Chickasha Line, rather than connected to the Chickasha Line via a turnout. Given the fact that Kristy Clark has misrepresented to the Board twice (on p.11 of BNSF's Amendment, then again on p. 7 of BNSF's Motion to Strike) that the Shields Spur turnout is still in place, and given the fact that BNSF placed into the record Mr. Elmore's photographs clearly showing the Shield Spur turnout has been removed, Kessler can only conclude that Ms. Clark either needs a new pair of glasses, or does not know what a turnout is, or perhaps both. (A turnout commonly is known as a switch, and connects two tracks together.)

17. On p.7 of its Motion to Strike, BNSF states that if the Shields Spur turnout had been removed, it would no longer be possible to serve Producers Co-Op. Since the Shields Spur is now directly connected to the Chickasha Line, rather than connected via a turnout, removal of the turnout, coupled with directly connecting the Shields Spur to the Chickasha Line, has not impeded BNSF's ability to serve Producers Co-Op. Removal of the Shiels Spur turnout, coupled with the removal of hundreds of feet of the Chickasha Line near MP 540.20, **has made it impossible for BNSF to provide service to Boardman.**

18. **Crossover Track.** On pp.7-8 of its Motion to Strike, BNSF reiterated its false statement that Kessler contended that BNSF has removed the crossover track connecting the Chickasha Line to UP's main line near MP 541.0.

19. In ¶34 C of Kessler's Comments, Kessler made the following statement

"C. The Chickasha line was / will be connected to the Union Pacific line (and thus to the National Rail System) at MP 541.0 via a crossover track. See Exhibit D, which is a Maps.live aerial graphic depicting the line in 2007, which graphic is appended to Boardman's V.S. The Chickasha line turnout to this crossover track is still in place, as is most of the crossover track. The only portion of the crossover track that has been removed, is the turnout that connected the crossover track to the Union Pacific line."

20. Attached to Kessler's Motion to Compel, are two graphics, showing the Chickasha Line

before and after the Chickasha Line had been unlawfully salvaged. The “After” graphic clearly shows most of the crossover track in place, and clearly shows (inside a small circle) that the turnout has been removed.

21. Attached to BNSF’s Motion to Strike as Exhibit 3, were three photographs taken by Jim Hatt, depicting the crossover track as of August 11, 2008. These photographs appear to accurately depict the crossover track as of August 11, 2008. Had BNSF appended these photographs to its Amendment Petition, rather than the photograph it did append, the Board would have been spared from reading several pages of filings discussing this issue. (Once again, Ms. Clark seems to be confusing the terms “track” and “turnout.” Kessler’s comments were about the missing “turnout.” Ms. Clark discussed the existing “track,” not the missing “turnout.”)

22. **Baseball Field.** On p.6 of its Amendment, BNSF attempts to justify its decision to reroute overhead traffic onto the Packingtown Lead from the Middle Segment, by stating **“moving the former right-of-way 200 feet to the south would have been much more difficult from an engineering standpoint and would have involved destroying a public baseball field and erecting crossings over several city streets.”**

23. In ¶17 of Kessler’s Reply, Kessler stated:

“BNSF did not provide any insight as to why it would have been more difficult from an engineering standpoint. More significantly, BNSF uttered another falsehood when it stated a public baseball field would have been destroyed. There are no public baseball fields in the portion of the Middle Segment where ODOT proposes to build its freeway. As for crossings, the Middle Segment presently has grade-separated crossings, while the Packingtown Lead has at-grade crossings.”

24. On p. 8 of its Motion to Strike, BNSF stated:

“BNSF did not say the highway would cross the baseball field, but rather that the relocated BNSF line would cross the field, if placed where Kessler would like it located. Fn 2. BNSF suggests that next time Kessler is trespassing on BNSF property searching for the non-missing crossover tracks he should venture down SW 9th Street to the corner of S Western Ave and take in a ball game on the public field.”

25. BNSF did not state where the base ball field it was making reference to, is located. Since BNSF made the statement, "Kessler . should venture down SW 9th Street to the corner of S Western Ave and take in a ball game on the public field.," perhaps the baseball field BNSF was making reference to is located near the intersection of S. Western Avenue and SW 9th Street. S. Western Ave is approximately 1,000 feet west of Shartel Avenue, or somewhere to the west of the edge of the Live Search Map BNSF included in its Motion to Strike Exhibit 3 If S Western Avenue is just to the west of the Live Search Map BNSF included in its Exhibit 3, then, since S Western Avenue is 1,000 feet west of Shartel Avenue, the closest the UP line shown on BNSF's Live Search Map comes to the intersection of SW 9th Street and the edge of BNSF's Live Search Map, is about 800 feet. ODOT's plans for its I-40 Crosstown Freeway indicate the proposed freeway will be immediately south of, and will parallel, the UP line. ODOT's Crosstown Freeway plans indicate the right-of-way of the freeway will be about 300-feet wide. From this rather basic information, it would appear that the baseball field BNSF may be making reference to, is some 500 feet southwest of the proposed Crosstown Freeway at the closest point. Based on this rather simple, elementary calculation, there does not appear to be any factual basis for BNSF's statement that **"moving the former right-of-way 200 feet to the south ... would have involved destroying a public baseball field."** Unless and until BNSF presents some evidence to support its statement, Kessler will stand by his statement that: **"There are no public baseball fields in the portion of the Middle Segment where ODOT proposes to build its freeway."**

26. In Kessler's Reply to BNSF's Amendment Petition, Kessler suggested counsel for BNSF should take the Heartland Flyer to Oklahoma City, then walk the Line. Doing so would make it more likely counsel for BNSF would know when it is uttering a falsehood. If counsel for BNSF were to visit Oklahoma City, Kessler would invite BNSF counsel to join him for a baseball game at Wheeler Park, where they could enjoy watching, though not listening, to the baseball game. (Trucks passing along the new I-40 alignment at 70 mph, would likely drown out the sounds of the game.)

27. **Western cut point for the Middle Segment.** On p.9 of its Motion to Strike, BNSF did a number of computations in an effort to refute Kessler's argument that abandoning the Middle Segment would adversely affect a rail carrier's ability to service Boardman. BNSF's computations are flawed in the following respects:

- A Boardman's switch is about 300 feet west of McKinley Ave (the terminus for the Middle Segment). BNSF misrepresented this switch is 840 feet from McKinley Ave. If counsel for BNSF were to bring their tape measure with them while visiting Oklahoma City, counsel would be able to ascertain that it is about 700 feet along the Chickasha right-of-way between McKinley and Indiana (the next street west of Boardman). Boardman's switch lies about half-way between McKinley and Indiana, or about 300 feet west of McKinley.**
- B The spur which services Boardman, actually passes through Boardman's property, crosses McKinley, then terminates some distance east of McKinley, on a parcel east of Boardman's parcel. The distance from where the spur enters Boardman's property adjacent to the Chickasha right-of-way, to the end of the spur, is approximately 600 feet, 300+ feet of which is on Boardman's property. Thus, there is approximately 500 feet of private track upon which rail cars could be stored.**

28. On p.9 of BNSF's Motion to Strike, BNSF misrepresented that Kessler stated Boardman's sole rail needs are outbound shipments. Boardman receives hundreds of tons of steel plate per year, which it fabricates into vessels. If reliable rail service were available, Boardman would receive inbound rail shipments of steel plate, and would ship fabricated goods outbound via rail.

29. On p. 10 of its Motion to Strike, BNSF stated that "if the track to the east of Boardman is inadequate, ... cars could temporarily be stored on the Packingtown Lead which is only a few blocks from the Boardman facility." The Packingtown Lead is actually 10 blocks south of Boardman's facility. The Packingtown Lead is about 1.5 rail miles from Boardman's facility, which Kessler would argue is more than "a few blocks from the Boardman facility." If one were to study where the tracks go, one would realize that it would take a train crew more than an hour to go from MP 542.91 on the Chickasha Line (where the Packingtown Lead intersects the Chickasha Line), to MP 541.7, where Boardman's switch is located, couple up to cars in Boardman's facility, then retrace its path back down to the Packingtown Lead, then back down the Packingtown Lead to a location where Boardman's rail cars could be stored temporarily, then return to Boardman with new railcars. BNSF's other proposed alternative, would involve making two trips from a rail yard more than 5 miles from Boardman's facility: Once, to remove loaded rail cars from Boardman, then a second time, to bring empty rail cars to Boardman. This

alternative would be even more impractical than the first alternative discussed

30. Signal Mast at Agnew Avenue. On p. 10 of its Motion to Strike, BNSF misrepresented that the Western Segment of the Chickasha Line “has been dormant for 5 years” (Emphasis in original.) If counsel for BNSF had studied track maps for the Packingtown Lead prior to the Packingtown Lead being rehabilitated in 2007, counsel would have noted that the Packingtown Lead **did not connect to the Chickasha Line at Agnew Avenue (MP 542.8).** The Packingtown Lead **only crossed the Chickasha Line via a diamond.** Prior to 2007, the only way Stillwater Central could get to Lawton, OK from Oklahoma City, was via the Chickasha Line. It was not possible to get from the Packingtown Lead to the Chickasha Line at MP 542.8, since the two lines merely crossed each other via a diamond. One aspect of the Packingtown Lead rehabilitation project, was to insert a turnout in the Chickasha Line at MP 542.85, then connect the Chickasha Line to the Packingtown Lead via this newly installed turnout. This is clearly depicted on Kessler’s “Before” and “After” graphics attached to Kessler’s Reply to BNSF’s Amendment Petition. This also explains why Gail Poole photographed a Stillwater Central train traveling west on the Chickasha Line near McKinley Avenue on February 6, 2006, which photograph is a part of the Abandonment Proceeding, and which is incorporated by reference herein. Had counsel for BNSF checked her facts, she would have learned that prior to the installation of the turnout in the Chickasha Line at MP 542.85, connecting the Chickasha Line to the Packingtown Lead, Stillwater Central operated daily east and west bound trains over the Chickasha Line, including those portions between MP 539.96 and MP 542.91. The portion of the Chickasha Line between MP 541.0 and MP 542.91 became dormant only a few months ago, when the rehabilitated Packingtown Lead was placed into service, and Stillwater Central began using the Packingtown Lead, rather than the Middle and Western Segments of the Chickasha Line.

31. Scope of this proceeding. On p.11 of its Motion to Strike, BNSF argued “To the extent any tracks were removed from the rail line located between mileposts 541.69 and 542.9 (**“Western Segment”**), that is a matter outside the scope of this proceeding.” Kessler would respectfully disagree.

32 BNSF has requested authority to relocate the Middle and Eastern Segments of the Line If the proposed relocation was “purely a relocation of an existing line under circumstances **involving no change in the service rendered by the applicant to the public,**” then the Board

would have no jurisdiction over the proposed relocation ” *Public Convenience Certificate to P. N & N Y R R*, 67 I.C.C. 252 (1921). In *Missouri Pac R Co Trustee Construction*, 282 I.C.C 388 (1952), the Commission adopted a five part test in determining whether it had jurisdiction over a relocation project. One component of that 5-part test, was whether the proposed relocation would affect service to shippers.

33 Prior to the Board ruling that BNSF does not need Board authority to implement its proposed relocation projects, the Board must find that the proposed relocation projects would involve **“no change in the service rendered by the applicant to the public.”** Boardman is a shipper on the Line Kessler has presented credible evidence that BNSF’s salvaging of portions of the Line have resulted in a change **“in the service rendered by the applicant to the public” (Boardman)**. Kessler argues that the impact of BNSF’s proposed abandonment (relocation) of the Middle and Eastern Segments, on the Western Segment, is very much within the scope of this proceeding, since if abandonment (relocation) of the Middle or Eastern Segment would adversely affect service to Boardman, then there would be a **“change in the service rendered by the applicant to the public.”** Since access to Boardman’s facility from the West, via the Western Segment, has been severed, the Middle Segment is needed to provide service to Boardman. If the Middle Segment were to be abandoned, then there would be no way to provide Boardman with rail service. The truth of this statement, has been demonstrated by BNSF’s refusal to deliver railcar HTTX 93507 to Boardman BNSF will not deliver railcar HTTX 93507 to Boardman, because it presently is physically impossible to deliver the railcar to Boardman, due to the Western Segment being unlawfully severed from the National Rail System at MP 542.8.

34. **Railcar HTTX 93507.** On p.12 of its Motion to Strike, BNSF stated: **“The Kessler Shipment is not a legitimate shipment.”** How Kessler’s shipment of a railcar to Boardman **“is not a legitimate shipment,”** is unexplained. Railcar HTTX 93507 was interchanged to BNSF, for delivery to Boardman. The freight bill was prepaid. BNSF personnel inspected the rail car prior to accepting the rail car. It was fully disclosed from the very beginning, that the commodity on the rail car was a locomotive. BNSF personnel determined the appropriate commodity code, and determined the applicable tariff.

35. On p.12 of its Motion to Strike, BNSF stated: **“While en route to the Boardman facility, BNSF determined that rail car HTTX 93507 was defective and in need of repair.”** The railcar was supplied by BNSF. Prior to BNSF accepting this rail car for delivery, the rail car, and its

load, were carefully inspected (a two-hour inspection) by two BNSF employees. These two BNSF car inspectors, prior to granting permission for this rail car and its load being placed on BNSF's interchange track, determined that this rail car was in good working order, and determined the load on the car, was properly secured. Since BNSF provided the rail car, BNSF was responsible for making all repairs. The relevance of this statement by BNSF eludes Kessler.

36. When Stillwater Central refused to deliver railcar HTTX 93507 to Boardman, Eric Strohmeyer, at my behest, had a telephone conversation with Mr. Pena, General Manager of Stillwater Central. Mr. Strohmeyer contemporaneously reduced to writing a summary of that telephone conversation. He e-mailed a copy of his summary to Mr. Pena. The e-mail attached to BNSF's Motion to Strike in Exhibit 4, is the response Mr. Strohmeyer received. On the bottom of Karl Morell's e-mail, is a disclaimer which states Mr. Morell's e-mail to Mr. Strohmeyer cannot be disseminated, distributed, or copied. Evidently this disclaimer was not intended to apply to this e-mail, since BNSF has made this e-mail a part of the record in this case, and consequently, this e-mail can be viewed, copied or distributed to anyone in the world. Since BNSF has made this conversation with Mr. Pena a part of the record, Kessler has appended hereto a copy of the e-mail Mr. Strohmeyer sent to Mr. Pena.

37. Railcar HTTX 93507 is integrally related to this proceeding, since BNSF's refusal to deliver this railcar to Boardman, demonstrates unequivocally that BNSF's proposed abandonment / relocation of the Eastern and Middle Segments, **has in fact adversely affected a shipper on the Line: Boardman.**

38. On p. 13 of its Motion to Strike, BNSF argued "neither Kessler nor Boardman may lawfully receive a rail shipment" on Boardman's spur. Kessler finds this statement to be perplexing, since on p 9 of its Motion to Strike, BNSF makes a point of stating Boardman has over the past few years, received three rail cars on its spur. In addition, Mr. Merry's Verified Statement clearly states that Boardman has received numerous railcars on its spur. BNSF also made the unsubstantiated statement that Boardman does not own its spur. Boardman has owned and used this spur for over 50 years (since the early 1930's). If the industry track agreement Boardman had with BNSF has lapsed, then it is BNSF's responsibility to present an industry track agreement to Boardman, so that an agreement can be executed.

39. Boardman has made a "reasonable demand for service." The 3rd Circuit has stated:

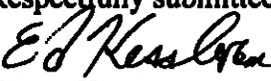
“The statute [49 U.S.C. §10102(5)] does not further define the term “common carrier,” but the general definition is “[a] carrier that is required by law to transport passengers or freight, **without refusal**, if the approved fare or charge is paid.” *New York Susquehanna v. Jackson*, 500 F3d 238, 250 (3rd Cir. 2007) (Emphasis added.) BNSF is a common carrier. The applicable tariff has been paid BNSF “is required by law to transport [Kessler’s] freight (locomotive), without refusal.”

40. WHEREFORE, Kessler would ask that the Board DENY BNSF’s Motion to Strike in its entirety.

41. I, Edwin Kessler, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Kessler’s Reply to BNSF’s Motion to Strike.

Executed on: October 13, 2008

Respectfully submitted,


Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2008, a copy of the foregoing Kessler’s Reply to BNSF’s Motion to Strike, was mailed by first class mail, postage prepaid, to Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131-2828, and a copy was E-mailed to Fritz Kahn, 8th Floor, 1920 N Street, N.W., Washington, DC 20036-1601.


Edwin Kessler

M.D. Monaghan, O.D.
2920 Old Orchard Road
Garland, TX 75041

February 8, 2004

Mr Tom Elmore, Executive Director
North American Transportation Institute
PO Box 6617
Oklahoma City, OK 73153-0617

Dear Mr Elmore

Your interest in preserving intact the property associated with the Oklahoma City Union Station is a worthwhile endeavor. During my fifty years in professional life I have had the pleasure and privilege of serving avocationally on several boards and commissions having to do with public transportation. Probably the most important and challenging example was five years as a member of the board of directors of Dallas Area Rapid Transit, known as DART.

Associated with this activity was a scenario that bears a close relationship to your efforts toward maintaining the integrity of your Union Station. Early in the 1970s I received a call at my office late one afternoon from a management official of the group that was developing the Hyatt Regency Hotel in downtown Dallas. The location they had selected was just across the tracks from Dallas Union Station, which had been closed in 1969 with the cessation of rail passenger service. In order to develop the hotel in an attractive manner it was necessary that Union Station be part of the project. They felt, however, that it should be a joint development with the City for various reasons as the more far sighted planners envisioned its ultimate use for regional public transportation.

This led to a proposal to the Dallas City Council for the City to purchase the station property from the railroads and lease it to the hotel developers who would, in turn, sublease it for shops or offices. The council agreed to put the proposal up for a vote which was the subject of the 11th hour call I received that afternoon. The vote was scheduled to be taken the next afternoon, and they wanted me to draft letters to the Council on behalf of two civic groups with whom I was associated recommending the purchase. My wife and I stayed up all night typing individual letters from both organizations to each individual council member. It was before the day of word processors and photocopiers. It came down to the wire and the proposal passed by one vote the next day.

It turned out to be one of the most visionary and productive decisions the Council ever made. Not long after that Dallas and Fort Worth jointly bought the former Rock Island Railroad line between the two cities. Close on the heels of that the DART referendum was passed which included plans for both commuter rail service on the line owned by the cities and for an extensive electric light rail system -- which immediately brought into clear focus the wisdom of acquiring Union Station as an intermodal terminal for the DART system, with the commuter trains also serving D/FW Airport.

Unfortunately, however, when the plans were drawn up for revitalization and renovation of the station, the need for track capacity was underestimated. Originally there were eleven tracks serving the passenger trains. The original restructuring done by the City reduced this to three tracks. As soon as the plans DART had formulated were laid on the table it was clear that two additional tracks had to be restored for the electric light rail line as the commuter trains to Fort Worth would need the three existing tracks. Also, Amtrak had begun service to Dallas which also had to share one of the three tracks with its trains to Chicago and San Antonio.

Work was begun and the two tracks were restored, which was a bit complex, since two bridges over streets going to the hotel, originally not present, had to be widened. This was accomplished and in 1996 both the commuter and light rail service was begun -- which has been at the top of the success stories in the transit world. Plans, however, are in the works to add additional commuter rail lines to other outlying suburbs, which will place greater demands on the limited track space. Further addition of tracks would be difficult as additional widening of the bridges would be necessary. The solutions would have been much simpler if planners had looked still farther ahead and anticipated this potential demand, as there are requests coming from all quarters for other communities to be served by DART's fast 65 mph light rail trains.

There is a lesson to be learned here for Oklahoma City as it would be unfortunate for them to make the same mistake, if not a worse one, by removing major portions of the station trackage which might be impossible to replace. Make no mistake -- Oklahoma City people will hear that the city is not large enough for rail transit, ridership will be minimal and buses will be cheaper. We heard all of that in Dallas and experience has proven it to be untrue. Cities are experiencing rapid growth and they soon become too large for slow buses to serve adequately, and there is a reluctance on the part of the middle classes to use buses. Due to the speed and convenience of the trains and the park & ride stations they serve, the trains appeal to both classes who mix compatibly on their way to the workplaces and other destinations.

If Oklahoma City citizens would like to take a peek at what your city could have in a few years, they would do well to visit Dallas, ride the two light rail lines and the commuter line to Fort Worth and then transpose this experience to their own environment thereby joining the multitude of cities that are building or planning rail transit.

Sincerely yours,

(Signed)

Marvin D. Monaghan

Former DART Board Member

Mobility Dallas Council

**RESOLUTION No. 09-005
THE CITY OF EL RENO, OKLAHOMA**

WHEREAS, rail transit stimulates economic development, provides dependable, safe and inexpensive transportation for all, reduces vehicular traffic and congestion, lowers carbon dioxide emissions that contribute to global warming, provides an important means of transportation for military facilities, and greatly improves air quality in metropolitan areas; and

WHEREAS, the Oklahoma City metropolitan area ranks high nationally among other large cities in terms of its widespread geographic area and commuting population and ranks 40th out of 100 as most traffic congested and ranks last out of 50 as best prepared for \$4 per gallon gasoline; and

WHEREAS, the Environmental Protection Agency has recently established stricter standards for ozone concentrations, and Central Oklahoma frequently experiences periods of high ozone levels and will now likely exceed the new federal standards of the Clean Air Act; and

WHEREAS, the Oklahoma City metropolitan area is far behind many other large cities in transportation efficiencies, including Denver, Salt Lake City and Dallas, whose Union Stations are the foundation for their vibrant rail and bus systems and have been successful beyond expectations and have received enthusiastic public support and demand for wider availability; and

WHEREAS, the irreplaceable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network and is the last grand urban passenger rail yard in the West that remains virtually unused today, with all of its original space and much of its essential infrastructure intact, including numerous tracks connecting every corner of the state; and

WHEREAS, the elegantly designed Union Station and its rail yard are a crucial hub to any future public transportation system and are essential to rapid and cost-effective development of a safe, convenient, fuel-efficient and environmentally friendly rail transit system for linking of the state's major towns and cities and Will Rogers World Airport; and

WHEREAS, Union Station's rail yard offers critical linkage and important rail transportation opportunities on existing rail lines for Oklahoma's military bases, including Tinker Air Force Base, whose economic engine is vital to Oklahoma and which the state cannot afford to lose; and

WHEREAS, Union Station's invaluable rail yard is still set for destruction in order to make way for the relocation of the Crosstown Expressway even though other viable route alternatives exist that do not require its destruction; and

WHEREAS, recent rulings by the Federal Surface Transportation Board have cast serious doubt on the suitability of the proposed route of the new Crosstown Expressway; and

Resolution No. 09-005

WHEREAS, pending petroleum shortfalls coupled with the rising cost of auto fuels threaten the economy and security of the state and the nation, and the assumptions made previously concerning the value of the Union Station rail yard and the decision to destroy it are no longer valid or in the best interest of Oklahoma and the country.

NOW, THEREFORE, BE IT RESOLVED:

THAT, the City of El Reno, Oklahoma respectfully requests that The Honorable Brad Henry, Governor of Oklahoma, declare a moratorium on any further work on the relocation of the Crosstown Expressway that could jeopardize any future use of the Union Station rail yard and its associated rail lines, and that the Governor appoint a Special Commission of citizens, public officials, and transportation experts to consider alternative routing for the Crosstown Expressway that preserves the entirety of the Union Station rail yard and its associated rail lines, and that the commission report to the Governor and to the public its findings and recommendations in an expedient manner, and

THAT, the City of El Reno, Oklahoma requests that the Association of Central Oklahoma Governments officially adopt this resolution.

ADOPTED this 5th day of August, 2008.



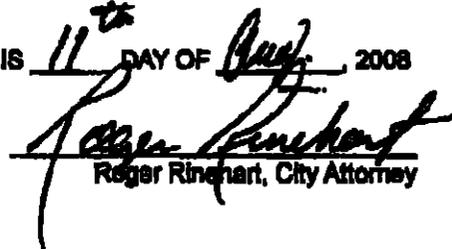
Matt White, Mayor

ATTEST



Lindsay Grigg, Deputy City Clerk
(SEAL)

APPROVED AS TO LEGAL FORM THIS 11th DAY OF Aug., 2008



Roger Reinhart, City Attorney

RESOLUTION No. 2008-12R

A Resolution of the Mayor and Council of the City of Chickasha, Grady County, State of Oklahoma

WHEREAS, rail transit stimulates economic development, provides dependable, safe and inexpensive transportation for all, reduces vehicular traffic and congestion, lowers carbon dioxide emissions that contribute to global warming, provides an important means of transportation for military facilities, and greatly improves air quality in metropolitan areas; and

WHEREAS, the Oklahoma City metropolitan area ranks high nationally among other large cities in terms of its widespread geographic area and commuting population and ranks 40th out of 100 as most traffic congested and ranks last out of 50 as best prepared for \$4 per gallon gasoline, and

WHEREAS, the Environmental Protection Agency has recently established stricter standards for ozone concentrations, and Central Oklahoma frequently experiences periods of high ozone levels and will now likely exceed the new federal standards of the Clean Air Act; and

WHEREAS, the Oklahoma City metropolitan area is far behind many other large cities in transportation efficiencies, including Denver, Salt Lake City and Dallas, whose Union Stations are the foundation for their vibrant rail and bus systems and have been successful beyond expectations and have received enthusiastic public support and demand for wider availability; and

WHEREAS, the irreplaceable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network and is the last grand urban passenger rail yard in the West that remains virtually unused today, with all of its original space and much of its essential infrastructure intact, including numerous tracks connecting every corner of the state, and

WHEREAS, the elegantly designed Union Station and its rail yard are a crucial hub to any future public transportation system and are essential to rapid and cost-effective development of a safe, convenient, fuel-efficient and environmentally friendly rail transit system for linking of the state's major towns and cities and Will Rogers World Airport; and

WHEREAS, Union Station's rail yard offers critical linkage and important rail transportation opportunities on existing rail lines for Oklahoma's military bases, including Tinker Air Force Base, whose economic engine is vital to Oklahoma and which the state cannot afford to lose; and

WHEREAS, Union Station's invaluable rail yard is still set for destruction in order to make way for the relocation of the Crosstown Expressway even though other viable route alternatives exist that do not require its destruction, and

WHEREAS, recent rulings by the Federal Surface Transportation Board have cast serious doubt on the suitability of the proposed route of the new Crosstown Expressway, and

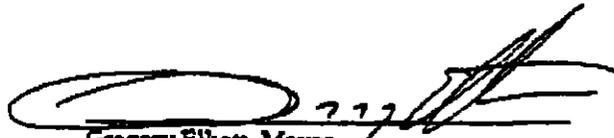
WHEREAS, pending petroleum shortfalls coupled with the rising cost of auto fuels threaten the economy and security of the state and the nation, and the assumptions made previously concerning the value of the Union Station rail yard and the decision to destroy it are no longer valid or in the best interest of Oklahoma and the country

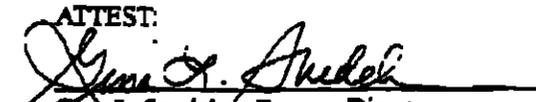
NOW, THEREFORE, BE IT RESOLVED:

THAT, the City of Chickasha, Oklahoma respectfully requests that The Honorable Brad Henry, Governor of Oklahoma, declare a moratorium on any further work on the relocation of the Crosstown Expressway that could jeopardize any future use of the Union Station rail yard and its associated rail lines, and that the Governor appoint a Special Commission of citizens, public officials, and transportation experts to consider alternative routing for the Crosstown Expressway that preserves the entirety of the Union Station rail yard and its associated rail lines, and that the commission report to the Governor and to the public its findings and recommendations in an expedient manner, and

THAT, the City of Chickasha, Oklahoma requests that the Association of Central Oklahoma Governments officially adopt this resolution.

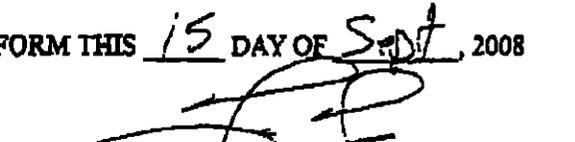
ADOPTED this 15th day of September, 2008.


Gregory Elliott, Mayor

ATTEST:

Gina L. Snedeker, Finance Director



APPROVED AS TO LEGAL FORM THIS 15 DAY OF Sept, 2008

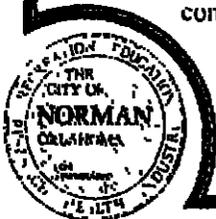

Tom Fraley, City Attorney

Resolution

R-0809-33

A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, REQUESTING THE GOVERNOR OF THE STATE OF OKLAHOMA TO APPOINT A SPECIAL COMMISSION TO CONSIDER FUTURE RAIL TRANSIT OPTIONS IN THE OKLAHOMA CITY METROPOLITAN AREA, FUTURE USES OF UNION STATION AND ITS ASSOCIATED RAIL LINES TO ENHANCE FUTURE RAIL TRANSIT FOR THE STATE OF OKLAHOMA; AND ALTERNATE ROUTES FOR THE INTERSTATE 40 CROSSTOWN EXPRESSWAY.

- § 1 WHEREAS, the replacement of the I-40 Crosstown Expressway through downtown Oklahoma City is critically necessary due to its deteriorated condition, and
- § 2 WHEREAS rail transit can stimulate economic development, provide dependable, safe and inexpensive transportation for all, reduce vehicular traffic and congestion, lower carbon dioxide emissions that contribute to global warming, provide an important means of transportation for military facilities, and greatly improve air quality in metropolitan areas, and
- § 3 WHEREAS, the Oklahoma City metropolitan area ranks high nationally among other large cities in terms of its widespread geographic area and commuting population, ranks 40th out of 100 as most traffic congested, and ranks last out of 50 as best prepared for \$4 per gallon gasoline, according to "Major U.S. Cities Preparedness for an Oil Crisis", a study by Warren Karlenzig, Common Current, March 2008 and
- § 4 WHEREAS, citizens of the central Oklahoma metropolitan area are in need of safe, efficient, and affordable transportation alternatives as opposed to reliance upon personal automobiles in face of rising gasoline prices, and
- § 5 WHEREAS, the Environmental Protection Agency has recently established stricter standards for ozone concentrations which are directly related to automobile usage and in 2006, Central Oklahoma exceeded the maximum allowed ozone level 11 times, almost twice as many times as the previous four years combined and before the new federal standards of the Clean Air Act became law, and
- § 6 WHEREAS, the City of Norman is a signatory of the U.S. Conference of Mayors climate protection agreement and is committed to supporting transportation alternatives which reduce vehicular traffic and congestion and lower carbon dioxide emissions that contribute to global warming, and
- § 7 WHEREAS, the central Oklahoma metropolitan area is behind many other large cities in transportation efficiencies, including Denver, Salt Lake City and Dallas whose Union Stations are the foundation for their vibrant rail and bus systems, have been successful beyond expectations, and have received enthusiastic public support and demand for wider availability, and
- § 8 WHEREAS, the historic and strategically valuable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network linking the state's major towns Tinker Air Force Base, and Will Rogers World Airport and is the last grand urban passenger rail yard in the west that remains virtually unused today with all of its original space and much of its essential infrastructure intact, including numerous tracks connecting every corner of the state, and



- § 9 WHEREAS, the future of rail service in central Oklahoma depends upon having a hub that allows rapid and cost-effective development of a safe, convenient fuel-efficient and environmentally friendly rail transit system for linking the economic engines of Oklahoma's towns, cities and military bases, and
- § 10 WHEREAS, recent rulings by the Federal Surface Transportation Board provide an important opportunity to expeditiously reconsider viable route alternatives for the new Crosstown Expressway that do not require the destruction of Union Station's invaluable rail yard, and
- § 11. WHEREAS, experience shows that any major public infrastructure project requires years, sometimes decades, of planning and foresight, which translates into millions of dollars in additional costs to taxpayers, before opening for service, as well as millions of dollars of additional costs to taxpayers while citizens now urgently seek alternatives to traditional highway travel, and
- § 12 WHEREAS, government at all levels cannot procure adequate funding for new roads and bridges and are years behind on maintenance in many cases, and
- § 13. WHEREAS, pending petroleum shortfalls coupled with the rising cost of auto fuels threaten the economy and security of the state and the nation, and change the assumptions made previously concerning the value of rail travel in the state and the country, and
- § 14 WHEREAS, accommodation of the need for an intermodal transportation hub for the Oklahoma City metropolitan area located in downtown Oklahoma City and the need for Highway replacement through downtown Oklahoma City can be met if the proposed alignment of the Crosstown Expressway be moved 400 feet south of the present planned alignment through the Union Station rail yard

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA

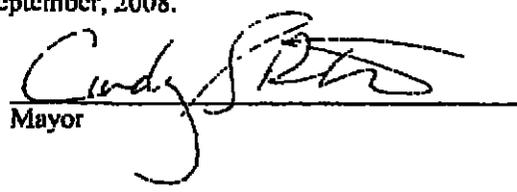
- § 15 WHEREAS, the City of Norman, Oklahoma, supports the efforts of ONTRAC to further investigate cost effective rail options for the State of Oklahoma and encourages the Association of Central Oklahoma Governments and its member cities to give due consideration to joining in the adoption of this resolution
- § 16 BE IT FURTHER RESOLVED THAT, the City of Norman, Oklahoma, respectfully requests that the Honorable Brad Henry, Governor of Oklahoma, convene a Special Commission of citizens, public officials, and transportation experts to consider immediately and expeditiously the future of rail transit options in the Oklahoma City metropolitan area, to study future uses of Union Station and its associated rail lines to enhance future rail transit for the state, to weigh the short and long term benefits of alternative routings of the Crosstown Expressway that would not jeopardize any future use of the Union Station rail yard, and that the commission report to the Governor and to the public its finding and recommendations in an expedient manner, and that until such time, the Governor direct the Oklahoma Department of Transportation to proceed with only those aspects of the Crosstown Expressway that do not affect Union Station's rail yard or connecting rail lines or that limit the State's ability either materially or financially, to implement any alternative routings recommended by the Special Commission

PASSED AND ADOPTED THIS 23rd day of September, 2008.

ATTEST



City Clerk



Mayor

RESOLUTION NO. 6334

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA, REQUESTING THE GOVERNOR OF THE STATE OF OKLAHOMA TO APPOINT A SPECIAL COMMISSION TO CONSIDER FUTURE RAIL TRANSIT OPTIONS IN THE OKLAHOMA CITY METROPOLITAN AREA; FUTURE USE OF UNION STATION AND ITS ASSOCIATED RAIL LINES TO ENHANCE FUTURE RAIL TRANSIT FOR THE STATE OF OKLAHOMA; AND ALTERNATE ROUTES FOR THE INTERSTATE 40 CROSSTOWN EXPRESSWAY.

WHEREAS, the replacement of the I-40 Crosstown Expressway through downtown Oklahoma City is critically necessary due to its deteriorated condition, and

WHEREAS, rail transit can stimulate economic development; provide dependable, safe and inexpensive transportation for all; reduce vehicular traffic and congestion; lower carbon dioxide emissions that contribute to global warming; provide an important means of transportation for military facilities; and greatly improve air quality in metropolitan areas; and

WHEREAS, the Oklahoma City metropolitan area ranks high nationally among other large cities in terms of its widespread geographic area and commuting population, ranks 40th out of 100 as most traffic congested, and ranks last out of 50 as best prepared for \$4 per gallon gasoline, according to "Major US Cities Preparedness for an Oil Crisis, a study by Warren Karlensz, common Current, March 2008; and

WHEREAS, citizens of the central Oklahoma metropolitan area are in need of safe, efficient, and affordable transportation alternatives as opposed to reliance upon personal automobiles in face of rising gasoline prices; and

WHEREAS, the Environmental Protection Agency has recently established stricter standards for ozone concentrations which are directly related to automobile usage and in 2006, Central Oklahoma exceeded the maximum allowed ozone level 11 times, almost twice as many times as the previous four years combined and before the new federal standards of the Clean Air Act became law; and

WHEREAS, the Oklahoma City metropolitan area is behind many other large cities in transportation efficiencies, including Denver, Salt Lake City and Dallas, whose Union Stations are the foundation for their vibrant rail and bus systems and have been successful beyond expectations and have received enthusiastic public support and demand for wider availability; and

WHEREAS, the historic and strategically valuable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network linking the state's major towns, Tinker Air Force Base, and Will Rogers World Airport and is the last grand urban passenger rail yard in the west that remains virtually unused today, with all of its original space and much of its essential infrastructure intact, including numerous tracks connecting every corner of the state, and

WHEREAS, the future of rail service in central Oklahoma depends upon having a hub that allows rapid and cost-effective development of a safe, convenient, fuel-efficient and environmentally friendly rail transit system for linking the economic engines of Oklahoma towns, cities and military bases; and

WHEREAS, recent rulings by the Federal Surface Transportation Board provide an important opportunity to expeditiously reconsider viable route alternatives for the new Crosstown Expressway that do not require the destruction of Union Station's invaluable rail yard; and

WHEREAS, experience shows that any major public infrastructure project requires years, sometimes decades, of planning and foresight, which translates into millions of dollars in additional costs to taxpayers, before opening for service, as well as millions of dollars of additional costs to taxpayers while citizens now urgently seek alternatives to traditional highway travel, and

WHEREAS, government at all levels cannot procure adequate funding for new roads and bridges and are years behind on maintenance in many cases; and

WHEREAS, pending petroleum shortfalls coupled with the rising cost of auto fuels threaten the economy and security of the state and the nation, change the assumptions made previously concerning the value of rail travel in the state and the country; and

WHEREAS, accommodation of the need for an intermodal transportation hub for the Oklahoma City metropolitan area located in downtown Oklahoma City and the need for Highway replacement through downtown Oklahoma City can be met if the proposed alignment of the Crosstown Expressway be moved 400 feet south of the present planned alignment through the Union Station rail yard.

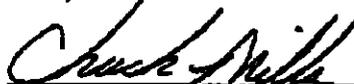
WHEREAS, the City of Shawnee recognizes that in order for this area to have economic growth and to provide for the common good of our people, we must have access to this fast, fuel efficient railroad as part of our transportation options in order to serve the industries and the citizens.

NOW, THEREFORE, BE IT RESOLVED:

WHEREAS, the City of Shawnee, Oklahoma, supports the efforts of ONTRAC to further investigate cost effective rail options for the State of Oklahoma and encourages the Association of Central Oklahoma Governments and its member cities to give due consideration to joining in the adoption of this resolution.

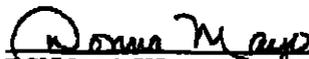
BE IT FURTHER RESOLVED THAT, the City of Shawnee, Oklahoma respectfully requests that The Honorable Brad Henry, Governor of Oklahoma, convene a Special Commission of citizens, public officials, and transportation experts to consider immediately and expeditiously the future of rail transit options in the Oklahoma City metropolitan area, to study future use of Union Station and its associated rail lines to enhance future rail transit for the state, to weigh the short and long term benefits of alternative routings of the Crosstown Expressway that would not jeopardize any future use of the Union Station rail yard, and that the commission report to the Governor and to the public its finding and recommendation in an expedient manner; and that until such time, the Governor direct the Oklahoma Department of Transportation to proceed with only those aspects of the Crosstown Expressway that do not affect Union Station's rail yard or connecting rail lines or that limit the State's ability, either materially or financially, to implement any alternative routings recommended by the Special Commission.

PASSED AND ADOPTED this 6th day of October, 2008.


CHUCK MILLS, MAYOR

SEAL

ATTEST


DONNA MAYO, ACTING CITY CLERK



**Resolution of the Oklahoma Chapter of the Sierra Club
Adopted August, 2008**

Whereas, Global Warming and climate change as a result of CO₂ and green house gases produced by the combustion of fossil fuels is overwhelmingly accepted by the scientific community and demands immediate attention at every level of government, and

Whereas, ozone levels in central Oklahoma are already exceeding maximum levels permissible under the new limits set by EPA Clean Air Act standards based on the most recent scientific evidence about health effects of ozone, and

Whereas, automobiles and trucks are a major source of CO₂, greenhouse gases, ozone and other pollutants and public transportation options that are clean, efficient and reliable are essential elements in significantly reducing these pollutants and our dependence on fossil fuels, and

Whereas, a passenger rail system is the foundation of the most successful and efficient, multimodal transportation systems and they rely on an interconnecting central hub provided by their restored grand Union Stations that progressive cities have had the good sense to preserve (examples are Salt Lake City, Denver and Dallas), and

Whereas, the elegantly designed Union Station rail facility at 300 SW 7th in Oklahoma City lies at the center of the state's unique railway network and is the last grand urban rail passenger yard in the West remaining unused today with all its original space and much of it essential engineering intact comprised of numerous tracks connecting every corner of the state and, its irreplaceable destruction is still planned to make way for a 10 lane cross-town expressway for through traffic including 70 mph truck traffic, and

Whereas, the Union Station rail yard is essential to the most efficient and reasonably economical future system of public transportation serving the entire state, and its reduction to one track would effectively cripple this priceless public resource and would foreclose the option to rapidly and economically develop safe, convenient, fuel efficient and environmentally friendly rail transit for the region and linking the state's major cities airport and key military installations on existing rail lines, and

Whereas, this destruction is unnecessary to the reconstruction or rehabilitation of the I-40 cross-town and there are several reasonable alternatives that should be reconsidered, and

Whereas, the rising price of fuels and their impending short falls threaten to seriously constrain the state's economy, and decisions and assumptions that were made ten years ago are no longer valid including major underestimation of the cost of the cross-town, and

Whereas, recent decisions by the Federal Surface Transportation Board has cast doubts on the inevitability of the proposed route of the new Cross-town,

Now therefore be it resolved, that the Oklahoma Chapter of the Sierra Club respectfully requests the Honorable Brad Henry, Governor of the state of Oklahoma, to demonstrate visionary leadership for the long term success of Oklahoma's economy and environment, to declare a moratorium on the Cross-town project, appoint a Special Commission of citizens and transportation experts to reconsider alternatives to the destruction of the Union Station rail yard and report to the Governor and to the public its findings and recommendation before proceeding any further on this project

Signed



Charles R. Wesner, Chair
Oklahoma Chapter Sierra Club



Founded in 1925

August 7, 2008

Mayor Cindy Rosenthal
City of Norman, Oklahoma

Dear Mayor Rosenthal:

The League of Women Voters of Norman would like to encourage the Norman City Council to forward to Governor Henry a resolution which supports saving the Union Station rail yard in Oklahoma City and asks him to declare a moratorium on the Crosstown Expressway in order to save the rail yard. We think that the rail yard is a valuable state asset for future development of multimodal public transportation for Central Oklahoma, including Norman, and we think that it should be preserved rather than torn up to make way for the Crosstown Expressway.

The Norman League advocates the development and maintenance of energy-efficient and time-efficient public transportation systems within the City of Norman and connection with other communities in Oklahoma. We believe priority should be given to government-funded transportation projects that are directed toward better public access to fuel-efficient transportation.

Sincerely,

Barbara A. Robinson, President
Jayne Colvard
Mary Francis
John Hilbert
Marjorie Greer
Helen D. Dixon
Luth E. Loeffler