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BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35914

ENTERED  
Office of Proceedings  
March 17, 2015  
Part of  
Public Record

**FORT TRANSFER COMPANY – VERIFIED PETITION FOR EXPEDITED  
RELIEF FOR SERVICE EMERGENCIES – TAZEWELL COUNTY, IL**

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**REPLY OF TOLEDO, PEORIA & WESTERN RAILWAY CORP.**

(includes color copy)

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Dated: March 17, 2015

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SURFACE TRANSPORTATION BOARD

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**FORT TRANSFER COMPANY – VERIFIED PETITION FOR EXPEDITED  
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On March 10, 2015, Fort Transfer Company (“Fort Transfer”) filed a Petition for Expedited Relief for Service Emergencies (the “Petition”) under 49 CFR §1146.1 and 49 USC §11123(a). The Petition seeks to have alternative rail service provided to its Morton, IL facility that has been receiving rail service from Toledo, Peoria & Western Railway Corp. (“TPW”). TPW files this Reply in opposition to the Petition. This Reply is being filed with the Board within five business days of the filing of the Petition as required under 49 CFR § 1146.1(b)(2).

**Discussion**

**1. Standards for Emergency Service**

In order to obtain interim alternative rail service, a shipper must: (1) show substantial, measurable service deterioration or service inadequacy; (2) summarize discussions with the incumbent carrier and show why the incumbent is unlikely to restore rail service within a reasonable period of time; and (3) contain a commitment from an alternative carrier to meet the shipper’s needs, and show that the service can be performed safely and without hurting service to existing customers of the alternative carrier and without unreasonably interfering with the incumbent’s service. *See* 49 CFR § 1146.1; *Pyco Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co. (“Pyco”)*, STB Finance Docket No. 34802 (served January 26,

2006), slip op. at 4-5. Each of the criteria is addressed below. Because the Petition fails to demonstrate that there has been inadequate service offered, or that the proposed service of the alternative carrier can be performed safely or without unreasonably interfering with the service being provided by TPW and other carriers, the Petition should be denied.<sup>1</sup>

## **2. Status of Service to Fort Transfer**

Fort Transfer is located in Morton, IL, at the end of a 4.3 mile track known as the Morton Industrial Lead (the “Lead”). The Lead is the last remaining element of what was once a longer through route between Pekin Junction and Pekin, IL. The portions of the line between Pekin Junction and Crandall, and between Morton and Pekin, were abandoned by the then-owner The Atchison, Topeka and Santa Fe Railway Company (“ATSF”) in 1982 and 1984. *See Atchison, Topeka and Santa Fe Railway Company -- Abandonment -- in Livingston, LaSalle, Woodford and Tazewell Counties, IL*, ICC Docket No. AB-52 (Sub-No. 21), 47 FR 57363 (served December 23, 1982); and *The Atchison, Topeka and Santa Fe Railway Company – Abandonment in Tazewell County, IL – Exemption*, ICC docket No. AB-52 (Sub-No. 31X), 49 FR 22142 (served May 25, 1984). As discussed more fully below, the remaining Lead is constructed of lightweight 85-pound rail, and is currently not in safe operating condition.

The Lead is an island disconnected from the rest of the TPW system. TPW accesses the Lead via trackage rights over approximately 8.0 miles of tracks now owned by Norfolk Southern Railway Company (“NS”) between the junction west of TPW’s East Peoria Yard and Crandall.

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<sup>1</sup> Although the Petition indicates in its title that it is “verified,” in fact there was no verification or verified statement provided with the Petition. Accordingly, none of the “facts” included in the Petition should be accepted as evidence by the Board, and as such the Petition cannot be deemed to make any of the required showings. (The “commitment” in the letter filed by Keokuk Junction Railway Company also lacks a verification.)

The 1983 trackage rights agreement between TPW and NS's predecessor Norfolk and Western Railway Company, as amended and supplemented, also grants NS trackage rights over approximately one mile of TPW between the junction west of TPW's East Peoria Yard and PPU Junction to what is now the yard of Tazewll & Peoria Railroad, Inc. ("TZPR") in Peoria. *See* the map attached hereto as Exhibit A.

Fort Transfer, according to its website (<http://forttransfer.com/services/>), is primarily a liquid bulk chemical transportation (trucking) company. It also stores and distributes liquid bulk chemicals and herbicides (Petition at 1), some or all of which is delivered to Fort Transfer by rail. According to TPW's records, over the past six years, Fort Transfer has received between 56 and 100 tank cars by rail – 73 in 2014, and only 7 through February 21, 2015. *See* table attached hereto as Exhibit B. All of the liquid bulk commodities received by Fort Transfer are considered hazardous materials under Federal Railroad Administration ("FRA") regulations. Fort Transfer indicates in the Petition that March – July is its busiest season with respect to rail deliveries. However, the table of actual rail traffic shows that the deliveries over the past 2 years have been spread evenly throughout the year and range from a high of 12 cars in a month to a low of -0- car in a month, with most months seeing 4-7 cars per month.<sup>2</sup> The Petition talks about a potential loss of business from one storage customer, but does not quantify the number of carloads, or when they would be expected to arrive. There is mention only of three cars that had been

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<sup>2</sup> There is one other customer located on the Lead, Morton Builders, Inc. Although Morton Builders is not a party to the Petition, for information, annual carloads delivered to Morton Builders is also shown on the attached table.

delivered to TPW via TZPR, and three more that are on their way to TPW.<sup>3</sup>

The Petition filed by Fort Transfer omitted the fact that the storage tanks at its facility are not located adjacent to the tracks. Thus, the commodities that Fort Transfer receives by rail must be transloaded from the tank cars into tanker trucks, transported across its property to the storage tanks, and then pumped from the trucks into the storage tanks. Fort Transfer does not use rail for any outbound moves; when it distributes product from the storage tanks, the commodities must then be pumped from the storage tanks back into tanker trucks.

TPW acknowledges that on February 21, 2015, based on an inspection of the Lead by TPW's Roadmaster on February 20, 2015, TPW took the Lead out of service by means of its Daily Operating Bulletin issued that day. A copy of the Daily Operating Bulletin is attached hereto as Exhibit C. Because of the lightweight rail and soft ground, the Lead historically needs work after the freezing and thawing of the ground over the winter. Although the track was, and has been, in FRA "excepted" track condition, the inspection found numerous problems with the Lead including ties that are 70% defective, all eight crossings deteriorated with five needing to be replaced including one with a broken rail in the crossing, culverts that need work or replacement, approaches to the bridge that need to be re-profiled, a number of wide gauge issues, all of the track needs surfacing and ballast work is required along the tracks, all of which together led TPW to conclude that the Lead was unsafe to operate, particularly for Fort Transfer's hazardous material traffic. Additionally, the diamond on NS's line by which the Lead is accessed, is 1930's vintage and needs replacement, and the signals on the Lead (there are 6

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<sup>3</sup> The Petition also indicates that there are three empty tank cars at Fort Transfer waiting pick up. These cars were delivered to Fort Transfer on February 10, 2015 (before the Lead was taken out of service), and not released by Fort Transfer until February 24, 2015.

public crossings, and 2 private crossings on the Lead) do not meet current guidelines. TPW estimates that repair of the Lead will cost approximately \$315,000, not including \$300,000 to replace the diamond, or \$75,000 to install new signals. TPW did not immediately embargo the Lead because it was evaluating its options, and because it believed that substitute truck service fulfilled its ongoing common carrier obligation to provide service in the interim.

This past Thursday, March 12, 2015, likely as a result of the filing of the Petition, the FRA sent its local track inspector to inspect the Lead. A copy of his inspection report (the “FRA Report”) of the track is attached hereto as Exhibit D. The FRA report confirms that TPW properly took the Lead out of service, and it must be repaired before rail service is restored. In particular the FRA Report notes that all bridges and public crossings must be brought into FRA Class 1 condition before hazardous materials can be moved over the Lead. Given the FRA’s inspection findings the Lead is unsafe, particularly for hazardous materials, TPW proceeded expeditiously to embargo the Lead effective March 16, 2015. *See* embargo confirmation attached hereto as Exhibit E.<sup>4</sup> As such, TPW is now temporarily relieved of its common carrier obligations to provide service to Fort Transfer (and Morton Builders).

Notwithstanding the taking of the line out of service, and now the embargo, TPW denies that there has been, or would have been, any deterioration in service but for the actions of Fort Transfer. As soon as a determination was made to take the Lead out of service, TPW’s General Manager called both Fort Transfer and Morton Buildings – the only customers affected by taking the Lead out of service - to tell them about the decision, and to offer them transloading services

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<sup>4</sup> TPW is aware that an embargo is a temporary measure, and that it must either take reasonable measures to restore service if such measures are available, or seek abandonment authority.

while a determination is being made by TPW about whether and what repairs would be necessary to restore safe service both short term and long term, and whether such expenditures would be justified. The Board and its predecessor the Interstate Commerce Commission have long acknowledged that a carrier is not responsible if it provides reasonable substitute truck service. *Overbrook Farms Union Cooperative Association – Petition for Declaratory Order – Violation of 49 USC 11101(a)*, ICC Finance Docket No. 31166 (served February 10, 1989), slip op. at 6-7. *See also Union Pacific Railroad Company – Discontinuance – in Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209) (served January 2, 2008), slip op. at 1 (noting without discussion that UP compensated a shipper for substituted truck service after the line was taken out of service approximately 4 ½ years prior to the filing for abandonment).

Since the Lead has been taken out of service, TPW has received six cars for Morton Builders, and has arranged, at TPW's expense, for them to be transloaded to truck and delivered to Morton Builders. There has been no delay in Morton Builders receiving its materials, and because cars are unloaded at the TPW yard, they are released sooner and Morton Builders will be incurring less demurrage. TPW and Morton Builders are continuing to work on scheduling so that deliveries do not back up at Morton Builders, but TPW believes that Morton Builders has been satisfied with the service (despite the Petition indicating generally that Morton Buildings supports the Petition).

On the other hand, Fort Transfer adamantly refused to accept delivery by transload (despite the fact that all of its rail deliveries are transloaded to truck before being loaded into storage tanks, as described above). Based on this refusal, TPW sent back the three carloads it received, and it will do the same with the embargo in place unless Fort Transfer changes its mind about accepting delivery by transload, or unless the Board were to order alternative service.

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Despite the issuance of the embargo, TPW stands ready, willing and able to arrange for deliveries to be transloaded to Fort Transfer until either TPW restores service on the Lead, or a determination is made relieving TPW of its carrier obligations on the Lead.

In sum, TPW continues to satisfy its common carrier obligations to Fort Transfer despite the Lead being out of service and now embargoed, through its offer to transload deliveries to Fort Transfer while a final determination is being made about the future of the Lead.

### **3. Discussions between TPW and Fort Transfer Regarding Restoration of Rail Service on the Lead**

The Petition, p. 3, indicates that Fort Transfer learned that the Lead had been taken out of service in a phone call from TPW's General Manager on February 23, 2015, based on the unsafe condition of the tracks. In fact, TPW called Fort Transfer on February 21, the day it was determined that the Lead would be taken out of service. TPW's General Manager told Fort Transfer that TPW was still evaluating the work that would be required to reopen the Lead, and there was no date as to when or if service would be restored over the Lead. Omitted from the Petition is the offer that TPW made to Fort Transfer to allow transloading in TPW's East Peoria Yard to allow for substituted truck delivery at TPW's cost to Fort Transfer. Fort Transfer refused to consider transloading from TPW's yard. There was no follow up from Fort Transfer before it filed the Petition.

The Petition expresses surprise that the condition of the Lead has resulted in the line being taken out of service. In fact, the discussions that Fort Transfer acknowledges took place in the fall of 2014,<sup>5</sup> included discussions about the costs of operations and maintenance necessary

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<sup>5</sup> In addition to the call in October, 2014, there were discussions in November, 2014 in which Fort Transfer advised TPW that it would not consider any transload options.

to provide service over the Lead, as well as discussions of transload options. The purpose of requiring discussions before a petition for alternative service is filed is to ensure that the shipper and carrier have done all that they can to resolve the service issues before coming to the Board for relief. *Pyco, supra* at 3. In this instance, Fort Transfer has refused to discuss or consider substitute transloading service while the future of the Lead is being determined.

#### **4. Proposed Alternative Service**

Under the regulations, 49 CFR § 1146.1(b)(1)(iii), the Petition must demonstrate not only a commitment from another carrier to provide the alternative service, but also that such service can be provided, *inter alia*, safely and without unreasonable interference with the incumbent railroad's ability to provide service. Neither is the case here.

The Petition states that Fort Transfer has contacted Keokuk Junction Railway Company ("KJRY") about providing the alternative service requested by the Petition, and that KJRY has agreed to do so. This is confirmed by a letter filed by KJRY (the "KJRY Letter") with the Board on March 11, 2011. The Petition indicates that KJRY made a "preliminary assessment" of the Lead from various public road crossings. The KJRY Letter does not mention any inspection of the Lead – formal or informal, but asserts that KJRY will be able to operate safely and in accordance with FRA regulations.<sup>6</sup>

As discussed above, the Lead has a number of conditions that need to be addressed before the Lead can be safely operated, in particular for the hazardous materials that would be moving to Fort Transfer, and the embargo can be removed. These conditions have been identified both by TPW's Roadmaster and by the local FRA track inspector. Before performing any alternative

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<sup>6</sup> KJRY has not requested permission from TPW to inspect the Lead, nor has it requested copies of any inspections of the Lead.

service that might be ordered, KJRY should be required to make all necessary repairs, and receive clearance from the FRA that the Lead is safe to operate. *Cf. Arkansas Midland Railroad Company, Inc. – Alternative Rail Service – Line of Delta Southern Railroad, Inc.*, STB Finance Docket No. 34479 (served March 11, 2004) (AKMD agreed to make necessary track repairs as part of its offer to provide alternative service); and (served March 19, 2015) (AKMD ordered to certify to the Board that line has been repaired and can be operated safely prior to beginning alternative service).

Even if the Lead were (or were put) in safe operating condition, KJRY's operations as described in the KJRY Letter are not solely within TPW's power to grant and would materially interfere with the operations of TPW and other carriers. KJRY proposes moving surplus power to the Lead and basing its operations from the Lead. TPW agrees that with power placed on the Lead, operations over the Lead itself would not interfere with the operations of TPW or any other carrier because TPW is not operating on the track at this time. However, KJRY also proposes that it would operate via trackage rights over the 8 miles of NS tracks between Crandall and East Peoria, via trackage rights over one mile of TPW track between from NS connection at East Peoria and into the TZPR yard in order to retrieve cars destined for Fort Transfer. Of course, that would require KJRY crews to be qualified to operate over not only the Lead, but also over NS's tracks, TPW's connecting track, and over TZPR. Neither the Petition nor the KJRY Letter indicate that operating issues or contractual arrangements have been discussed with third party carriers including NS and TZPR.

An initial problem with KJRY's proposal is that TPW cannot assign to KJRY TPW's trackage rights over NS between Crandall and East Peoria. Those trackage rights, as discussed above, are included in the same agreement under which TPW has granted trackage rights to NS.

The rights and the charges under the agreement are interrelated, and TPW does not have the ability to assign, or partially assign, the trackage rights to KJRY. KJRY would need to obtain approval from, and work out terms with NS directly since NS is not a party to this proceeding.<sup>7</sup>

Further, KJRY would be adding trains to the already congested use of TPW's tracks between East Peoria and TZPR, and of TZPR's tracks into and in its yard. KJRY's trains across the TPW tracks into and out of the yard (expected to be 4 trains per week – 2 in each direction - based on previous volumes handled for Fort Transfer and Morton Builders), would be added to TPW's current trainload traffic of 20 - 24 trains week (these handle TPW's local traffic on its other lines and interchange traffic to/from connecting carriers), and NS's current trainload traffic moving over the tracks to and from TZPR of 30 trains per week. TZPR, which is operated independently of TPW, is responsible for interchanging approximately 55-60 trains per week to and from 8 carriers (including TPW and NS). Additionally, there are additional maintenance requirements and inspections of track required of TPW because of NS's loaded ethanol traffic that moves across the line segment 3-4 times per week on average. Accordingly, adding KJRY to the mix is certainly not as simple as KJRY makes it sound, and the addition of an additional carrier and additional trains would interfere with the operations of TPW, NS, TZPR and the other carriers with which TZPR interchanges traffic.

An alternative if the Board were to order alternative service by KJRY to Fort Transfer (and Morton Builders) would be to limit the service provided by KJRY to the Lead. TPW would continue to handle cars between the TZPR yard and Crandall just as it was doing before the Lead

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<sup>7</sup> TZPR is also not a party to this proceeding; however, it is an affiliated company to TPW. The General Manager of TZPR has expressed serious concerns about the interference that would be caused by additional trains operated by KJRY over TZPR tracks on which numerous other trains already operate.

was taken out of service. TPW would use the current diamond to shove cars onto the Lead, and would pick up outbound cars from the end of the Lead where they would be placed by KJRY. Under this alternative KJRY's service would not interfere with the service of any other carriers, and TPW and the other carriers would continue to operate as they have previously with no changes in operations to accommodate another carrier required.

## **5. Compensation and Agreements**

Under 49 USC § 11123(b)(2), if the Board were to order alternative rail service by KJRY, KJRY and TPW are to establish the terms of compensation for operations and use of facilities and equipment between themselves.<sup>8</sup> If they cannot reach agreement, then the Board may establish the terms for them. TPW anticipates that if the alternative service were to be limited to the Lead, that it would not seek compensation for the use of the Lead over and above the repairs that KJRY would be required to make in order to make the Lead safe to operate for the movement of hazardous materials, and any required maintenance during the period of alternative service. TPW would also expect the parties to enter into an interchange agreement, and a trackage rights agreement, both with standard insurance requirements, under which TPW would be indemnified for any and all liabilities incurred, or damage caused to its tracks or property, by or in connection with KJRY's operations on the Lead. If alternative service were limited to the Lead, TPW and KJRY would also need to agree on an allocation of the revenues attributable to the movements based on their relative portions of the moves. *See* 49 USC §11123(b)(3)(A).

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<sup>8</sup> As described above, KJRY would also need to reach compensation arrangements with NS, and with TZPR if KJRY were to operate as KJRY has proposed.

## Conclusion

For the foregoing reasons, TPW requests that the Board deny the request of Fort Transfer for emergency service relief. If the Board were to determine that alternative service is necessary, then the service provided by KJRY should be limited to service on the Morton Industrial Lead, and only after the Lead is made safe for hazardous material operations.

Respectfully submitted,



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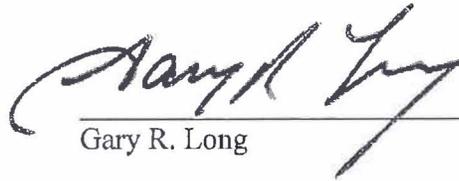
Dated: March 17, 2015

Attorneys for  
Toledo, Peoria & Western Railway Corp.

**VERIFICATION**

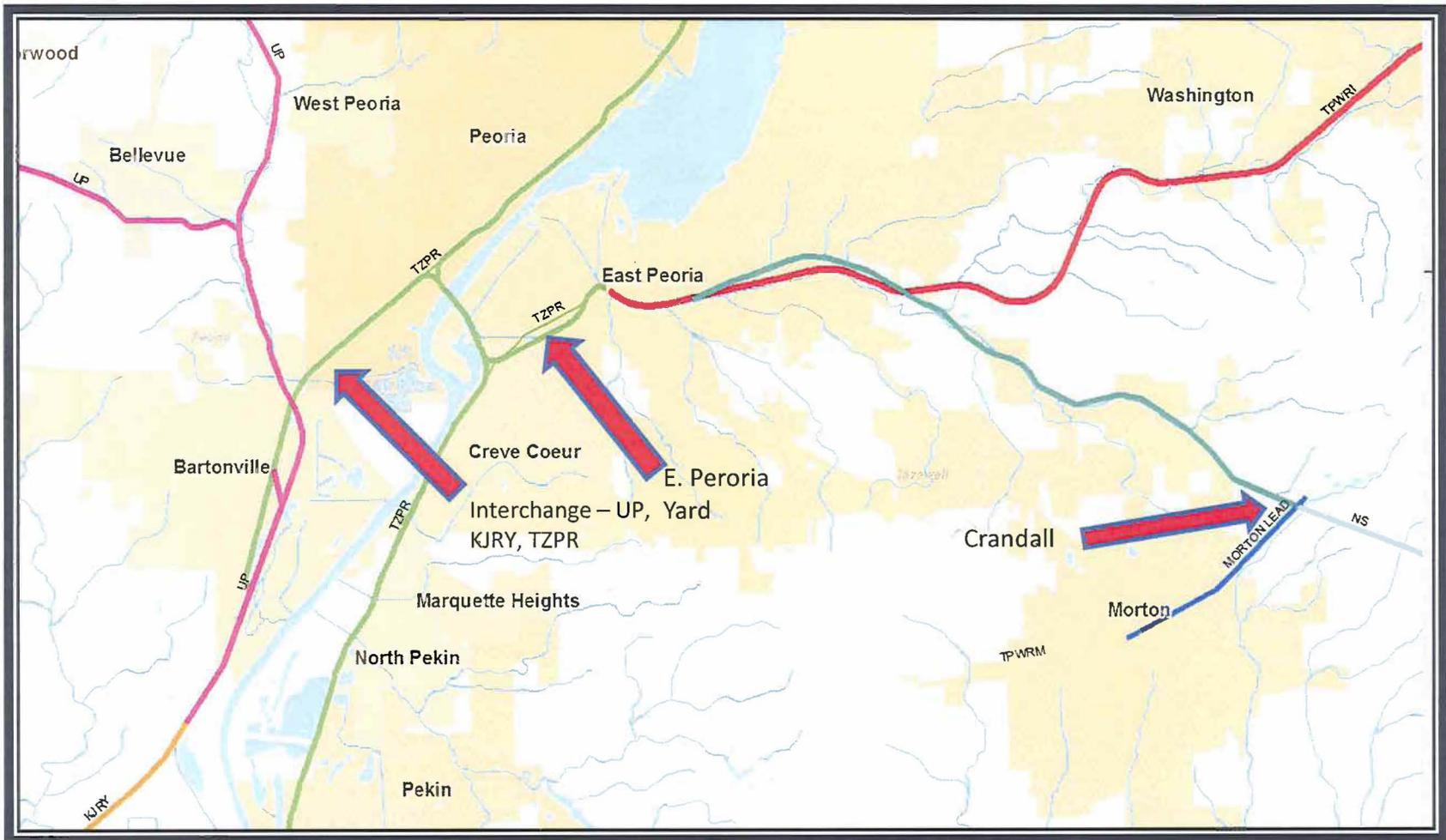
I, Gary R. Long, President of Toledo, Peoria & Western Railway Corp. verify under penalty of perjury that the foregoing is true and correct to the best of my information and belief. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 17, 2015.

  
\_\_\_\_\_  
Gary R. Long

**EXHIBIT A**

**MAP**



**EXHIBIT B**

**TABLE OF TRAFFIC**

**TPW TRAFFIC MORTON BRANCH**

|                  | CUSTOMER | VOLUME |      |      |      |      |      | YTD 3/12/15 |
|------------------|----------|--------|------|------|------|------|------|-------------|
|                  |          | 2009   | 2010 | 2011 | 2012 | 2013 | 2014 | 2015        |
| MORTON BUILDINGS |          | 31     | 27   | 33   | 32   | 43   | 38   | 7           |
| FORT TRANSFER    |          | 63     | 84   | 100  | 56   | 80   | 73   | 7           |

| <b>2013</b> | MB | FT |
|-------------|----|----|
| JAN         | 3  | 4  |
| FEB         | 5  | 5  |
| MAR         | 4  | 6  |
| APR         | 1  | 6  |
| MAY         | 6  | 6  |
| JUN         | 6  | 12 |
| JUL         | 4  | 6  |
| AUG         | 5  | 7  |
| SEP         | 2  | 9  |
| OCT         | 4  | 7  |
| NOV         | 2  | 5  |
| DEC         | 1  | 7  |

| <b>2014</b> | MB | FT |
|-------------|----|----|
| JAN         | 3  | 6  |
| FEB         | 4  | 5  |
| MAR         | 3  | 7  |
| APR         | 3  | 10 |
| MAY         | 3  | 7  |
| JUN         | 5  | 5  |
| JUL         | 3  | 4  |
| AUG         | 5  | 11 |
| SEP         | 1  | 9  |
| OCT         | 2  | 0  |
| NOV         | 5  | 4  |
| DEC         | 1  | 5  |

**EXHIBIT C**

**DAILY OPERATING BULLETIN**

**TOLEDO, PEORIA AND WESTERN RAILWAY COMPANY**DAILY OPERATING BULLETIN NO: **052** EFFECTIVE AT 0001 HOURS: **February 21, 2015**

DOB VERIFIED AT: \_\_\_\_\_

DISPATCHER: \_\_\_\_\_

TRANSPORTATION RULE OF THE DAY: **1800**MECHANICAL RULE OF THE DAY: **4221**ENGINEERING RULE OF THE DAY: **8222**OFFICE AND ADMINISTRATIVE EMPLOYEES RULE OF THE WEEK: **OFFICE CHAIRS - 1980, 1981, 1982, 1983, 1984****ALL SUBDIVISIONS**

| Void | Item | Form Limits | Speed   | From - Until | Foreman                      | Flags Displayed | F.INT & DATE & TRK COND |  |
|------|------|-------------|---|--------------|------------------------------|-----------------|-------------------------|--|
|      | 1    | NA          | TIMETABLE IN EFFECT NO. 3<br>LATEST GENERAL ORDER NUMBER: 14-11   |              | LATEST GENERAL NOTICE: 01-15 |                 |                         |  |
|      | 2    | NA          | ALL CREWS MUST BE ON THE LOOKOUT FOR SUSPICIOUS PERSONS ON OR ABOUT RAILROAD PROPERTY. IF ANYTHING UNUSUAL IS NOTICED REPORT THESE INSTANCES TO THE TRAIN DISPATCHER AND TO LOCAL LAW ENFORCEMENT IMMEDIATELY. BE ESPECIALLY ALERT FOR SIGNS OF TAMPERING WITH TANK CARS, FERTILIZER CARS OR CARS & LOCOMOTIVES CONTAINING DIESEL FUEL. |              |                              |                 |                         |  |

**INDIANA SUBDIVISION**

| Void | Item | Form Limits | Speed              | From - Until   | Foreman | Flags Displayed | F.INT & DATE & TRK COND |
|------|------|-------------|--------------------|--|---------|-----------------|-------------------------|
|      | 3    | C           | <u>HOOSIERLIFT</u> | ALONG LOADER TRACK DRIVE ONLY ON CEMENT DRIVEWAY.<br>DO NOT DRIVE OVER MANHOLE COVERS ON ASPHALT |         |                 | SWL 08-15-12            |
|      | 4    | C           | <u>REMINGTON</u>   | WEST 300 FEET OF REMINGTON ELEVATOR TRACK OOS  |         |                 | WCB 12-08-14 TIES       |
|      | 5    | C           | <u>GOODLAND</u>    | UPTOWN ELEVATOR SIDING OOS   |         |                 | JCB 07-07-14            |

**ILLINOIS SUBDIVISION**

| Void | Item | Form Limits | Speed           | From - Until   | Foreman | Flags Displayed | F.INT & DATE & TRK COND |
|------|------|-------------|-----------------|--|---------|-----------------|-------------------------|
|      | 6    | A           | 2.0 - 3.0       | 10 MPH (DIAMOND)   |         |                 | WCB 02-19-15            |
|      | 7    | A           | 4.0 - 4.1       | 10 MPH (DIAMOND)   |         |                 | WCB 01-26-15 RAIL       |
|      | 8    | C           | <u>WATSEKA</u>  | EAST PASS SWITCH OOS FROM EAST SWITCH TO YOUNT ST.                       |         |                 | JCB 08-15-13            |
|      | 9    | C           | <u>FORREST</u>  | SIDING OOS ACCOUNT TRACK DEFECTS   |         |                 | JDS 07-08-14            |
|      | 10   | C           | <u>FAIRBURY</u> | SOUTH ELEVATOR TRACK OOS BETWEEN 3RD AND 4TH ST<br>ACCOUNT TRACK DEFECTS |         |                 | SWL 07-07-14            |
|      | 11   | A           | 95.0 - 100.0    | 10 MPH   |         |                 | SWL 10-07-14 JOINTS     |

**PEORIA SUBDIVISION**

| Void | Item | Form | Limits             | Speed | From - Until  | Foreman | Flags Displayed | F.INT & DATE & TRK COND |
|------|------|------|--------------------|-------|---|---------|-----------------|-------------------------|
|      | 12   | C    | <u>EAST PEORIA</u> |       | LOWER CROSSOVER SWITCH OOS  |         |                 | SWL 02-11-15            |
|      | 13   | C    | <u>EAST PEORIA</u> |       | WATCH YOUR FOOTING ALONG LOCOMOTIVE MAINTENANCE TRACK ACCOUNT ICE                 |         |                 | DMT 01-16-15            |
|      | 14   | C    | <u>EAST PEORIA</u> |       | WEST 200 FEET OF TRACK 2 OOS  |         |                 | SEC 01-07-15            |
|      | 15   | C    | <u>EAST PEORIA</u> |       | WEST 200 FEET OF TRACK 3 OOS  |         |                 | SEC 01-07-15            |
|      | 16   | C    | <u>EAST PEORIA</u> |       | WATCH YOUR FOOTING ON WEST END OF TRACK 1 ACCOUNT TIE JOB                         |         |                 | SEC 11-19-14            |
|      | 17   | C    | <u>EAST PEORIA</u> |       | EAST 300 FEET OF OIL DOCK TRACK OOS ACCOUNT MOW EQUIPMENT                         |         |                 | SEC 11-06-14            |
|      | 18   | C    | <u>EAST PEORIA</u> |       | WEST 500 FEET OF TRACK 11 OOS ACCOUNT TIE CONDITIONS                              |         |                 | SEC 10-06-14 TIES       |
|      | 19   | C    | <u>EAST PEORIA</u> |       | CLIC TRACK 0124 (LOWER 24 TRACK) OOS ACCOUNT SURFACE                              |         |                 | SWL 04-24-14            |
|      | 20   | C    | <u>EAST PEORIA</u> |       | NORTH RIP TRACK OUT OF SERVICE ACCOUNT BROKEN RAIL, EIC ROADMASTER LEE            |         |                 | SWL 04-27-14 RAIL       |
|      | 21   | C    | <u>EAST PEORIA</u> |       | SOUTH RIP TRACK OUT OF SERVICE ACCOUNT BROKEN RAIL, EIC ROADMASTER LEE            |         |                 | SWL 04-27-14 RAIL       |
|      | 22   | C    | <u>EAST PEORIA</u> |       | WEST 700 FEET OF TRACK 106 OUT OF SERVICE ACCOUNT TIE DEFECTS, EIC ROADMASTER LEE |         |                 | JDS 07-25-14 TIES       |
|      | 23   | C    | <u>EAST PEORIA</u> |       | TRACK 109 OOS ACCOUNT TIE CONDITIONS  |         |                 | JDS 07-25-14 TIES       |

**MORTON INDUSTRIAL TRACK**

| Void | Item | Form        | Limits                         | Speed | From - Until              | Foreman | Flags Displayed | F.INT & DATE & TRK COND |
|------|------|-------------|--------------------------------|-------|---------------------------|---------|-----------------|-------------------------|
|      | 24   | C           | <u>MORTON INDUSTRIAL TRACK</u> |       | OOS ACCOUNT TRACK DEFECTS |         |                 | SWL 02-20-15            |
|      | 24   | TOTAL ITEMS |                                |       | END OF DOB                | 052     |                 | February 21, 2015       |

**SAFE DAYS WORKED SINCE:**

|  | DAYS | DATE               |
|--|------|--------------------|
| LAST FRA REPORTABLE INJURY - T&E       | 1528 | December 16, 2010  |
| LAST FRA REPORTABLE INJURY - LOCO SHOP | 2347 | September 18, 2008 |
| LAST FRA REPORTABLE INJURY - MOW       | 1089 | February 28, 2012  |

ARDC DISPATCHER PHONE NUMBER

(888) 293-3443

ARDC CREW CALLER PHONE NUMBER

(802) 527-3441

EMERGENCY PHONE NUMBER FOR EMERGENCY USE ONLY

(866) 527-3499 or (802) 527-3499

**EXHIBIT D**

**FRA INSPECTION REPORT**

# INSPECTION REPORT

|  |                   |                       |                           |  |                             |   |                                |                   |              |                   |       |              |               |
|--|-------------------|-----------------------|---------------------------|--|-----------------------------|---|--------------------------------|-------------------|--------------|-------------------|-------|--------------|---------------|
| Inspector's Name<br>Blaydes, Fred E.   |                   | Inspector's Signature |                           |  | Inspector's ID No.<br>11291 | Report No.<br>48  | Date<br>yy mm dd<br>2015 03 12 |                   |              |                   |       |              |               |
| Railroad/Company Name & Address<br>TOLEDO, PEORIA & WESTERN RWY CORP.<br>1990 EAST WASHINGTON STREET<br><br>EAST PEORIA IL 61611   |                   |                       |                           | R/C<br>R   | Division<br>SYSTEM          | RR/Co. Representative (Receipt Acknowledged)<br>Name JUDE O'DONNELL<br>Title TRACK SUPERVISOR<br>Email<br>Signature |                                |                   |              |                   |       |              |               |
| From: City MORTON  |                   | Codes 5780            | Destination City & County |  |                             | Codes   | From Latitude                  |                   |              |                   |       |              |               |
| State IL   |                   | 17                    | City MORTON               |  |                             | 5780  | From Longitude                 |                   |              |                   |       |              |               |
| County TAZEWELL  |                   | C179                  | County TAZEWELL           |  |                             | C179  | To Latitude                    |                   |              |                   |       |              |               |
| Mile Post: From MI0043.20 To MI0046.70   |                   |                       |                           | Inspection Point MORTON INDUSTRIAL   |                             |   | To Longitude                   |                   |              |                   |       |              |               |
| Activity Code:   | MTH               | MTW                   | TOM                       | RWP  | RMM                         | MSB   | DER                            | 2170              | 2180         |                   |       |              |               |
| Units:   | 3                 | 1                     | 8                         | 1  | 1                           | 1   | 4                              | 1                 | 1            |                   |       |              |               |
| Sub Units:   | 0                 | 0                     | 0                         | 1  | 0                           | 0   | 0                              | 1                 | 1            |                   |       |              |               |
| Item   | Initials/Milepost | Equipment/Track #     | Type/Kind                 | 49 CFR/USC   | Defect                      | Subrule   | Speed                          | Class             | Train #/Site | SNFR*             | RCL** | # of Occ.*** | Activity Code |
| 1  |                   | MAIN                  | M                         |  |                             |   |                                |                   |              | N                 | N     | 0            | MTH           |
| Description - [** Comment to Railroad/Company **]<br>COURTESY INSPECTION OF MORTON INDUSTRIAL TRACK WHICH IS EXCEPTED TRACK BUT IS CURRENTLY OUT OF SERVICE BY BULLETIN. THE FOLLOWING MAINTENANCE ITEMS WERE OBSERVED THAT NEED ADDRESSED BEFORE THIS TRACK IS PUT BACK IN SERVICE. 1.) 4 1/2-INCH BOLT HOLE BREAK WITH A BREAK OUT IN THE RAIL HEAD AT A JOINT ON THE SOUTH RAIL IN HARDING ROAD CROSSING. 2.) TWO PRIVATE ROAD CROSSINGS AT MILE MI44.4-MI44.5 HAVE CROSSING TIMBERS HEAVED UP AND HAVE DRAG MARKS FROM PREVIOUS TRAINS. 3.) EAST END OF CATERPILLAR SWITCH HAS INSECURE HEEL BLOCK. 4.) THE BRIDGE AT MILE MI45.8 HAS A RELATIVELY NEW DECK OF TIES BUT A PROPER RUNOFF WAS NOT MADE WHEN THE DECK WAS INSTALLED. THE RUNOFF AND PROFILE ON THE EAST APPROACH EXCEED CLASS 1 STANDARDS. 5.) OVERALL TIE CONDITION IS WEAK WITH MANY ROTTEN TIES AT VARIOUS LOCATIONS THROUGHOUT. 6.) OVERALL SURFACE CONDITION NEEDS ATTENTION AND HAS MANY MUDDY SPOTS. 7.) IF HAZMAT IS TRANSPORTED, THE ROAD CROSSINGS AND BRIDGES WILL NEED TO MEET CLASS 1 STANDARDS. |                   |                       |                           |  |                             |   |                                |                   |              |                   |       |              |               |
| Seal Applied   |                   | Seal Removed          |                           |  | Hazard Class                |   |                                | UN/NA ID          |              |                   |       |              |               |
| Violation Recommended  |                   |                       |                           | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No            |                             | Latitude:   |                                |                   | Longitude:   |                   |       |              |               |
| Written Notification to FRA of Remedial Action is:   |                   |                       |                           | <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional |                             | Railroad Action Code  |                                | Date(mm/dd/yyyy): |              | Comments on back? |       |              |               |

**EXHIBIT E**

**EMBARGO CONFIRMATION**

**Print Embargo**

TPW-TOLEDO PEORIA & WESTERN RAILWAY CORPORATION

Embargo Number: TPW000115

Status: Effective

Effective Date: 03-16-2015

Expiration Date: 03-16-2016

Allow Permit: No

Tier 2 Effective Date: 03-19-2015

Original Effective Date:

Roads Invited to Participate: NS

Original Requester : Madeleine Torres - Ph: 1.9049006301 - Email: madeleine.torres@gwrr.com

Bypass Local Waybills: No

Operating Station Notice: No

Effective Immediately: No

Include Empty Revenue Cars: Yes

Include All Empty Cars: No

Maximum Car Allowed:

Commodities: Target All Commodities

Geography:

Included Locations:

Origin:

TPW-01343, CRANDALL, IL

TPW-01345, MORTON, IL

Destination: \*

BI-DIRECTIONAL

Umler Equip. Type : Target All Umler Equipment Types

No Weight Restrictions

Except These Cars: No Cars In Exception List

Embargo/OPSL Umler Element Status: No Umler Element

Clearance Code: No Clearance Code

Waybill Parties: Target All Waybill Parties

Cause: Track Conditions

Cause Detail:

Note:

Jeffrey J. Usher  
Asst. Vice President-Business Services  
Association of American Railroads

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the parties, and by the method shown below:

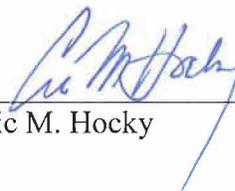
By email:

Richard H. Streeter  
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By FedEx:

J. Michael Carr  
President  
Keokuk Junction Railway Co.  
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Peoria, IL 61607

Daniel C. Orlaskey  
Attorney-Advisor  
Federal Railroad Administration  
US Department of Transportation  
1200 New Jersey Ave., SE  
Washington, DC 20590



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Eric M. Hocky

Dated: March 17, 2015