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<u>EXPEDITED ACTION REQUESTED</u>

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35875

JOLIET BULK BARGE & RAIL, LLC—ACQUISITION AND OPERATION EXEMPTION—CENTERPOINT PROPERTIES

PETITION OF JOLIET BULK BARGE & RAIL, LLC TO TERMINATE PROCEEDING

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On November 12, 2014 Joliet Bulk Barge & Rail, LLC ("JBBR"), a noncarrier, filed a verified notice of exemption ("Notice") under 49 C.F.R. § 1150.31 to acquire and operate "approximately 6.5 miles of railroad right-of-way, trackage, and transloading facilities currently owned by CenterPoint Properties (CenterPoint) in Joliet, Illinois." The Notice stated that the track qualifies as a railroad line subject to the Board's jurisdiction under 49 U.S.C. § 10901 and requested an exemption from the requirements of section 10901. The Notice also advised that the track was currently being constructed.

In response, the Board published a decision served December 2, 2014 stating that Section 1150.31, under which the Notice was filed, applies to all acquisitions and operations under 49 U.S.C. § 10901 but does not cover construction. The decision directed JBBR to file, by January 2, 2015, supplemental information describing in detail whether the activities at issue include construction of a line of railroad subject to the Board's licensing authority and, if so, why Board authority for the construction had not been sought. It further ordered that any construction that was currently ongoing should cease pending resolution of this matter.

JBBR hereby provides the supplemental information requested by the Board. For the reasons explained below, JBBR is not a common carrier subject to the Board's jurisdiction based on its operation of the facility and associated rail line described in the Notice. Rather, JBBR will operate the track at issue, once it is fully constructed, as a private carrier serving only one client pursuant to a contract between JBBR and that client. Accordingly, JBBR hereby withdraws it Notice and requests that the Board terminate this proceeding and issue an order allowing JBBR to resume rail construction, which JBBR ceased immediately upon learning of the Board's December 2, 2014 decision. JBBR respectfully requests that the Board issue such a decision on an **expedited basis** **by no later than January 15, 2015** for the reasons explained below.

I. Background

Prior to the development of the Joliet facility, neither CenterPoint nor JBBR has been involved in developing a bulk commodity terminal. The November 12, 2014 Notice was filed by counsel that did not have an accurate understanding of the facts relating to the facility. However, following the Board's December 2, 2014 decision, JBBR consulted with undersigned transportation counsel. Following a careful review of the relevant facts, JBBR now understands that its proposed operations will not constitute common carriage subject to the Board's jurisdiction, but rather private carriage outside of that jurisdiction. Accordingly, JBBR hereby withdraws its November 12, 2014 Notice and requests that the Board terminate this proceeding and lift its order requiring that construction cease. The facts presented in this petition are supported by the attached verified statement of Eric J. Gilbert (hereafter "Gilbert VS") Mr. Gilbert is Vice President of JBBR, a licensed engineer in the state of Illinois, and has responsibilities for managing the development of the JBRR.

A. Joliet Facility

As explained in JBBR's Notice, approximately 34,450 linear feet of track was being constructed at the site planned as the JBBR transload facility. In addition to the rail line, storage tanks are being built at the site to store bulk liquid products. The storage tanks will connect to a pipeline originating on the property of the transload facility that is owned by an affiliate of JBBR. The entire Joliet facility, including the rail track, the storage tanks, and the pipeline will be used to serve a single shipper customer, ExxonMobil ("Exxon") at Exxon's Joliet refinery.

Exxon, through its subsidiary Imperial Oil, is currently building a private rail loading facility in Edmonton, Alberta, Canada where it will load rail cars with feedstock products for shipment to refineries in the United States. Approximately [redacted] unit trains per week will travel from the Exxon loading facility in Canada to the JBBR facility in Joliet via the Canadian National Railway Company ("CN"). Additional trains will travel from the Exxon loading facility in Edmonton to another private rail transload facility similar to the Joliet facility that is owned by an entity that is not affiliated with CenterPoint or JBBR. The Exxon loading facility in Edmonton is scheduled to begin operations by early March 2015, at which time trains will be able to begin traversing the route between Edmonton and JBBR's Joliet facility. A schematic of the Joliet facility and the CN tracks that lead to the facility is attached to the Gilbert VS.

Exxon has contracted directly with JBBR for the rail transload services to be provided by JBBR within the Joliet facility. Exxon will pay JBBR directly for the transload services provided by the JBBR terminal and pipeline. The rail transportation service provided by CN to deliver the Exxon rail cars to the JBBR facility will not include any of the services provided within the JBBR facility, and JBBR will not be directly or indirectly compensated by CN in any way for the services JBBR provides to Exxon. CN and JBBR will enter an industrial track agreement granting CN permission to deliver rail cars containing Exxon's products onto JBBR's private tracks. There will be no interchange agreement between JBBR and CN as is typical where two common carrier railroads agree to interchange traffic. Further, JBBR's rail tracks will be confined to its own property; will not connect with any railroad other than CN; will not handle any outbound traffic (other than empty rail cars being returned to CN) and will not cross any public roads. The location of the Joliet transload facility is highly desired by the shipper, Exxon, and CN because it allows CN to route the trains around Chicago and, thereby, avoid the congestion and inefficiencies often associated with rail transportation within Chicago.

CN will deliver the Exxon rail cars onto the JBBR "loop track" and JBBR employees will operate the trains on the JBBR track to position and unload the rail cars. The product will be conveyed from the rail cars to one of two storage tanks. From the storage tanks, the product will be delivered to a connecting pipeline owned by an affiliate of JBBR. The pipeline is a dedicated pipeline that will serve only the JBBR facility and has one customer, Exxon. The pipeline is approximately four and a half miles long and connects at the other end to the primary crude feeder pipe into the Exxon refinery in Joliet, Illinois.

B. **The Need for Expedited Consideration**

JBBR requests that the Board act on an expedited basis and issue a decision by January 15, 2015. JBBR makes this request because it will suffer substantial adverse consequences due to its contractual commitments if construction is not completed by February 15, 2015. Specifically, JBBR's contract with Exxon provides for a [redacted]. To meet this deadline, JBBR will need to resume rail construction by no later than mid-January. The contract with Exxon provides for a [redacted].

There are other reasons why the rail construction must be completed quickly. Once completed, the terminal will provide an additional outlet for bulk liquid products produced in

Canada, allowing approximately [redacted] barrels per day to reach the Joliet area for use at Exxon's Joliet refinery. Until the Joliet transload facility is completed, the Exxon refinery at Joliet will be unable to receive its required volume of feedstock from Canada and will be forced to operate at less than its optimal efficiency. In addition, once operational the Joliet facility will directly employ more than 70 full time employees, and will indirectly result in the creation of 200 additional jobs. It will also create over 1,000 temporary construction jobs. If the project experiences significant delays or is cancelled, the anticipated transportation of products for refinery use, as well as the benefits to workers and the local economy, will be significantly delayed or lost.

For the reasons explained below, the determination that JBBR operations are not common carrier operations subject to the Board's jurisdiction is a straightforward one.

II. JBBR Will Not Be a Common Carrier

A. The *Lone Star* Analysis

The Board's jurisdiction over rail carriers is limited to common carriers and does not extend to private carriers. *See, e.g., Northern Plains R.R. Co.—Construction and Operation Exemption—Musselshell and Yellowstone Counties, MT*, Finance Docket 32077, slip op. at 2 (ICC served Dec. 28, 1992) (hereafter "Northern Plains") ("Our railroad jurisdiction is limited to rail common carriers. Whether 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/or service that the entity holds itself out to provide.").[1]

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[1] The term "private carrier" is sometimes used to refer to an entity that owns and operates a rail line to transport only its own cargo or the cargo of an affiliate as part of its non-rail business. *See Northern Plains*, slip op. at 2. It is also sometimes used to refer to what are sometimes called "private contract carriers" or "contract carriers", that haul merchandise for others, but only pursuant to individual contracts and that do not hold themselves out to provide rail services to the

The Board and the courts have identified four factors to consider in determining whether the owners of rail lines within industrial or terminal facilities are common carriers or private carriers. These factors are (1) whether the entity actually performs rail service; (2) whether the service being performed is part of the total rail service contracted for by a member of the public; (3) whether the entity is performing as part of a system of interstate rail transportation by virtue of common ownership between itself and a railroad or by a contractual relationship with a railroad, and hence is deemed to be holding itself out to the public; and (4) whether remuneration for the services performed is received in some manner, such as a fixed charge from a railroad or by a percent of the profits from a railroad. These factors are often referred to as the *Lone Star* factors because they were set forth in *Lone Star Steel Co. v. McGee*, 380 F.2d 640 (5th Cir. 1967).[2] As discussed further below, a consideration of these factors demonstrates that JBBR will not be a common carrier.

With respect to the first *Lone Star* factor, the movement of Exxon's products over the rail line to the storage tanks at JBBR's facility appears to constitute rail service and JBBR will be the entity conducting such service. Thus, the first *Lone Star* factor weighs in favor of common carriage rather than a private carrier. However, consideration of this factor alone is insufficient to establish that an entity is a common carrier. *Iverson v. Southern Minn. Beet Sugar Coop.*, 62 F.3d 259 (8th Cir. 1995) (finding that the first *Lone Star* factor was satisfied but holding that the entity at issue was not a common carrier); *Mahfood v. Continental Grain Co.*, 718 F.2d 779 (5th

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public. *Id*. When JBBR refers to itself as a "private carrier", it is using the term in the sense of a "private contract carrier."

[2] The ICC in *Ass'n. of P&C Dock Longshoremen v. Pittsburgh & Conneaut Dock Co.,* 8 I.C.C.2d 280, 290 (1992), indicated that these factors could be distilled to the following to questions: "(1) does defendant conduct rail operations; and (2) does it 'hold out' that service to the public." However, in answering those two questions the Board nonetheless analyzed each of the *Lone Star* factors. *Id.* at 291-95.

Cir. 1983) (same); *Huntley v. Bayer MaterialScience, L.L.C.*, 452 Fed. Appx. 453 (5th Cir. 2011) (same); *Willard v. Fairfield S. Co.*, 472 F.3d 817 (11th Cir. 2006) (same).

Under the second *Lone Star* factor, the question is whether the service being performed by JBBR is part of the total rail service contracted for by a member of the public. In analyzing this factor, the Board and the courts look to whether the shipper or shippers contract directly with the entity in question for the service within the industrial or terminal facility (appears to be private carriage) or whether that service is included as part of the agreement between the shippers and the railroad that connects to the facility (appears to be common carriage). For example, in holding that the second *Lone Star* factor weighed in favor of private carriage, the court in *Huntley* explained as follows:

> "Bayer and the Lessees each had individual contracts with Union Pacific and BNSF to transport their rail cars to and from the Facility. There is no evidence, however, that Union Pacific and BNSF were contractually responsible to the Lessees for the rail services Bayer provided to them within the Facility."

452 Fed. Appx. at 458; *see also Willard***,** 472 F.3d at 822 ("Fairfield is a private carrier that hauls for clients pursuant to individual contracts, entered into separately with each customer. Fairfield performs rail service for its in-plant scrap recyclers, Tube City and Fritz Enterprises, pursuant to contracts with those facilities.") (internal quotation marks omitted); *McCrea v. Harris County Houston Ship Channel Navigation Dist.*, 423 F.2d 605, 609 (5th Cir. 1970) ("The Kansas grain shipper, who appeared hypothetically throughout this case, does not receive the services of the Navigation District by virtue of his shipment contract with a railroad. The regular line-haul rate entitles the shipper only to transportation to the appropriate siding track. Independent arrangements must be made with the Navigation District and an additional charge paid in order to have the cars moved to the dumping mechanism and unloaded.").

In the present case, Exxon will pay CN to bring its products to the JBBR facility and all rail service within the facility will be provided by JBBR pursuant to a separate contract between Exxon and JBBR. CN will have no contractual obligation related to rail services provided within the facility and payments made by Exxon to CN for CN's services will not include payment for any service within the JBBR facility. Rather, pursuant to the contract between Exxon and JBBR, Exxon will pay JBBR a separate fee for the services provided within the Joliet facility.[3]

JBBR's situation is in stark contrast to cases where the second *Lone Star* factor has been found to weigh in favor of a common carrier finding. *See Ass'n. of P&C Dock Longshoremen*, 8 I.C.C. 2d at 294-95 ("B&LE publicly offers P&C Dock's rail-lake vessel loading and unloading services at Conneaut as part of its complete common carrier rail transportation service, compensated through B&LE's publicly filed tariff."); *Nichols v. Pabtex, Inc.*, 151 F. Supp. 2d 772, 779 (E.D. Tex. 2001) (operator of a rail line within a facility had arrangement with common carrier railroad whereby operator made "throughput" bids to shipping companies that included one charge for transportation, storage, loading, and unloading services, and operator allocated proceeds between itself and the railroad without customer's knowledge; thus, operator provided part of the total rail service contracted for and was itself a common carrier).

Under the third *Lone Star* factor, the question is whether JBBR is providing services as part of a system of interstate rail transportation by virtue of common ownership between itself

[3] JBBR's situation is not akin to the situation in *SMS Rail Service, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34483 (served Jan. 24, 2005). In that case, the Board found that an entity that provided service pursuant only to individual contracts was a common carrier because the shippers choose the contractual arrangement voluntarily and the carrier was willing to offer shippers common carrier rates upon request. *SMS Rail Service, Inc.,* slip op. at 7. In contrast, JBBR required that service provided to Exxon be provided pursuant to a contract and JBBR would not be willing to offer a common carrier rate to Exxon or any other party. *See* Gilbert VS at 2-3.

and a railroad or by a contractual relationship with a railroad. If so, this is an indication of common carriage; if not, it is an indication of private carriage. In the present case there is no common ownership between JBBR and CN, the railroad that will be delivering Exxon's rail cars to the Joliet facility, or any other railroad. *See* Gilbert VS at 2. JBBR and CN will enter an industrial track agreement allowing CN to deliver rail cars containing Exxon's products onto JBBR's private track. The industrial track agreement between CN and JBBR will not obligate JBBR to provide any part of CN's common carrier service or provide any type of rail service. Rather, it will simply grant CN permission to deliver rail cars containing Exxon's products onto JBBR's private track.

Accordingly, it is the type of contractual arrangement weighing in favor of finding a private carrier rather than a common carrier under the third *Lone Star* factor. This conclusion is supported by other cases addressing similar agreements that cover the right of a common carrier to use track in and around a terminal facility. *See Mahfood v. Continental Grain Co.*, 718 F.2d 779, 781, 783 (5th Cir. 1983) (agreement between export facility and railroad whereby railroad agreed to deliver railroad cars to the export facility and the export facility was prohibited from operating trains on railroad's tracks outside the facility except for one 1,500 foot segment on which the facility was permitted to use for storage was found not to be significant with respect to the *Lone Star* analysis); *Iverson* 62 F.3d at 262-264 (contract with railroad stating that facility had the right to operate trains over the tracks within the facility and that the facility indemnified the railroad for any damages caused by the facility's operation of the railcars within the facility not determinative in *Lone Star* analysis); *see also Huntley*, 452 Fed. Appx. at 459 (despite contracts between the facility and the connecting common carrier railroads for the facility to lease track outside of the facility and for the railroad to transport rail cars owned by the facility to various locations throughout the country for a fee, the court found that there was no contractual arrangement that was significant with respect to the *Lone Star* factors because the facility did not "have a contractual relationship with [the connecting railroads] under which [the facility owner] is obligated to perform any rail services.").

Under the fourth *Lone Star* factor, the issue is whether remuneration for the services performed by JBBR is received in some manner from the railroad, such as a fixed charge from a railroad or by a percent of the profits from a railroad. As noted above, JBBR has contracted directly with Exxon and will be paid only by Exxon.[4] JBBR will receive no remuneration from CN. Accordingly, this factor weighs in favor of private carriage. *Compare* cases finding entity is private carrier: *Willard*, 472 F.3d at 822 ("With regard to the fourth Lone Star factor—remuneration for the services performed—the companies within Fairfield's property pay Fairfield directly, and Fairfield directly invoices the facilities. Fairfield does not collect payment from any common carrier railroad, and it does not hold itself out to the public for a fee."), *and Huntley*, 452 Fed. Appx. at 460 ("With regard to the fourth consideration, receipt of remuneration for the services performed, it is undisputed that the Lessees paid Bayer directly for the intra-Facility rail services Bayer performed and that Bayer received no payment, either directly or indirectly, from Union Pacific or BNSF."), *with* cases finding entity is common carrier: *Ass'n of P&C Dock Longshoremen*, 8 I.C.C.2d at 295 ("P&C Dock's services, paid for by [the common carrier

[4] JBBR does not have a contractual relationship with any customer other than Exxon with respect to the facility and JBBR does not anticipate serving any other customers at the Joliet facility anytime in the foreseeable future. *See* Gilbert VS at 3. Moreover, even if for some reasons JBBR decided to serve another customer, it would do so pursuant to a contract and not hold out use of its facility to any shipper. *Id.* If JBBR served another customer pursuant to a contract and did not hold its services out to the public, the result of the *Lone Star* analysis would be the same. *See Huntley*, 452 Fed. Appx. 453 (holding that an operator of a rail line within a facility served multiple lessees within the facility pursuant to individual contracts but was not a common carrier); *Willard*, 472 F.3d 817 (same).

railroad] on a fee basis (satisfying the fourth Lone Star consideration), are thus clearly 'held out' to all that engage B&LE."), *and Nichols*, 151 F. Supp. 2d at 779 ("Pabtex also received remuneration for the rail services it performed. KCSR and Pabtex collectively charged one rate for all services and then divided the revenue. Customers often paid one amount that included transportation, storage, loading, and unloading charges, not segregated or divided by KCSR and Pabtex.").[5]

B. The Board's Transloading Precedent

JBBR is a transloading facility; as noted, Exxon's products will be delivered by rail and placed into storage tanks for shipment out of the facility via a pipeline owned by a JBBR affiliate. Given that JBBR will be performing transloading services, Board and court precedent addressing whether transloading facilities that connect with railroads are common carriers is highly relevant. Indeed, in preemption cases involving transloading facilities, the Board has cited *Ass'n of P&C Dock Longshoremen* and *Lone Star* and indicated that the analysis in those cases and the transloading cases focus on essentially the same question: whether the services of an operator of a facility that connects to a common carrier railroad are being held out to the public as part of the railroad's common carrier services. *See Town of Babylon and Pinelawn Cemetery-Petition for Declaratory Order*, STB Finance Docket 35057 (served Feb. 1, 2008) (citing *Lone Star* and *Ass'n of P&C Dock Longshoremen* for the proposition that the "Board's jurisdiction extends to the rail-related activities that take place at transloading facilities if the

[5] Even under alternatives to the *Lone Star* formulation followed by some courts, the JBBR arrangement is properly characterized as private carriage. Some courts simply consider whether the entity at issue "operate[s] a going railroad that carries for the public." *See Smith v. Rail Link, Inc.*, 697 F.3d 1304, 1308 (10th Cir. 2012) ("Rail Link certainly does not do this at the Belle Ayre Mine, where it has *one* contractual relationship with *one* client and is paid pursuant to a contractually negotiated formula." *Id.* at 1308-09 (emphasis in original). The same can be said of JBBR, which only has one contractual relationship with one client (i.e., Exxon).

activities are performed by a rail carrier or the rail carrier holds out its own service through the third party as an agent or exerts control over the third-party's operations."); *Diana Del Grosso, et al.—Petition for Declaratory Order*, Finance Docket 35652, slip op. at 5, n. 9 (STB served Dec. 5, 2014) (citing *P&C Dock Longshoremen's* for the proposition that "so long as the questioned service is part of the total rail common carrier service that is publicly offered, then the agent providing it for the offering railroad is deemed to hold itself out to the public"); *Grafton & Upton Railroad Company—Petition for Declaratory Order*, Finance Docket 35752, slip op. at 6 n. 15 (STB served Sept. 19, 2014) (citing *P&C Dock Longshoremen's* for the proposition that "when the service in question is part of the total rail common carrier service that is publicly offered, the agent providing it for the offering rail carrier is deemed to hold itself out to the public"); *see also Town of Milford, Mass.—Petition for Declaratory Order*, Finance Docket No. 34444 (STB served Aug. 12, 2004) (Board lacked jurisdiction over noncarrier operating a rail yard where it transloaded steel because the transloading services were not being offered by the railroad as part of common carrier services offered to the public but offered directly to customers by the transloading facility).

In the transloading cases, the Board and the courts often consider the following factors: (1) whether the rail carrier holds itself out as providing transloading service; (2) whether the rail carrier is contractually liable for damage to shipments during loading or unloading; (3) whether the rail carrier owns the transloading facility; (4) whether any third party that performs the physical transloading receives compensation from the rail carrier or the shipper; (5) the degree of control retained by the rail carrier over the third party operator of the transload facility; and (6) other terms of the contract between the rail carrier and the third party operator of the transload facility. *See, e.g.*, *Grafton & Upton Railroad Company—Petition for Declaratory Order*, Finance Docket 35752, slip op. at 5-6 (STB served Sept. 19, 2014).

In the instant case, each of these factors weighs against JBBR being classified as a common carrier subject to Board jurisdiction. CN, the railroad that will deliver the rail cars to the Joliet transload facility, will not hold itself out as providing JBBR's transloading services; CN will not be contractually liable for anything that occurs at JBBR's facility; CN has no ownership interest in the JBBR facility; CN will have no control over the JBBR operations; and CN and JBBR will enter an industrial track agreement (not an interchange agreement) giving CN permission to deliver cars onto JBBR's private track.

Thus, the instant case is similar to other cases in which the Board and courts have held that transloading operations are not common carrier operations. *See Town of Babylon and Pinelawn Cemetery-Petition for Declaratory Order*, STB Finance Docket No. 35057 (served Feb. 1, 2008) (transloading facility not subject to STB jurisdiction because railroad not liable for activities at the facility; facility operators charged and collected a separate fee for their services and performed all marketing for the facility; railroad did not hold out transloading operations as part of the service offered to the public; and railroad exercised no control over activities at the facility); *Hi Tech Trans LLC v. State of New Jersey*, 382 F.3d 295 (3rd Cir. 2004) (same).

III. Conclusion

As the discussion above illustrates, each of the formulations employed by the Board and various courts to determine whether an entity is a common carrier or a private carrier, when applied to JBBR, demonstrate that JBBR will be a non-jurisdictional private carrier. Accordingly, JBBR requests that the Board terminate this proceeding and confirm that JBBR may resume construction at its Joliet intermodal facility.

Respectfully submitted,

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VERIFIED STATEMENT OF ERIC J. GILBERT IN SUPPORT OF JOLIET BULK BARGE & RAIL, LLC PETITION TO TERMINATE PROCEEDING

My name is Eric J. Gilbert**.** I am Vice President of Joliet Bulk, Barge & Rail, LLC ("JBBR") and became an officer of JBBR upon its creation in 2014. I am also a licensed engineer in the state of Illinois. My responsibilities include management of the development of the JBRR. I provide this verified statement in support of JBBR's Petition to Terminate Proceeding.

JBBR, which is owned by CenterPoint Properties, intends to develop and operate a transloading facility in Joliet Illinois on property owned by JBBR. In addition to rail track, the facility will include storage tanks to store crude oil. The storage tanks will connect to a dedicated pipeline originating on the property of the transload facility that is owned by an affiliate of JBBR. JBBR intends to use the entire Joliet facility, including the rail track, the storage tanks, and the pipeline to serve a single shipper customer, ExxonMobil ("Exxon"), at Exxon's Joliet, Illinois refinery. A schematic of the facility is attached to this statement.

JBBR has already entered into a contract with Exxon to the use of this facility. Pursuant to this contract, JBBR will provide Exxon with a rail transload facility at Joliet for Exxon's crude oil. Exxon will pay JBBR directly for these transload services.

Exxon's crude oil will be delivered to the Joliet facility by the Canadian National Railway ("CN") company, whose track will connect with the private track at the facility site. Payment by Exxon to CN for rail transportation services will not cover any of the services provided by JBBR to Exxon and JBBR will receive no direct or indirect remuneration from CN. CN and JBBR will enter a standard industrial track agreement allowing CN to deliver rail cars containing Exxon's products onto JBBR's private track. The industrial track agreement between CN and JBBR will not obligate JBBR to provide any part of CN's common carrier service or require JBBR to offer any type of rail service other than that related to the on-site transload operations. There will be no interchange agreement as is typical where two common carrier railroads agree to interchange traffic.

Further, JBBR's rail tracks will be confined to its own property, will not connect with any railroad other than CN; will not handle any outbound traffic (other than empty rail cars being returned to CN) and will not cross any public roads. There is no common ownership between JBBR and CN or any other railroad. The location of the Joliet transload facility is highly desired by the shipper, Exxon, and CN because it allows CN to route the trains around Chicago and, thereby, avoid the congestion and inefficiencies often associated with rail transportation within Chicago.

JBBR will not be offering a common carrier rate for service at the Joliet facility and all of the service provided by JBBR will be offered only pursuant to the contract with Exxon. JBBR does not have a contractual relationship with any customer other than Exxon with respect to the

Joliet facility and JBBR does not anticipate serving any other customers at the Joliet facility. Were JBBR to serve another customer at the transload facility in the future, it would do so only pursuant to a contract with that customer and not pursuant to a broader holding out of services to any shipper.

Exxon, through its subsidiary Imperial Oil, is currently building a private rail loading facility in Edmonton, Alberta where it will load rail cars with feedstock products for shipment to refineries in the United States. Approximately [redacted] [redacted] unit trains per week will travel from the Exxon loading facility in Canada to the JBBR facility in Joliet via CN. Those shipments will constitute all of the traffic that will be handled at the Joliet facility. Additional trains will travel from the Exxon facility in Edmonton to another private rail transload facility similar to the Joliet facility that is owned and operated by an entity that is not affiliated with CenterPoint Properties or JBBR. The Exxon facility in Edmonton is scheduled to begin operations by early March 2015, at which time trains will be able to begin traversing the route between Edmonton and JBBR's Joliet facility.

CN will deliver the Exxon rail cars onto the JBBR "loop track" and JBBR employees will operate the trains on the JBBR track to position and unload the rail cars. The product will be conveyed from the rail cars to one of two storage tanks. From the storage tanks, the product will be delivered to a connecting pipeline owned by an affiliate of JBBR. The pipeline is a dedicated pipeline that will serve only the JBBR facility. It has only one customer, Exxon. The pipeline is approximately four and a half miles long and connects at the other end to the primary crude feeder pipe into the Exxon refinery in Joliet, Illinois.

JBBR's contract with Exxon provides for a [redacted]. To meet this deadline, JBBR will need to resume rail construction, which was terminated pursuant to the Board's December 2, 2014 order, by no later than mid-January. The contract with Exxon provides for a [redacted].

Once completed, the Joliet terminal will provide an additional outlet for bulk liquid products produced in Canada, allowing approximately [redacted] barrels per day to reach the Joliet area for use at Exxon's Joliet refinery. Until the Joliet transload facility is completed, the Exxon refinery at Joliet will be unable to receive its required volume of feedstock from Canada and will be forced to operate at less than its optimal efficiency. In addition, once operational the Joliet facility will directly employ more than 70 full time employees and will indirectly result in the creation of 200 additional jobs. It will also create more than 1,000 temporary construction jobs. If the project experiences significant delays or is cancelled, the anticipated transportation of products for refinery use, as well as the benefits to workers and the local economy, will be significantly delayed or lost.

VERIFICATION

I, Eric J. Gilbert, hereby verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Eric J. Gilbert

Dated this 19th day of December 2014

DRAWN BY: CAK
APPROVED: KAH
CAD DATE: 8/6/14
CAD FILE: O:\Projects\86130073 Joliet Site - CenterPoint Properties\Design\CAD\Sheets\90%\Exhibits\86130073-90%_Overall Exhibit.dwg

JOB DATE: 07-25-2014
JOB NUMBER: 86130073

BAR IS ONE INCH ON OFFICIAL DRAWINGS.
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NO.	DATE	BY	REVISION DESCRIPTION
A	7/9/14	MJ/CK	REVISED PER CN COMMENTS LIST AND AECOM
			RAIL GRADE CHANGE AS OF 6/24/14
B	7/24/14	MJ/CK	REVISED PER CN COMMENTS ON 7/24/14

Engineered Rail Solutions, LLC

JOLIET BULK BARGE & RAIL LLC

NORTH LARAWAY TERMINAL
WILL COUNTY, ILLINOIS
JOLIET, ILLINOIS

NORTH LARAWAY TERMINAL
OVERALL PLAN EXHIBIT

SHEET NO.