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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35685

**RAIL SWITCHING SERVICES, INC.
- OPERATION EXEMPTION -
LINE OF PEMISCOT COUNTY PORT AUTHORITY
IN PEMISCOT COUNTY, MISSOURI**

FD 35686

**PIONEER RAILCORP
- CONTINUATION IN CONTROL EXEMPTION -
RAIL SWITCHING SERVICES, INC.**

**PEMISCOT COUNTY PORT AUTHORITY'S
PETITION TO REJECT EXEMPTIONS**

Respectfully submitted,

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Dated: October 26, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35685

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**I.
INTRODUCTION**

Pemiscot County Port Authority (“PCPA”), a Missouri political subdivision and nonoperating common carrier railroad, files this Petition to Reject two exemption notices filed by Pioneer RailCorp (“Pioneer”) with the Surface Transportation Board (“the Board”) in the above-captioned proceeding. The Board should reject these notices for the simple reasons that Pioneer’s subsidiary, Rail Switching Services, Inc. (“RSS”) (1) lacks any agreement with PCPA to provide common carrier railroad service over PCPA’s track, (2) RSS does not require Board authority to store cars or provide service on a purely contractual basis, and (3) that this matter involves unusual, complex, controversial issues not suitable for

handling under the expedited “class exemption” approval procedures. Should the Board decline to reject or dismiss these notices outright, it should initiate a proceeding under 49 U.S.C. §10502(d) to consider them. Raritan Central Railway, L.L.C.-Operation Exemption-Heller Industrial Parks, Inc., FD 34514, STB served Oct. 5, 2004.

II. STATEMENT OF FACTS

PCPA is a political subdivision established in 1974 under Missouri law to construct, own, and operate an intermodal port facility along the Mississippi River near Hayti, MO. As pertinent here, it sought and received authority¹ from the Board in 2003 to construct and own approximately 5 miles of new railroad (“the Line”) extending from milepost 213.32 at the junction with BNSF Railway Company’s (“BNSF’s”) mainline at Hayti to the end of the line at milepost 217.22 at Caruthersville, Pemiscot County, MO. Upon receiving Board construction approval, it resumed construction² and has now substantially completed that project. It sought that authority in the expectation that one day it would attract to its facility customers needing common carrier railroad service whether or not in conjunction with a prior or subsequent movement by barge. It believed that an

¹ Pemiscot County Port Authority--Construction Exemption--Pemiscot County, MO, FD 34117, STB served Aug. 26, 2003.

² PCPA initially commenced construction of about two miles of track on right-of-way purchased from the former Burlington Northern Railroad without realizing that it needed Board authority which it promptly sought.

ability to “hold out” to perform common carrier rail service, whether directly or under contract to a short line railroad, would be advantageous in attracting customers. That day now appears to have arrived.

PCPA’s relationship with RSS goes back to around 2008 when it signed an initial contract with that entity allowing it to store out of service rail cars on the Line. PCPA entered into that contract for the simple reason that PCPA did not have any rail customers at that time and RSS’s owner, Pioneer, needed track on which to store empty cars for car owner customers. The parties continued that arrangement by entering into a new two year agreement dated Feb. 29, 2012, the Rail Line Operating Agreement (“the Agreement”), a copy of which is attached as Exhibit A.

As relevant to this dispute, the Agreement states in its “whereas clauses” that PCPA (“the Authority”) owns a “line of railroad” on which it has no active customers and that RSS desires to provide “non-common carrier contract switching service over said line.” Section 2 of the Agreement provides that RSS shall pay PCPA 35% of the “railcar storage fees” plus 35% of fees received for “railcar switching fees,” fees for switching stored cars. Section 4 of the Agreement states that RSS shall use the line as a “non-common carrier contract switcher” and that RSI shall have “exclusive use of the Line for all rail purposes,” subject to PCPA’s right to “allow customers to ship or receive products or materials on the Line.”

RSS's right of access under section 4 is limited to that portion "south and east of Highway J" for car storage. It can use the portion of the Line north and west of that point just for bringing cars to or taking them from BNSF.³ Nowhere does the Agreement grant RSS any common carrier rights. Section 14(c) of the Agreement specifies the sole procedures for resolving any bona fide disputes as to the interpretation of any provision thereof.

Recently, Marquis-Missouri Terminal LLC ("MMT"), executed a lease with PCPA for use of a portion of PCPA's facility for transporting, storing, shipping, and receiving liquid fuels, fertilizers, and feedstock. MMT represents the first and, as yet, the only customer on the Line. On August 17, 2012, MMT executed an agreement with PCPA for access to the Line to enable it to receive unit trains of liquid fuels originating in North Dakota and moving to its on-line facility for further movement by barge down the Mississippi River. BNSF will handle this traffic pursuant to a transportation contract with MMT. It will deliver the unit trains with its own power and crews to an 8,000-foot long siding midway on the Line. Once the train arrives, MMT will pump the contents of the cars into a pipeline linking the siding with waiting barges on the River. Operating the trains "push-pull" with locomotives on either end will enable BNSF to promptly send an empty train back to its point of origination for reloading.

³ See map attached as Exhibit B.

Upon learning of the MMT traffic, RSS through Pioneer's management, began to voice concerns as to whether the BNSF-MMT unit trains would cause interference with RSS's rights to store cars and switch stored cars. Putting this matter in perspective, PCPA notes that RSS's historic use of the Line has been once every two or three weeks. By contrast, BNSF's need to access the Line for the MMT traffic would be three times per week in either direction once the service is fully implemented.

In communications with PCPA, RSS variously voiced concerns about the Line's compliance with Federal Railroad Administration safety rules, its desire to handle switching for MMT, how the BNSF-MMT traffic would affect RSS's rights to serve any other customers that might eventually locate on the Line and need service, and whether the BNSF-MMT traffic movements violated the provision in the Agreement granting RSS the "exclusive use of the Line for all rail purposes." In response, PCPA advised Pioneer/RSS that it desired for all parties to negotiate protocols for safe use and access to the Line and it was happy for them to continue their existing right to store cars under the Agreement. PCPA encouraged Pioneer/RSS to approach MMT about its needs but noted that it had no ability to require MMT to use RSS's service. Alternatively, PCPA offered to negotiate a cash payment with Pioneer/RSS for an early termination of the Agreement. Instead of making an offer of settlement, Pioneer/RSS responded with a Notice of

Default (copy attached as Exhibit C) and the Notice of Exemption filings⁴ that are the subject of this Petition to Reject.

III. ARGUMENT

A. Pioneer's/RSS's notices must be rejected under Board precedent

The Board's class exemption procedures provide an expedited means of obtaining Board authority in certain classes of transactions involving routine matters. However, notices that raise unresolved issues or questions requiring considerable scrutiny may and in this case should be rejected. Winamac S. Ry.—Trackage Rights Exemption—A. & R. Line, Inc., FD 35208, slip op. at 2, STB served Jan. 9, 2009. Additionally, where a notice is misleading, it is void *ab initio* and will be rejected. U S Rail Corp.—Lease & Operation Exemption—Shannon G., FD 35042, slip op. at 3-4, STB served Oct. 8, 2008. Because Pioneer/RSS' notices raises questions that require scrutiny beyond that available under the Board's class exemption procedures, and because they are misleading, the Board must reject them.

⁴ In FD 35685, RSS variously represented that it is filing as a "contract operator for PCPA" or "for the purpose of facilitating common carrier operations" under the provisions of 49 CFR §1150.41. Presumably it means under 49 CFR §1150.31 as it is a noncarrier. In FD 35686 Pioneer is seeking to continue in control of RSS under 49 CFR §1180.2(d)(2).

B.

Pioneer/RSS lacks any agreement authorizing
common carrier railroad operations over the Line

As a general matter, Board precedent holds that an exemption notice under 49 CFR §1150.31 or §1150.41 must indicate whether “an agreement has been reached or details about when an agreement will be reached.” Utah Southern Railroad Company, LLC-Change in Operators Exemption-Iron Bull Railroad Company, LLC, FD 35558, slip op. at 4, STB served Sept. 21, 2012 (cited as *Utah Southern*). Moreover, where an exemption contains false or misleading information, that exemption is void *ab initio* and will be rejected or revoked. *See*, 49 C.F.R. § 1150.32 and San Francisco Bay Railroad-Mare Island—Operation Exemption—California Northern Railroad, FD 35304, STB served December 6, 2010 (cited as *San Francisco Bay Railroad*). Failure to disclose material information can render a notice misleading by omission, and therefore void *ab initio*. *See* U S Rail Corp.—Lease & Operation Exemption—Shannon G., a N.J. LLC, FD 35042, slip op. at 3-4, STB served Oct. 8, 2008. “Material” means the transaction would not have otherwise qualified for an exemption. Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378 (1st Cir. 1995). A misrepresentation by the applicant as to the lack of an agreement covering the acquisition and/or operation of a rail line has been found by the Board to constitute a material misrepresentation

rendering the exemption void and serving as the basis for rejection or revocation.

San Francisco Bay Railroad, supra.

The Board must reject RSS's exemption notice in FD 35685 for failure to demonstrate that it has a right to initiate common carrier operations over the Line. RSS states at pages 1 and 3 of its notice that it is a "non-carrier" and that it "has a Rail Line Operating Agreement with [PCPA], providing that RSS will provide all rail service on the Line, as a contract operator for PCPA." At page 4 it admits that it has only handled empty storage cars to date. A few lines down on page 4 RSS adds that it is now filing as a contractor operator for PCPA. However, RSS claims on page 6 that "the proposed operation is for the purpose of facilitating common carrier continued rail operations."⁵ And RSS's companion continuation in control exemption notice filed in FD 35686 states at page 8 that the purpose of the transaction is to enable RSS to initiate

"common carrier service, due to customer demand, on the line of railroad that the Board authorized construction of, but has not, to date, had any common carrier service. RSS expects to be able to operate the line, and preserve service that would otherwise, not be available, as the owner and residuary carrier, [PCPA], does not desire to provide the service itself, and has contracted with RSS to provide the service."

To the extent that it seeks to provide a common carrier service where its access agreement only grants it a right to provide service as "a non-common carrier

⁵ RSS's Caption Summary attached to its notice as Exhibit C merely states that it seeks "to operate the rail line owned by [PCPA]..." without identifying the nature of that authority.

contract switcher,” that is tantamount to saying that RSS lacks any agreement for the purpose of an operating exemption. Furthermore, any implications from the statements at page 6 of the operation exemption notice and page 8 of the common control exemption notice that RSS already possesses some sort of common carrier right of access to the Line, that its initiation of common carrier service is due to “customer demand” [from MMT], and that PCPA has contracted with RSS to provide a common carrier service are patently false. MMT has not expressed any desire for service from RSS. In any event before PCPA could even grant RSS or any other railroad the right to provide common carrier operating authority over the Line, PCPA would, as a public agency, be required to solicit and evaluate bids from interested parties through a Request For Proposal process. Accordingly, the Board must treat these statements for what they are: gross misrepresentations.

During the past few years the Board has had many occasions to consider and reject (or revoke) notices of exemption where the applicant wrongly represented that it had a right to acquire, lease, or operate a line of railroad for which it sought Board operating authority. *See, e.g., San Francisco Bay Railroad and Utah Southern, supra.* As recently as several weeks ago, the Board reiterated that it would view as false and misleading an incorrect representation as to the status (or lack thereof) of an agreement giving a railroad applicant any right to purchase or access a line and will reject any notice of exemption containing a false

representation. *Utah Southern Railroad Company, supra*. Accordingly, the Board should reject these notices as RSS lacks any common carrier right granted by PCPA to provide service on the Line.

C.

RSS does not require STB authority to conduct contract operations

Assuming for argument's sake that RSS merely seeks to operate over the Line on a strictly "contract carrier" basis as if it were a motor carrier, it does not need any authority from the Board. Accordingly, its notice should also be rejected or dismissed.

In V&S Railway, LLC-Petition for Declaratory Order-Railroad Operations in Hutchinson, KAN, FD 35459, slip op. at 10-11, STB served July 12, 2012, the Board addressed the regulatory status of private carrier operating over regulated track. The agency has found that a noncarrier may conduct private carriage on a common carrier rail line with the owner's consent where the private carrier is transporting its own goods, not holding itself out to provide service for compensation, and not unduly interfering with the common carrier's operations on the line. In so ruling the Board relied on S.D. Warren Co. d/b/a Sappi Fine Paper N.A.—Acquis. & Operation Exemption—Maine Cent. R.R., FD 34133, slip op. at 2, STB served Sept. 30, 2002 (cited as *S.D. Warren*, finding private carriage not to be the operations of a "rail carrier" under the current definition in 49 U.S.C. §10102, and therefore, outside the Board's jurisdiction); Bhd. of Locomotive

Eng'rs v. Interstate R.R., FD 31078, ICC served Nov. 20, 1987 (explaining that operations at issue were not those of a “rail carrier” under the definition contained in 49 U.S.C. § 10102 at that time); and Boeing Co.—Acquis. & Operation Exemption—Chehalis W. Ry., FD 31916, ICC served Oct. 10, 1991. RSS’s operations are essentially those of a private carrier, an entity that performs transportation for its own account (like a railroad customer that is handling its own transportation needs). *S. Warren, supra*. RSS’s operations on the Line to date consist of storing cars for storage customers. But car storage is not common carrier service. As the Board’s predecessor, the Interstate Commerce Commission has explained,

“A railroad is a common carrier railroad if it purports to hold itself out as a common carrier for hire and if there is an ostensible and actual movement of traffic for the public for hire. The principal test is whether there is a bona fide holding out coupled with the ability to carry for hire.” *See Northern Plains Railroad Company -- Construction and Operation Exemption -- Musselshell and Yellowstone Counties, MT*, FD 32077, ICC served Dec. 28, 1992, slip op. at 2, 1992 Lexis 290, cited as *Northern Plains*.

As a contract carrier, RSS has not, does not, and will not be holding out its service to the public and its service will is not subject to Board jurisdiction. As the ICC held in *Northern Plains*,

“The Commission's jurisdiction over railroads is limited to **rail common carriers**. Whether or not **a rail carrier is a common carrier subject to our jurisdiction or a private or private contract carrier**

not subject to our jurisdiction is determined by the nature of the transaction and the service that an entity holds itself out to provide. Slip op. at 1-2.

Insofar as RSS' contract rights limit its access to the Line to car storage, it is not performing common carrier railroad service. The Board should reject or dismiss its notices as unnecessary.

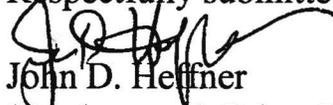
D.
RSS' Request is Controversial
And Not Suitable for a Class Exemption

Finally, the Board has ruled that the class exemption procedure is not appropriate for cases that involve unresolved, controversial, complicated, or nonroutine issues. Riverview Trenton Railroad Company — Acquisition and Operation Exemption — Crown Enterprises, Inc., FD 33980, STB served Feb. 15, 2002 (cited as *Riverview*) and Steel River Infrastructure Partners, LP-Control Exemption-Patriot Rail Corp, Et Al, FD 35622, slip op., cases cited at footnotes 4 and 5 at pages 2-3, STB served June 15, 2012. Such is the case here. The fact that RSS's notice involves a seldom made request for "contract carrier" authority makes it unusual by itself. This matter is controversial insofar as it may involve the conversion of RSS's existing private carriage into a full fledged common carrier service over the objection of a public agency [PCPA]. There are unresolved, complicated issues in terms of how RSS's service would affect BNSF's service and PCPA's future satisfaction of its common carrier service

obligation. The case law suggests the reason for the Board's policy of requiring unusual, complicated, or controversial cases to be filed using an individual petition or a full application is that the tight deadlines associated with class exemption notices do not afford the agency sufficient time to obtain and analyze public comment, develop a proper record, and issue a decision. *Riverview, supra*. Such is the case here.

IV. CONCLUSION

The Pioneer/RSS notices raise more questions than they answer. They present issues that are unresolved, complicated, controversial, and nonroutine. Accordingly, the Pioneer/RSS exemption requests do not meet the Board's requirements for consideration as class exemption notices. The Board should reject or dismiss them out of hand. Should the Board deem otherwise, it should hold them in abeyance and initiate a full blown proceeding in order that it may have an adequate record upon which to render a proper decision.

Respectfully submitted,

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

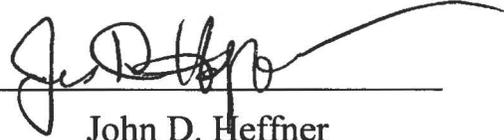
Dated: October 26, 2012

CERTIFICATE OF SERVICE

I, John D. Heffner, do hereby certify that a copy of the foregoing "Pemiscot County Port Authority's Petition to Reject Exemptions" was served via email and first-class U.S. mail this 26th day of October, 2012, on the following named individuals:

Daniel A. LaKemper, Esq.
General Counsel
Rail Switching Services, Inc.
1318 S. Johanson Road
Peoria, Illinois 61607

Charles Nottingham, Esq.
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, D.C. 20006



John D. Heffner

Dated: October 26, 2012

EXHIBIT A

RAIL LINE OPERATING AGREEMENT

THIS RAIL LINE OPERATING AGREEMENT ("Agreement") made and entered into this 29th day of February, 2012, by and between PIONEER RESOURCES, INC., an Iowa corporation, doing business as RAIL SWITCHING SERVICES, INC., ("RSSI"), with principal offices at 1318 S. Johanson Road, Peoria, Illinois 61607, and the PEMISCOT COUNTY PORT AUTHORITY ("Authority"), a governmental entity organized under the laws of the State of Missouri, with principal offices at 111 East 3rd Street, Caruthersville, Missouri 63830.

WHEREAS, the Authority owns a line of railroad (the "Line"), extending from the BNSF Railway ("BNSF") interchange at Hayti, Missouri, a distance of approximately five (5) miles in a generally easterly direction, which currently has no active customers; and,

WHEREAS, RSSI desires to provide non-common carrier contract switching service over said Line;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained it is agreed as follows:

1. TERM.

This Agreement shall become effective on March 01, 2012, and remain in effect for a period of two (2) years through February 28, 2014 ("Initial Term"), unless otherwise terminated as hereinafter provided. Moreover, this Agreement may be renewed for additional one-year periods ("Renewal Term or Terms") provided that RSSI is in compliance with this Agreement and provided that RSSI requests such a one-year extension during the 13th month (February) prior to the expiration date of the current (Initial or Renewal) term and provided that Authority grants that request.

2. PAYMENTS BY RSSI.

RSSI shall pay to Authority 35% of the gross operating revenue – that is storage revenue less any third party payable, ie. brokerage commissions, received by RSSI for railcar storage fees for railcars stored on the Line of the Authority, plus 35% of the gross revenue – that is switch revenue less any third party payable, ie. brokerage commissions, for railcar switching fees related to placing on and removing railcars from the Line of the Authority, payable monthly, within 10 days of the end of each calendar month. RSSI shall furnish the Authority with copies of monthly reports showing numbers of cars and dates cars were received from or delivered to BNSF, and copies of invoices showing numbers of cars billed and charges therefor (acknowledging that other information regarding RSSI's clients may be redacted) as verification for the monthly fees paid.

3. LAWS AND REGULATIONS

RSSI shall take all steps necessary to be in compliance with the provisions of all laws, statutes and regulations, including but not limited to the requirements of state and federal regulatory agencies applicable to its use of the Line. RSSI shall comply with all applicable Federal Railroad Administration ("FRA") regulations, and shall use engineers meeting all applicable FRA requirements.

4. **USE AND OPERATION.**

The Line shall be used by RSSI operating as a non-common carrier contract switcher under the provisions of the Interstate Commerce Act, as amended. RSSI shall have exclusive use of the Line for all rail purposes, provided, however, that 1) Authority may, to the extent that it does not unreasonably interfere with RSSI's use thereof, continue to extend the Line using its own forces and resources, and that 2) RSSI does not unreasonably hinder or interfere with the ability of Authority to allow customers to ship or receive products or materials on the Line. Such interference or hindrance shall constitute a violation of this Agreement, subject to the provisions of Paragraph 14. It is understood, that a customer may provide his own means of switching his industry, ie. a track mobile; but customers will not be allowed to retrieve from or deliver cars to the BNSF.

RSSI shall use that portion of the Line between the BNSF mainline and Missouri Highway J in Hayti for pick-up and delivery of cars to/from BNSF only, and shall only use that portion of the Line south and east of the Highway J crossing for car storage.

5. **MAINTENANCE AND REHABILITATION**

(a) RSSI and Authority will cooperate to ensure that brush and weed control are performed in accordance with FRA Standards.

(b) While responsibility for the maintenance of all grade crossings rests with the Authority, RSSI agrees to provide technical advice and other reasonable assistance in order to ensure their satisfactory condition.

6. **TAXES AND ASSESSMENTS**

Authority covenants that RSSI shall not be responsible for payment of any real estate taxes, special assessments, or other charges that may be levied or assessed against the Line; the Authority being exempt from such taxes, fees, assessments, or other charges by state law.

7. **CONDITIONS.**

The parties believe that since RSSI shall not be operating as a common carrier, no Surface Transportation Board ("STB") proceedings are required to effectuate this Agreement. If, however, any STB proceedings are required, this Agreement shall be contingent on RSSI's obtaining such authority, without the imposition of any material requirements that are unacceptable to either party. RSSI shall obtain such STB authority at its cost.

8. **RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION.**

No expiration or termination of this Agreement shall affect the liabilities or obligations of RSSI or Authority that may have accrued prior to such expiration or termination. Title to any improvements or betterments to the Line shall vest in the Authority, and RSSI shall have no claim therefor.

9. **RAIL CROSSINGS, LICENSES AND EASEMENTS.**

The Line is accepted by RSSI subject to those presently existing crossings, licenses, and easements, whether or not of record.

10. **NOTICES**

Except as provided in Section 8, all notices, demands, and requests required or permitted under this Agreement shall be in writing and shall be deemed properly served if delivered by hand to the party whose attention it is directed, or when received if sent postage prepaid by United States Certified Mail, return receipt requested, addressed as follows:

If intended for Authority: David P. Madison, Executive Director
Pemiscot County Port Authority
111 East 3rd Street
Caruthersville, Missouri 63830

If intended for RSSI: J. Michael Carr, President
Railroad Switching Services, Inc.
1318 S. Johanson Road
Peoria, Illinois 61607

Or at such other address or to such other party which any party entitled to receive notice hereunder may designate to the other party in writing. If in person, such shall be effective when received; if by mail, such shall be effective three business days after mailing.

11. **NON-ASSIGNMENT**

This Agreement shall be binding and inure to the benefit of the parties hereto, their respective successors and assigns, provided however, that neither RSSI nor Authority may, without the prior written consent of the other, assign this Agreement or any of its rights or obligations hereunder, provided, however, that RSSI's use of contractors or other third parties in the ordinary course of business to perform various functions on its behalf shall not be construed to be an assignment or partial assignment.

12. **INSURANCE**

RSSI shall procure, and maintain in force during the term of this Agreement, policies of

insurance providing railroad liability coverage (including applicable Workers' Compensation and/or Federal Employers' Liability Act coverage) in an amount of not less than \$10 million, and naming Authority as Additional Insured.

13. **MISCELLANEOUS**

This Agreement shall be governed by and construed according to the laws of the State of Missouri. The provisions of Section 8 shall survive the expiration, termination, or cancellation of this Agreement. When used herein, singular terms shall include the plural form, and vice versa, unless the context requires otherwise. This Agreement was negotiated by the parties, and shall not be construed in favor of or against either party by virtue of the fact that one or the other drafted or wrote any or all of its provisions. Any waiver, amendment or modification of this Agreement must be in writing and manually (not electronically) signed by the parties.

14. **VIOLATION AND DISPUTE RESOLUTION**

(a) In case of violation by RSSI of any provision of this Agreement, Authority may, at its option, after thirty (30) days' notice in writing to RSSI specifying the violation, and if RSSI does not commence diligently to remedy the violation within the thirty (30) day period, terminate this Agreement by written notice.

(b) Neither RSSI nor Authority shall be deemed in violation of this Agreement if they are unable to perform their obligations hereunder due to force majeure. Force Majeure shall include extreme weather conditions, natural disasters, strikes and labor disputes, acts of war, terrorism, criminal acts of third parties, fuel shortages, or any other condition beyond the reasonable control of the party(ies) which prevents said party(ies) from performing their obligations. The parties shall, nevertheless, take such actions as they reasonably can to mitigate such conditions, and shall use good faith in resuming the performance of their obligations after the event of force majeure has ended. Authority acknowledges that rail operations involve danger and that RSSI shall not be held in violation for exercising caution in such matters as resuming operations after a natural disaster.

(c) In the event of a bona fide dispute as to the interpretation of any provision of this Agreement, upon which the parties cannot agree, the parties shall meet with a disinterested mediator, having knowledge of rail operations, prior to filing any legal action. In the event that the parties cannot agree on a mediator, such mediator shall be appointed, upon application of either party, by the Chief Judge of the United States District Court for the Eastern District of Missouri, or such Court's Alternative Dispute Resolution Office.

15. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior agreements, understandings, representations and statements, oral or written, are merged herein.

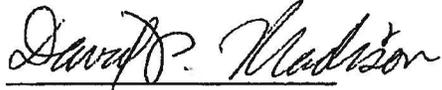
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by the duly authorized officers or officials; signature page follows:

RAILROAD SWITCHING SERVICES, INC.



By: J. Michael Carr, President

PEMISCOT COUNTY PORT AUTHORITY



By: David P. Madison, Executive Director

EXHIBIT B



8000' foot siding

Google Earth

EXHIBIT C

NOTICE OF DEFAULT

October 12, 2012

David P. Madison, Executive Director
Pemiscot County Port Authority
111 E. 3rd. Street
Caruthersville, MO 63830

Dear Mr. Madison:

Notice is hereby given, pursuant to Section 10 of our Rail Line Operating Agreement, that Rail Switching Services, Inc. ("RSSI") considers the Pemiscot County Port Authority ("PCPA") to be in violation of said Agreement. In particular, the PCPA has violated Section 4 of the Agreement by purporting to grant Marquis - Missouri Terminal LLC ("MMT") a right to access the rail line. The proposed movement of trains by BNSF on to the line, and delivery to MMT would be a direct violation of our Agreement, and preparations for this movement have already resulted in RSSI being unable to switch cars requested out by one by our car storage customers.

RSSI respectfully requests that PCPA take all appropriate actions to remedy this situation expeditiously, and prevent any entity from using the rail line in violation of our Agreement.

I am also, by this letter, advising you that it is the intent of RSSI, in accordance with Section 7 of the Agreement, to file for authority with the Surface Transportation Board to operate the line as a contract operator for PCPA.

We remain ready to discuss this matter in good faith, and hopeful that the parties can resolve any disputes in a fair and equitable manner.

Sincerely yours,

/s/

J. Michael Carr,
President.

cc: John Heffner.