

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35765

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**PETITION OF WICHITA TERMINAL ASSOCIATION, BNSF RAILWAY COMPANY,  
and UNION PACIFIC RAILROAD COMPANY FOR DECLARATORY ORDER**

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**OPENING STATEMENT OF EVIDENCE AND ARGUMENTS**

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- A - VERIFIED STATEMENT OF SIMON WALBRUCH (WICHITA TERMINAL ASSOCIATION)
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- H – FULL TEXT OF WICHITA ORDINANCE NO. 5436
- I – WICHITA ORDINANCE NO. 5624
- J – WTA INTERCHANGE DATA (2012 -2014), *SEE PRODUCED COMPACT DISC*
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- L – VERIFIED STATEMENT OF ROBERT MEDER (UNION PACIFIC RAILROAD COMPANY)

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**OPENING STATEMENT OF EVIDENCE AND ARGUMENTS**

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Pursuant to the Board's May 20, 2014 Decision (the "Decision"), Petitioners Wichita Terminal Association, BNSF Railway Company, and Union Pacific Railroad Company submit their opening statement. Based on the evidence and arguments set forth below and attached hereto, the Board should find that the Emporia Court crossing sought by F.Y.G. Investments, Inc. and Treatco, Inc. (collectively "FYG") across the WTA's interchange tracks ("IT") would, under any circumstance, cause an undue burden on interstate commerce. If the Board determines that a crossing is necessary, the WTA proposes that the temporary crossing at the west end of the IT, and used by FYG for over five years, be made permanent.

**I. INTRODUCTION**

On May 20, 2014, the Board instituted a declaratory order proceeding with modified procedural rules pursuant to 49 C.F.R. § 1112 because the Board found that the current record contains insufficient information to determine: "(1) the impact on interstate commerce of the proposed Emporia Court crossing, with and without the removal and/or relocation of the north track; (2) how the IT are used by the Wichita Terminal Association, BNSF, and UP on a daily and weekly basis; and (3) the current status and applicability of the 1916 Wichita

ordinance.” (Decision, p. 6). Information regarding all three of these topics is set forth below, in the attached exhibits, and in the statistical railcar movement records provided herewith.

## **II. FACTUAL AND PROCEDURAL HISTORY**

### **A. History of the WTA**

The Wichita Terminal Association was formed in September 1889 as the Wichita Union Stockyards & Packing House Tracks Association by agreement between the Chicago, Kansas & Nebraska Railway Company (Rock Island), the Wichita & Southwestern Railway Company (Atchison), Fort Scott Wichita & Western Railway Company (Pacific) and the Kansas Midland Railroad Company (Frisco) for the purpose of ownership and operation of tracks in the stockyards and packing house district of Wichita. (**Exhibit A**, Simon Walbruch Verified Statement (“Walbruch V.S.”), p. 2). The Wichita Union Stockyards & Packing House Tracks Association originally switched a small area of tracks near 21<sup>st</sup> Street in Wichita, primarily servicing stock yards. (*Id.*).

At the turn of the century, Wichita’s economy began to grow and more industries were created in north Wichita. Because of this growth, spur tracks were built to connect the factories and mills with the long haul rail carriers. (*Id.*). On June 29, 1923, control of such tracks transferred to the four major railroads in Wichita; the Chicago, Rock Island & Pacific Railway Company, the Atchison, Topeka and Santa Fe Railway Company, the Missouri Pacific Railroad Company and the St. Louis – San Francisco Railway Company. (*Id.*). This new partnership became the Wichita Terminal Association. (*Id.*). Each parent company owned a ¼ share and one official from each carrier served on the WTA board. (*Id.*).

Since that time the format of the WTA has basically remained the same, and it continues to service customers in the stock yards, packing houses and milling district. (*Id.*). Today, the

Wichita Terminal Association is owned equally by BNSF (The Atchison, Topeka and Santa Fe Railway Company and the St. Louis – San Francisco Railway Company) and UP (The Chicago, Rock Island & Pacific Railway Company and the Missouri Pacific Railroad Company). The Wichita Terminal Association provides switching of railcars for industries on the WTA’s tracks in Wichita. (*Id.*, at pp. 2-3). With more than a dozen industries and a steady flow of business from the flour mills, grain elevators, feed mill, oilseed processing and other shippers, the WTA moves freight to and from this area of Wichita in interstate commerce. (*Id.*, p.3).

B. The WTA Interchange Tracks (IT)

The IT are double parallel main line tracks located in the right-of-way of 25th Street in Wichita, Kansas. (Walbruch V.S., p. 3); *see also* WTA’s Petition for Declaratory Order (“WTA Pet.”), p. 2, Ex. C). 25th Street is a public street that runs east to west. (Walbruch V.S., p. 3); WTA Pet., p. 2, Ex. C). The IT are approximately 920 feet from east and west clearance points. (Walbruch V.S., p. 3). The IT connect with main line tracks owned by BNSF whose tracks are directly to the west of the IT. (Walbruch V.S., p. 3; WTA Pet., p. 2, Ex. E). The WTA uses the IT to receive and ship agricultural products such as wheat, milo, corn, barley malt, flour and soybeans; aggregates such as clay, granite, billet ore and plastics; materials such as bricks, lumber, steel and paper; and chemicals such as petroleum distillates, waste oil and fuel additives to and from California, Colorado, Illinois, Indiana, Iowa, Kansas, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Missouri, Ohio, Oklahoma, Tennessee, Texas, Utah, Washington, and to cities within Canada such as Edmonton, Lloydminster, and Raymond. (Walbruch V.S., p. 3); *see also* **Exhibit B**, Toni Hanson Verified Statement (“Hanson V.S.”), p. 2).

The WTA serves numerous rail customers in Wichita, all of whom are engaged in interstate commerce. (Walbruch V.S., pp. 3-4). Such customers include Americold, Bartlett Grain, Midwest Scrap Management, Beachner Grain, Cargill Oil, Wichita Terminal Elevator, Cereal Food Processors, Glickman Metal Recycling, and Horizon Milling. (*Id.*, p. 4). Most of the products shipped across the IT go outside the State of Kansas. (*Id.*). The IT are a vital artery in interstate rail transportation. (*Id.*).

C. Proposed Emporia Court Crossing

In 1996, F.Y.G. Investments, Inc. purchased land immediately adjacent and to the south of the IT. (WTA Pet., p. 3). Shortly thereafter, FYG sought a permanent railroad crossing from 25th Street to its property. (*Id.*). As part of a development plan, FYG proposed Emporia Court, a public road that would extend from its property across the IT to 25th Street. (*Id.*). To date, the proposed Emporia Court road has not been built. (*Id.*). FYG's plan calls for the Emporia Court crossing to be located near the center of the IT. (*Id.*, Ex. G).

The proposed Emporia Court crossing would functionally cut the IT in two, dramatically limiting the WTA's ability to interchange railcars among vital BNSF and UP arteries, and would stall traffic along these interstate rail networks. (Walbruch V.S., p. 6). Moreover, the proposed Emporia Court crossing would reduce the interchange capacity of the IT by nearly two-thirds causing severe interference with interstate commerce by effectively halting interchange traffic on the IT. (*Id.*). The proposed Emporia Court crossing is not a viable location for FYG to access their property, particularly because FYG has other available means of access, such as the temporary crossing to the west of the IT and the entrance to their property to the south. (WTA Pet., p. 4, Ex. J; *see also* WTA's Reply to Reply of FYG, p. 4).

Additionally, FYG's demand for access across the center of the IT at the proposed Emporia Court crossing would result in the application of the Manual on Uniform Traffic Control Devices ("MUTCD"), which Kansas and Wichita have adopted as law. (WTA Pet., p. 4). The MUTCD sets the clearance requirements for constructing railroad crossings, and requires the placement of cross bucks and/or other warning devices at a minimum of fifteen (15) feet from the nearest rail at any rail crossing. (*Id.*, Exs. D and H). Under the MUTCD, the proposed Emporia Court crossing would force the WTA to place warning devices near the center of the 25<sup>th</sup> Street public right-of-way, and essentially block the eastbound lane of travel. (*Id.*, Ex. D). Such a warning device location violates the MUTCD, which prohibits the placement of crossing protections near the center of public streets. As has been recognized by both the Kansas District Court and the Kansas Court of Appeals, installing a crossing over the IT at the proposed Emporia Court location cannot legally or practicably be accomplished given the present track configuration of the IT. *Wichita Terminal Ass'n v. F.Y.G. Investments, Inc.*, 1083, 305 P.3d 13, 17-19, 22 (Kan. Ct. App. 2013).

Put simply, and as more fully explained below, FYG's proposed Emporia Court crossing will unreasonably burden interstate commerce. Without fully functioning IT, interchange and bridge move capacity will be significantly diminished resulting in traffic delays and backups on the BNSF and WTA, as well as hinder the WTA's ability to bridge railcars between BNSF and UP. (Walbruch V.S., p. 6). IT operating at less than full capacity will halt and/or delay flow traffic along these key BNSF and UP arteries and delay interstate rail traffic through Wichita with detrimental effects on rail traffic throughout the BNSF and UP rail networks. (*Id.*, pp. 6-7).

D. July 2, 2013 Kansas Court of Appeals Decision

On July 2, 2013, the Kansas Court of Appeals held that: (1) the WTA timely raised its ICCTA preemption argument; (2) the STB has exclusive jurisdiction over the track removal/relocation question; and (3) the STB has exclusive jurisdiction to determine whether constructing a permanent crossing at Emporia Court is impossible or would unreasonably burden interstate commerce. (WTA Pet., p. 3). On October 18, 2013, the WTA timely filed its Petition with the Board.

**III. THE DECISION**

The Board instituted a declaratory order proceeding because “[t]he current record contain[ed] insufficient information for the Board to determine: (1) the impact on interstate commerce of the proposed Emporia Court crossing, with and without the removal and/or relocation of the north track; (2) how the IT are used by the Wichita Terminal Association, BNSF, and UP on a daily and weekly basis; and (3) the current status and applicability of the 1916 Wichita ordinance.” (Decision, p. 6).

The Board directed the parties to provide the following as part of their submissions:

1. A complete set of trial and hearing transcripts, journal entries, and oral or written orders and decisions by the Kansas District and Appellate courts dated after the February 20, 2007 bench trial on the first remand. (WTA)<sup>1</sup>
2. A complete set of pleadings submitted to the Kansas District and Appellate courts by either or both parties after the February 20, 2007 bench trial and before the August 1, 2008 journal entry. This request need not include exhibits prepared specifically for proceedings before the judge, unless the parties believe those exhibits will be helpful to the Board in addressing the above-noted questions. (WTA)<sup>2</sup>

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<sup>1</sup> On June 4, 2014, the WTA provided the Board with materials responsive to directive No. 1. On June 24, 2014 the WTA supplemented its production of evidence to provide the Board with the transcript from the May 15, 2009 Kansas District Court hearing, which was first received by counsel for WTA from the District Court on June 23, 2014.

<sup>2</sup> On June 4, 2014, the WTA provided the Board with materials responsive to directive No. 2.

3. A description of the circumstances under which Wichita Ordinance 5436 was passed; how or why WTA became the operator of the tracks discussed in the ordinance; and any changes, amendments, or modifications to the ordinance since 1916. (WTA and FYG, to the extent known)
4. A map showing all WTA tracks in Wichita, along with a description of any other tracks in Wichita, other than the IT, that are used, or could be used, to interchange rail traffic between BNSF and UP. A description of tracks in Wichita belonging to BNSF and UP individually and to WTA, and tracks not otherwise designated as WTA track that are used or could be used to interchange rail traffic. This discussion should include any facts that could impact the suitability of the tracks for interchange. (WTA)
5. A description of how the IT connect with the interstate rail network, including rail lines owned, leased, or operated by BNSF and/or UP. A description of the nature of the activities that WTA currently performs, or has performed in the last two years on the IT, including details regarding the amount of time required to perform each of those activities. Evidence, such as bills of lading, demonstrating that WTA uses the IT to transport goods in interstate commerce as part of a rail movement. Also, please discuss daily demand for interchange at Wichita as it relates to the daily capacity of the interchange at Wichita. (WTA)
6. Detailed explanations of whether and how BNSF's and UP's uses of the IT relate to their interstate railroad operations and whether and how a crossing at grade at Emporia Court would unreasonably interfere with interstate commerce as described above. (WTA and FYG)
7. Documentation of the discussions between the City of Wichita and WTA regarding where a crossing should be constructed. (WTA and FYG, to the extent known)

The WTA sets forth below the following evidence in response to Directives Nos. 3-7.

The WTA's argument follows the evidence.

#### **IV. DISCUSSION AND EVIDENCE**

##### **A. Evidence For Directive No. 3**

Directive No. 3 requests evidence on three topics: (1) the circumstances under which Wichita Ordinance 5436 was passed; (2) how or why WTA became the operator of the tracks discussed in the ordinance; and (3) any changes, amendments, or modifications to the ordinance since 1916.

1. *Circumstances under which Wichita Ordinance 5436 was passed.*

The WTA has been unable to obtain specific information regarding the circumstances under which Wichita Ordinance 5436 was passed. However, the WTA believes that economic growth in north Wichita in the early 1900s, including increased milling production and demand for grain, livestock and other commodities within and outside of Kansas led to the passage of the ordinance. (Walbruch V.S., p. 2). Based on what little legislative history WTA has been able to locate, on September 4, 1916, Wichita Commissioner Proceedings were held to consider Ordinance 5436. (**Exhibit C**, September 4, 1916 Commissioners Proceedings). The purpose of the ordinance was to grant to the Wichita Terminal Association and “its receivers, and the successors and assigns of such association, the right to construct, operate and maintain industrial tracks on and across what is ordinarily known and called 25<sup>th</sup> Street.” (*Id.*). On September 5, 1916, sections 1 through 5 of Ordinance 5436 passed at a regular meeting of the commissioners and were published in the Wichita Daily Record on September 6, 1916. (**Exhibit D**, Wichita Ordinance 5436).

2. *How or why the WTA became the operator of the tracks discussed in the ordinance.*

On September 30, 1889, the Wichita Union Stockyards & Packing House Tracks Association was formed by agreement between the Chicago, Kansas & Nebraska Railway Company (Rock Island), The Wichita & Southern Railway Company (Atchison), Fort Scott Wichita & Western Railway Company (Pacific) and the Kansas Midland Railroad Company (Frisco) for the purpose of ownership and operation of tracks in the stockyards and packing house district of Wichita. (**Exhibit E**, the “1889 Agreement”).

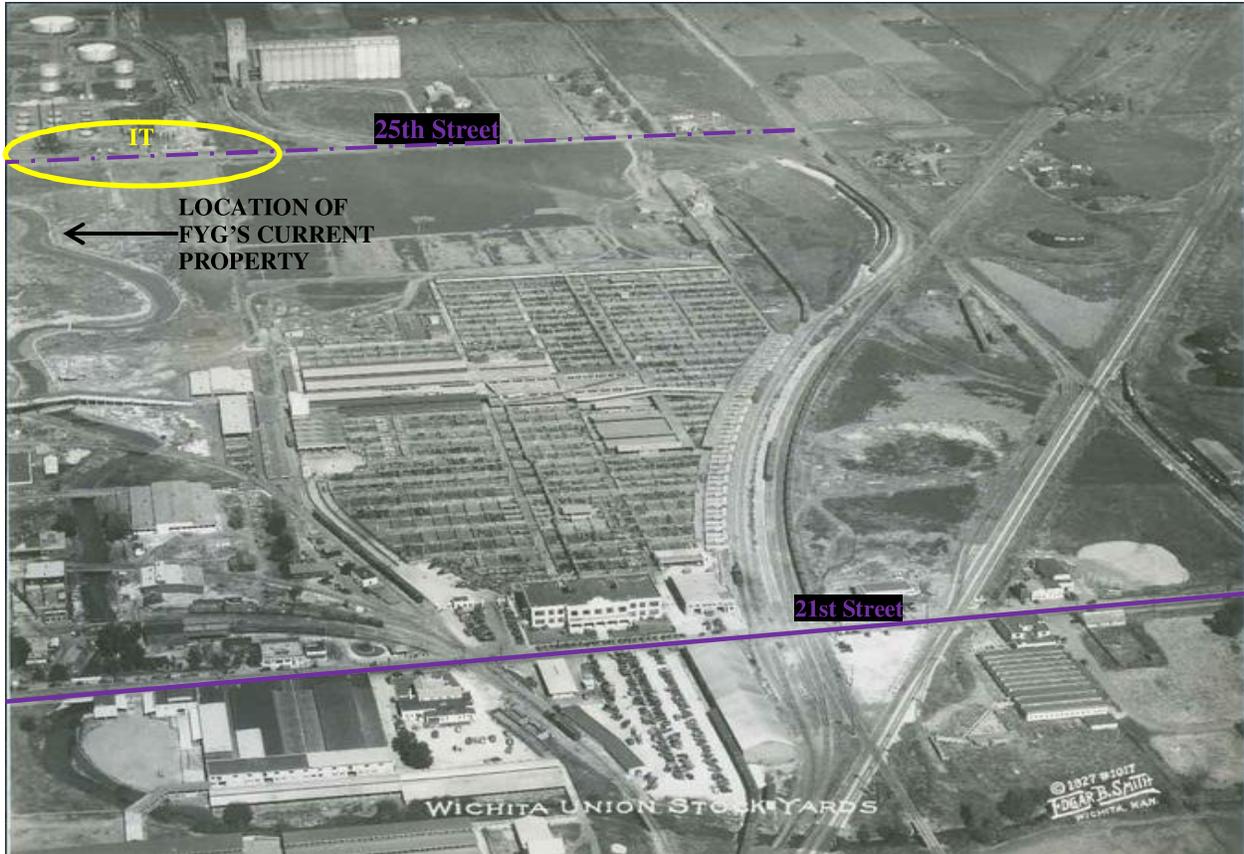


Diagram No. 1 above shows a 1927 photo of the Wichita Union Stockyards. Stockyards and packing houses were generally located to the south of 25th Street. The milling district was generally located north of 25th Street. The diagram also shows FYG’s future property, located just the south of the IT.

Pursuant to the 1889 Agreement, spur tracks were built throughout the district to connect the stockyards and packing houses with the long haul rail carriers. New interchange tracks were presumably needed to accommodate the growth of milling and grain transportation. On June 29, 1923, control of these tracks transferred to the Wichita Terminal Association by agreement. (**Exhibit F**, the “1923 Agreement”).<sup>3</sup> The 1923 Agreement was entered into “[f]or purposes of economy and efficiency of handling the business in said District” “in the stock yards, packing houses and milling district.” (*Id.*, p. 2).

<sup>3</sup> The Wichita Terminal Association was formed on February 1, 1910 by the four major railroads in Wichita. (**Exhibit G**, Wichita Daily Eagle, “Terminal Company Today Takes Over Railroad Property,” February 1, 1910).

3. *Changes, amendments, or modifications to the ordinance since 1916.*

The WTA's review of what little legislative history it has been able to locate regarding Wichita Ordinance 5436 establishes that Section 4 of the ordinance was subsequently amended.

Section 4 originally stated:

That said association shall accept this ordinance and the provisions thereof in writing to be filed with City Clerk within forty days after the publication of this ordinance and the tracks described in Section 1 hereafter must be built complete on or before August 1, 1917, otherwise this ordinance is null and void.

(**Exhibit H**, Full text of Wichita Ordinance 5436). On May 23, 1917, Ordinance No. 5624 (**Exhibit I**, Wichita Ordinance 5624) was passed to remove Section 4, and the amended ordinance with this section removed was approved by Wichita Commissioners and published in the Daily Record on May 25, 1917. (*Id.*). The WTA has been unable to verify a specific reason why Section 4 was amended. Presumably, the ordinance was amended because the IT could not be built on or before August 1, 1917.

B. Evidence For Directive No. 4

Directive No. 4 requests evidence for three topics: (1) a map showing all WTA tracks in Wichita; along with (2) a description of any other tracks in Wichita, other than the IT, that are used, or could be used, to interchange rail traffic between BNSF and UP; and (3) a description of tracks in Wichita belonging to BNSF and UP individually and to WTA, and tracks not otherwise designated as WTA track that are used or could be used to interchange rail traffic.<sup>4</sup>

In support of topic (1), below are a series of 6 Google Earth images showing the WTA tracks in Wichita along with brief explanations for each image. Also shown are the BNSF, UP,

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<sup>4</sup> Evidence for topics 2 and 3 cannot be produced because the IT are the only tracks that can be used in Wichita where railcars are interchanged between BNSF and the WTA, BNSF and UP, and vice versa. (Walbruch V.S., p. 3). As stated below, interchange with UP railcars occurs in the UP Yard.

former Frisco,<sup>5</sup> and the Wichita Union Terminal Association (“WUT”) main line tracks.<sup>6</sup> All main line tracks move railcars in both directions. The maps begin at the northern most portion of WTA property, which is to the north of 29th Street. Such property extends south to 9th Street.

The Wichita Terminal Association does not have a yard for switching and railcar storage. (Walbruch V.S., p. 3). Instead, the WTA has a series of main line spur/stub tracks spread throughout north Wichita. As such, the WTA relies heavily on the IT for railcar switching and interchange of its customers’ freight. (*Id.*).



<sup>5</sup> BNSF owns the Frisco Yard and lines. The Frisco Yard is out of service because of track conditions. (Walbruch V.S., p. 3).

<sup>6</sup> The WUT is a jointly owned corporation that operates elevated tracks in the downtown area of Wichita; these tracks are known as the Hump or Flyover. The Flyover runs from approximately 17th Street to Gilbert Street in Wichita. As shown in Diagram No. 6 below, the UP and BNSF main lines come together south of 17th Street at the Flyover. BNSF and UP own the WUT.

Diagram No. 2 above shows the northern main line tracks of the WTA, north of 29th Street. The diagram also shows BNSF's yard which is north of the IT and to the west of WTA's main line. To the east of BNSF's yard is the former Frisco yard.



Diagram No. 3 above shows the WTA's tracks south of 29th Street which service WTA customers Midwest Scrap Management, Wichita Terminal Elevator, Americold, and Glickman Recycling, all of which are north of the IT. Railcars are interchanged to and from these customers from the BNSF yard over the IT to each customer for loading and/or unloading. (Walbruch V.S., p. 4).

BNSF's Yard is to the west of the WTA's main line. The WTA interchanges with the BNSF via the IT to WTA's main line to the east. The IT north and south tracks are each approximately 920 feet in length from clearance point to clearance point, and each contains approximately 850 - 920 feet of usable space depending on train car length. (Walbruch V.S., p. 6).

Bridge traffic between BNSF and UP is also interchanged over the IT. (*Id.*, p. 3). BNSF spots reciprocal railcars and provides line haul movement for WTA customers of UP railcars. (*Id.*).

The WTA interchanges with the UP in the UP yard to the east of the WTA main line. (*Id.*, p. 6).

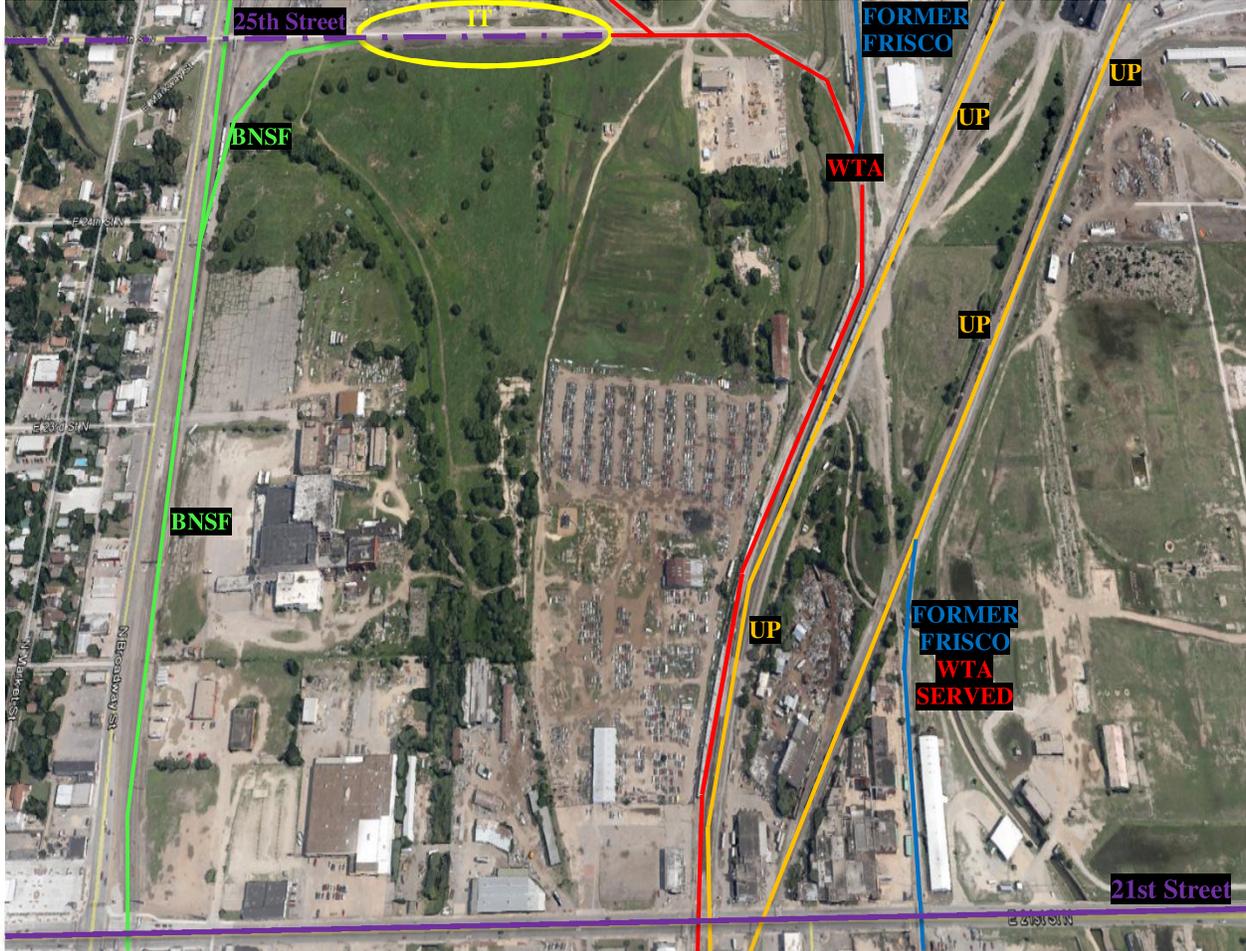


Diagram No. 4 above shows the WTA tracks south of 25th Street and east of the IT. BNSF's main line runs parallel and to the east of N. Broadway Street. The UP main line tracks are shown east of the WTA main line.

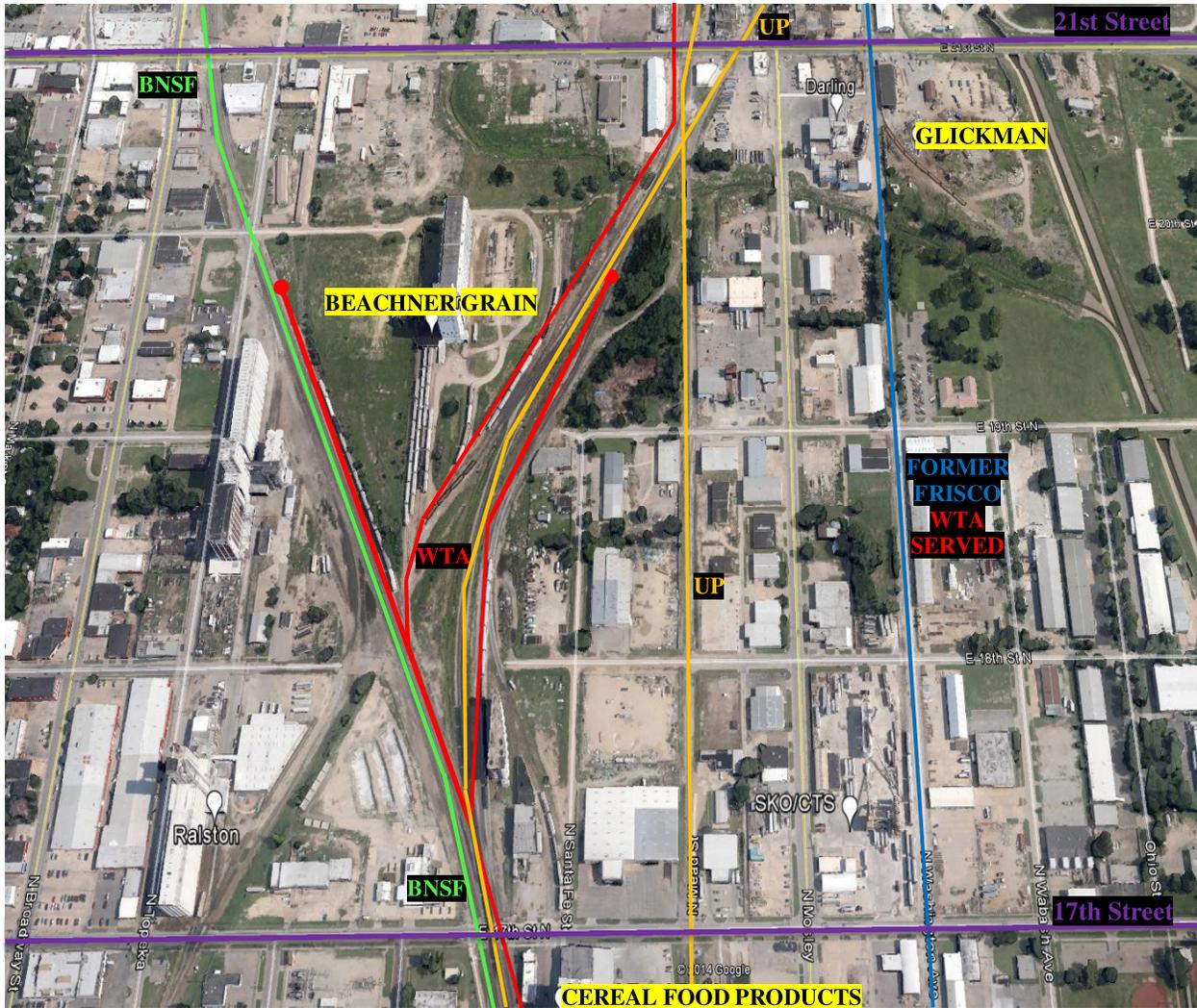


Diagram No. 5 above shows the WTA, BNSF, and UP tracks south of 21st Street. South of 21<sup>st</sup> Street, WTA services customers Beachner and Glickman. Railcars delivered from BNSF to these customers, and vice versa, are interchanged over the IT. (Walbruch V.S., p. 4).

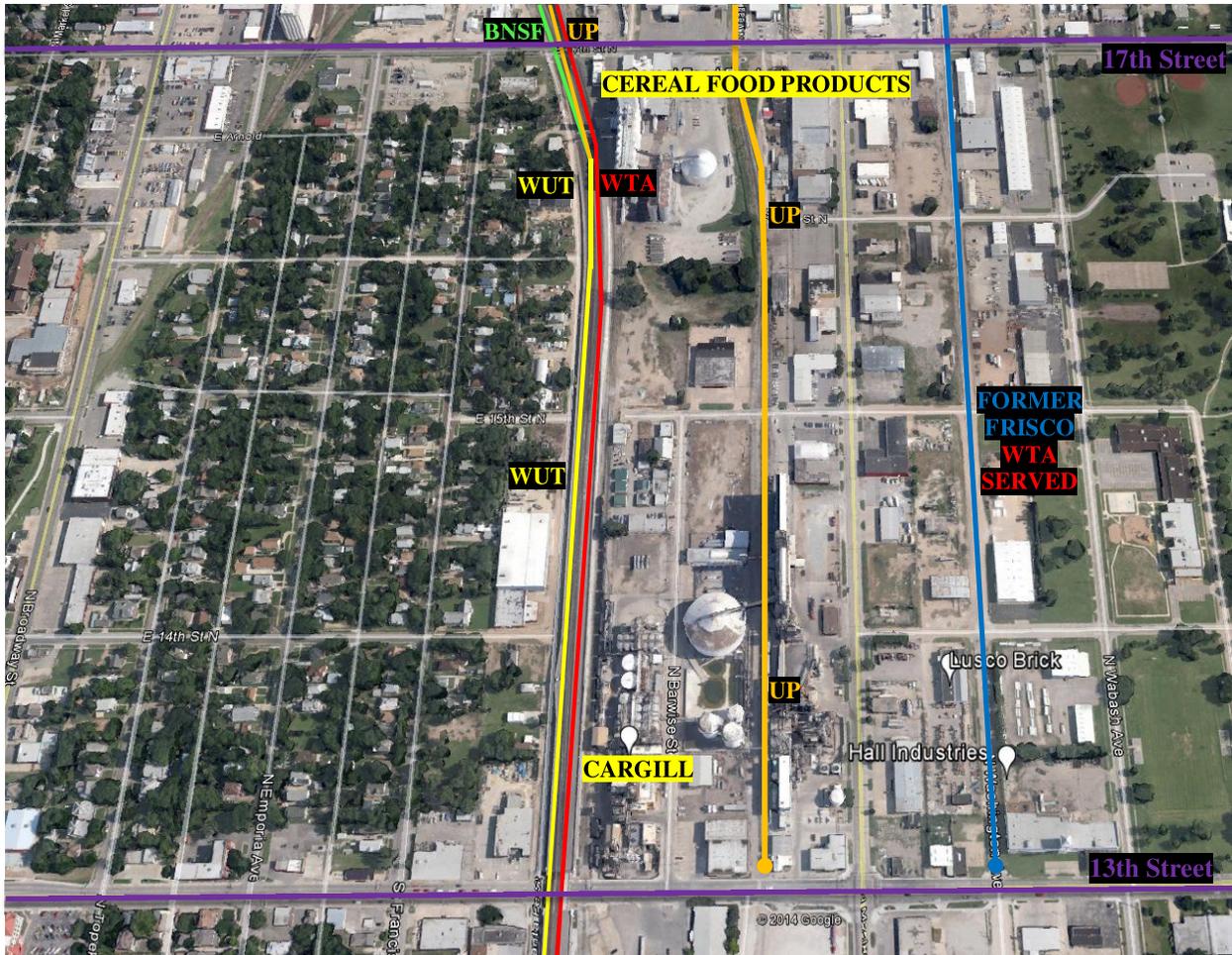


Diagram No. 6 above shows the WTA, BNSF, and UP tracks south of 17th Street. The WTA services Cereal Food Products and Cargill south of 17<sup>th</sup> Street. Again, railcars delivered to and from BNSF for these customers are interchanged over the IT. (Walbruch V.S., p. 4). BNSF's and UP's lines end just north of 16th Street. Tracks just south of 16th Street are owned by the WUT. To the east, UP's industrial lead and the former Frisco main line tracks end just north of 13th Street.



Diagram No. 7 above shows the WTA and WUT tracks south of 13th Street. The WTA services Horizon Milling which is south of the IT. (Walbruch V.S., p. 4). Again, such traffic to and from BNSF for this WTA customer is interchanged over the IT. (*Id.*). The WTA's main line ends at 9th Street.

C. Evidence For Directive No. 5

Directive No. 5 requests evidence for three topics: (1) how the IT connect with the interstate rail network, including rail lines owned, leased, or operated by BNSF and/or UP; (2) the nature of the activities that WTA currently performs, or has performed in the last two years on the IT, including details regarding the amount of time required to perform each of those activities; and (3) the daily demand for interchange at Wichita as it relates to the daily capacity of the interchange at Wichita. The evidence for these topics is below, and in the attached exhibits of railcar movement records.

1. *How the IT connect with the interstate rail network, including rail lines owned, leased, or operated by BNSF and/or UP.*

Diagrams Nos. 2 through 7 above show the main line tracks of the WTA, BNSF and UP, how the IT connect with those main lines, and the proximity of those tracks to the various shippers served by the WTA. As noted, the IT connect with BNSF's main line to the west, and UP's main line to the east via WTA's main line. WTA customers in Wichita have two options to move product on the interstate rail transportation system: over the IT to BNSF or by UP. (Walbruch V.S., p. 3). The IT are also used to bridge railcars between BNSF and UP. (*Id.*, p. 4).

2. *The nature of the activities that WTA currently performs, or has performed in the last two years on the IT, including details regarding the amount of time required to perform each of those activities.*

The WTA will generally spot railcars on the IT that are being interchanged to the BNSF for onward movement on BNSF's network. (Walbruch V.S., p. 4). WTA will also use the IT to interchange railcars between BNSF and UP, and vice versa. (*Id.*). Both tracks of the IT are used for all such interchange moves. (*Id.*). The time it takes to place these railcars is dependent on the number of railcars in a given train. (*Id.*). Such trains can be as small as 1 or 2 railcars to over one hundred railcars in length. (*Id.*). Ultimately, the WTA's use of the IT is to deliver traffic to BNSF or receive traffic from BNSF. (*Id.*). If all of the railcars will fit on one track then the engines are cut away and the crew will depart the IT. (*Id.*, p. 5). Such a move would take between 10-20 minutes. (*Id.*). If the train is of such a size that both tracks are to be used the move will take roughly twice as long. (20-40 min.). (*Id.*). Such trains remain on the IT until moved to BNSF's main line or bridged between BNSF and UP for transportation in interstate commerce. (*Id.*). How long such trains remain on the IT largely depends on train traffic on BNSF's main line and in BNSF's yard to the north. (*Id.*).

3. *Daily demand for interchange at Wichita as it relates to the daily capacity of the interchange at Wichita.*

Daily demand for interchange across the IT and interchange capacity in Wichita depends on several variables such as demand for commodities, general economic conditions, railcar size, weather, harvest production, and other variables. (Walbruch V.S., p. 4). An example of demand and capacity is in the attached Exhibit J, which lists interchange and bridge moves occurring over the IT from January 1, 2012 to May 20, 2014.<sup>7</sup> The evidence shows that during this 28 month period, 28,613 railcars were interchanged between BNSF and the WTA, and the WTA bridged 8,937 railcars between BNSF and UP. The evidence also shows that interchanges and bridge moves increased during the summer and fall months, mainly because of increased demand for grain shipments.

Demand for interchange and bridge moves is considerably higher during the harvest seasons, as over 100 railcars on a given day can be interchanged over the IT during the summer and early fall months. (Walbruch V.S., p. 7). For example, 114 railcars were interchanged on July 2, 126 railcars on July 4, 140 railcars on July 11, and 137 railcars on July 17. **Exhibit J**, 2013 tab. In the fall of 2013, 246 railcars were interchanged on September 23, and 182 railcars on September 30. (*Id.*). Less often, the WTA experiences demand for interchange at this frequency during winter and spring months. (*Id.*). In addition to interchange, the IT also serve as temporary storage tracks. Because the IT have a limited

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<sup>7</sup> The WTA's Interchange Data was compiled by Mr. Walbruch. (See **Exhibit J**, attached as Compact Disc). Exhibit J summarizes shipping data submitted by BNSF and UP on Microsoft Excel spreadsheets, which have also been provided to the Board. This exhibit does not analyze data all from UP, which is attached as a separate exhibit. Exhibit J has five columns that analyze interchange and bridge moves for each day over a two and a half year period. "ICH to BNSF" means railcars interchanged over the IT and delivered to BNSF. "ICH from BNSF" means railcars interchanged on the IT to WTA customers. "BNSF to UP Bridge Move Across IT" means BNSF railcars exchanged to UP over the IT. "UP to BNSF Bridge Move Across IT" means UP railcars exchanged to BNSF over the IT. As addressed more fully below, several thousand of these railcars were engaged in interstate commerce.

capacity of just over 900 feet on both tracks, and because the WTA lacks a formal yard, daily demand for interchange and storage often exceeds WTA's capacity. (Walbruch V.S., p. 5).

D. Evidence For Directive No. 6

Directive No. 6 requests evidence for two topics: (1) explanations of whether and how BNSF's and UP's uses of the IT relate to their interstate railroad operations; and (2) whether and how a crossing at grade at Emporia Court would unreasonably interfere with interstate commerce. The evidence of these topics is below.

1. *Explanations of whether and how BNSF's and UP's uses of the IT relate to their interstate railroad operations.*

BNSF and UP have provided the Board with data showing that the IT are an integral part of BNSF's and UP's interstate rail operations.<sup>8</sup> (**Ex. B**, Hanson V.S., p. 1; **Exhibit L**, Robert Meder Verified Statement ("Meder V.S."), p. 1). For example, BNSF's data shows interchange information over the IT from January 3, 2012 to May 23, 2014. (See **Exhibit K-1** in Compact Disc **Exhibit K**). The information was obtained from waybills and internal BNSF shipping data. (Hanson V.S., p. 1). A cursory review of Columns N and O to Tabs RR and DD in Exhibit K-1 indicates IT interchange to and from cities in California, Colorado, Illinois, Indiana, Iowa, Kansas, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Missouri, Ohio, Oklahoma, Tennessee, Texas, Utah, Washington, and to cities in Canada such as Edmonton, Lloydminster, and Raymond. (*Id.*, p. 1, **Ex. K-1**). Columns M to Tabs RR and DD show commodities such as flour, salt, plastic, wheat, grease, corn syrup and other products shipped to such cities. See **Ex.**

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<sup>8</sup> The WTA has provided the Board with verified data from BNSF and UP that has been compiled on Microsoft Excel. See Compact Disc attached as **Exhibit K** (**Exhibit K-1** is spreadsheets of BNSF's data, and **Exhibit K-2** is UP's data). The data shows that thousands of the railcars interchanged over the IT were moving in interstate commerce. And, although the WTA interchanges with UP in the UP Yard, UP's data shows that hundreds of UP railcars interchanged to BNSF over the IT were engaged in interstate commerce. **Exhibit K-2**. The data contained in Exhibits K-1 and K-2 shows unequivocally that the IT are used extensively in interstate commerce.

**K-1.** Such evidence shows that thousands of the railcars interchanged over the IT were engaged in the interstate transportation of goods during this period of time. (Hanson V.S., pp. 1-2).

2. *Whether and how a crossing at grade at Emporia Court would unreasonably interfere with interstate commerce.*

The IT are a vital link between BNSF and the WTA, between BNSF and UP, and between UP and BNSF because all customer rail traffic that is interchanged with BNSF in Wichita moves across these two tracks. (Walbruch V.S., p. 5). The Emporia Court crossing would effectively end, or severely limit, the WTA's operations on the IT. First, the proposed crossing would slash the IT's railcar capacity by approximately 60%. Kansas law requires that railcars stay "a reasonable distance" from a crossing when not in motion so as to not interfere with the visibility of approaching motor vehicles. Kan. Ad. Reg. 82-5-8(c) (2013). According to WTA's internal rules, industry guidelines, and the laws of many states, a "reasonable distance" is 250 feet from the edge of a crossing when railcars are on multiple adjacent tracks. (WTA Pet., pp. 16-17; *see also* Walbruch V.S., p. 5). Such clearance requirements allow motorists to see down the tracks to observe trains that may be approaching next to railcars on the adjacent track.

The IT currently have approximately 900 feet of usable space per track, or 1800 feet in total. (*Id.*, p. 6). Although railcars vary in length, on average, railcars that are interchanged over the IT are approximately 60 feet long. (*Id.*; WTA Pet., p. 17, Ex. D). As such, the current capacity of the IT are 30 railcars. The crossing itself is proposed to be 32 feet wide. (Walbruch V.S., p. 6). Because the proposed Emporia Court crossing would bisect the IT, over 1000 feet of usable track space would be lost when trains are cut to comply with the required 250 feet of clearance from the crossing. (*Id.*). Thus, the Emporia Court crossing would reduce the IT's capacity from 30 railcars to at most 12 (or 3 per track on each side of the crossing). (*Id.*; WTA

Pet., p. 17, Ex. D). Such a limitation on capacity would greatly hinder, and possibly even halt, interchange activity on the IT. (Walbruch V.S., p. 6).

Additionally, Kansas law would preclude the WTA from blocking the crossing for more than 10 minutes, after which such trains would have to be cut and moved 250 feet from the crossing. Kan. Stat. Ann. § 66-273 (2013). These restrictions would drastically slow interchange moves, because the decreased IT capacity would greatly increase the number of switching moves needed to interchange these railcars.<sup>6</sup> (Walbruch V.S., p. 7). Well over 100 railcars can use the IT daily, especially during summer and fall months, for interchange and bridge activities. (*Id.*). By drastically increasing the number of cuts and switching moves and increasing the time needed for such moves, the proposed crossing would backup traffic onto BNSF's main line to the west, and the WTA's main line to the east. (*Id.*). This railcar backup, combined with the railroad gymnastics needed to comply with these onerous additional switching moves caused by the crossing installation, would substantially hinder traffic on the adjoining BNSF and UP arteries thus unreasonably burdening interstate commerce. (*Id.*).

E. Evidence For Directive No. 7

Directive No. 7 requests “[d]ocumentation of the discussions between the City of Wichita and WTA regarding where a crossing should be constructed.” Decision, p. 8. The WTA has no documents regarding discussions between WTA and the City of Wichita regarding where the crossing should be constructed.

**V. ARGUMENTS**

The WTA provides the following additional arguments regarding: (1) the impact on interstate commerce of the proposed Emporia Court crossing, with and without the removal

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<sup>6</sup> Compliance with Wichita's ordinance which sets the time limit at 5 minutes would have a more disastrous effect. See Wichita Code § 12.04.080.

and/or relocation of the north track, and (2) the current status and applicability of the 1916 Wichita ordinance.

A. Impact on Interstate Commerce of the Proposed Emporia Court Crossing, With and Without the Removal and/or Relocation of the North Track

As argued in the WTA's Petition, installation of the proposed Emporia Court crossing cannot comply with Kansas and Wichita law. (WTA Pet., pp. 22-23). MUTCD requires placement of a crossbuck or other crossing warning devices 15 feet from the nearest rail. MUTCD 2009 Edition, Chapter 8 at §8B.04(11) (<http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf>) (mandating a minimum 15-foot distance measured perpendicular from the nearest rail). (*Id.*, p. 22). The MUTCD also prohibits the placement of crossing protections in the middle of a public road. (*Id.*, p. 22). Under current conditions, the WTA cannot comply with both of these Kansas and Wichita legal requirements. Given the 15-foot requirement for the placement of warning devices under MUTCD, construction of a crossing at Emporia Court would force the WTA to place its crossing warning devices in the middle of 25<sup>th</sup> Street. (*Id.*, pp. 22-23, Exs. D and H).

1. *Removal of the north track is an unreasonable burden on interstate commerce because it eliminates railcar storage and interchange capacity on the IT.*

Removal of the north track would result in a more catastrophic effect on the WTA's interstate commerce operations. (Walbruch V.S., p. 7). Loss of one track and the installation of a crossing would cut the IT's capacity even further. Under such a scenario, the IT would only be able to hold 2-3 railcars. (*Id.*). This result would cause even more strain on the WTA's operations, as track removal would, again, increase the number of required switching moves. (*Id.*). In other words, loss of the north track would decrease the IT's capacity by 80% and cause a

significant increase in the required amount of interchange moves. (*Id.*; WTA Pet., p. 18). Such a result is unsustainable for the only interchange facility in Wichita. (Walbruch V.S., p. 7).

2. *The WTA cannot relocate the north IT to the south of the south IT because it does not own the land immediately south of the IT.*

FYG attempted to remedy these track-removal difficulties by proposing a southern relocation of the north IT. (WTA Pet., p. 18.) FYG's effort must fail, however, because the relocation is both illegal and infeasible. FYG, not the WTA, owns the property "south of the existing line." (*Id.*). The WTA lacks any right of way on that land. Even Kansas courts lack jurisdiction to relocate the IT in the manner proposed because the Kansas legislature has deprived courts of jurisdiction over eminent domain and condemnation proceedings.

An eminent domain proceeding is a special statutory proceeding and is not a civil action covered by the code of civil procedure. The proceeding is administrative rather than judicial, and its nature is the same whether conducted by or before a district court, or any judge thereof, the probate court, or its judge, a board of county commissioners or any other official board or tribunal authorized by the legislature to act in that capacity.

*Miller v. Bartle*, 283 Kan. 108, 113, 150 P.3d 1282, 1286 (2007) (citations and emphasis omitted); *see also* K.S.A. 26-501 *et seq.* (eminent domain procedure). In short, Kansas law does not authorize a district court to condemn property. *See* K.S.A. § 26-101 *et seq.*

Likewise, this Board may not use eminent domain to condemn the land needed for a southern relocation of the IT. *See, e.g., Dakota, Minnesota, & Eastern R.R. v. South Dakota*, 236 F. Supp. 2d 989, 1009, 1012 (D.S.D. 2002) (holding that "STB approval . . . does not carry with it any federal power to take land to complete the project." "If Congress would have intended to supplant such a basic state power, it could have delegated its own eminent domain power or made the preemption of state eminent domain law express in nature."). Rather, the Interstate Commerce Commission Termination Act ("ICCTA") has been held to preempt eminent domain proceedings, such as here, where the state action would "prevent or unreasonably interfere with

railroad operations.” *Maumee & W. R.R. Corp.*, STB Fin. Docket No. 34354 (S.T.B. March 3, 2004); *accord Dist. of Columbia v. 109,205.5 Square Feet of Land et al.*, No. Civ.A. 05–202, 2005 WL 975745, \*3 (D.D.C. Apr.21, 2005).

Eminent domain is possible “only when the right of eminent domain is invoked by a party with the power to do so.” *United States v. Hardage*, 58 F.3d 569, 577 (10th Cir. 1995). Here, no party has initiated a condemnation proceeding, nor did they (or the District Court) have the power to do so under these facts. *See generally Whitehead v. Allied Signal, Inc.*, No. 98-6305, 1998 WL 874868 (10th Cir. Dec. 16, 1998) (unpublished opinion); *Hardage*, 58 F.3d at 569. Thus, the Board cannot order condemnation of the southern property and relocation of the IT to that land, nor should it relinquish authority to the District Court to do so, because the WTA cannot be legally required to reconstruct the IT on property which it does not own.

Even if it were legal or feasible to relocate the north track to the south, as noted for the reasons stated above, an unreasonable burden on interstate commerce still exists if the Emporia Court crossing is installed. The WTA cannot interchange, bridge, switch, or shove railcars in order to meet the demands of its customers and put railcars in the possession of BNSF and UP in a timely and efficient manner if the crossing is installed. (Walbruch V.S., pp. 7-8). Therefore, track relocation is not a viable option.

#### B. The Current Status and Applicability of the 1916 Wichita Ordinance

Although Wichita Ordinance 5436 granted the WTA the right to install the IT in 1916, the ordinance has no current applicability for at least two reasons. First, the IT are part of the interstate rail system, and the ICCTA preempts local ordinances that unreasonably burden interstate commerce. Second, the ordinance improperly attempts to manage and govern rail transportation because it requires the WTA to construct and maintain the IT for the “crossing of teams and vehicles at any point over the IT.”

1. *ICCTA preempts Wichita Ordinance 5436.*

Section 10501(b) of ICCTA plainly and expressly preempts any state or local regulation of railroad transportation, including railroad property. The ICCTA’s preemption applies to the WTA’s design, construction and maintenance of its rail lines. The ICCTA defines “transportation” broadly, and provides that the Board has exclusive and preemptive jurisdiction under Section 10501(b). The ICCTA defines “transportation” to include “(A) a . . . **property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property**, or both, by rail . . . and (B) services related to that movement . . . .” 49 U.S.C. § 10102(9) (emphasis added). Hence, any rail property related to the movement of passengers or goods on tracks is “transportation” within the exclusive jurisdiction of the STB. *See Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 534 (5th Cir. 2012).

In general, ICCTA preemption applies to local ordinances in the same manner as state law, regulations and court actions. *See, e.g., City of Auburn v. United States*, 154 F.3d 1025, 1027-1029 (9<sup>th</sup> Cir. 1998). That is also true for ordinances granting railroad right-of-way over public access streets when the restrictions contained in that ordinance unduly hinder rail commerce. *See City of Seattle v. Burlington N. R.R.*, 41 P.3d 1169 (Wash. 2002).

In *City of Seattle*, the court faced a situation materially similar to the one at issue here, namely the railroad operated under the grant of right-of-way on public streets through a city ordinance. *Id.* at 1170. In authorizing railroad operations, the 1903 ordinance also placed specific limits on rail activity, reserving the right:

To regulate the speed of locomotives and trains within the limits of the rights of way herein granted, and the maximum period of time for which locomotives, cars or trains shall be allowed to blockade travel along or across the streets embraced in this grant, or intersecting streets, and shall have such further control and police powers over such right of way as the City Charter and state laws permit.

*Id.* (quoting Seattle City Ordinance No. 9119 § 3 First at 5 (1903)). Initially, the court found that the ordinance was preempted by the ICCTA because it would “regulate railroad switching activities. . .” *Id.* at 1172. The City, however, claimed that ICCTA preemption did not apply because that litigation and the railroad’s right to operate were “controlled by the language of Ordinance No. 9119.” *Id.* at 1174. In other words, the City claimed that, because Ordinance No. 9119 gave the railroad its ability to operate, that ordinance could restrict railroad activity in ways that would otherwise be preempted by the ICCTA. *Id.*

The Washington Supreme Court disagreed with the City’s contention because the court recognized that “[t]he agreement is nonetheless an ordinance—that is, a law. Like any state law, a local ordinance is subject to Congressional preemption.” *Id.* at 1175. Thus, the *City of Seattle* court found efforts to limit the time that the railroad could block city streets preempted by the ICCTA even though such limits on the railroad’s activity were specifically preserved in the ordinance under which it operates. *Id.* at 1174-75.

ICCTA preemption applies exactly the same here. If the conditions sought to be placed by FYG upon the WTA unduly restrict interstate rail commerce, then those conditions are preempted. *See Emerson v. Kan. City S. Ry. Co.*, 503 F.3d 1126, 1133 (10<sup>th</sup> Cir. 2007) (holding that implied ICCTA preemption “requires a factual assessment. . . as to whether requiring the Railroad to remedy the injury claimed by the Landowners would have the effect of preventing or unreasonably interfering with railroad transportation”) *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 254 (3d Cir. 2007) (finding generally that “for the unreasonably burdensome prong [of implied ICCTA preemption], the most obvious component is that the substance of the regulation must not be so draconian that it prevents the railroad from carrying out its business in a sensible fashion”). Here, because FYG’s reliance on the ordinance will

unreasonably burden the WTA's interstate rail operations, the ordinance should be preempted by the ICCTA.

2. *The ordinance attempts to manage and govern interstate rail transportation.*

Wichita Ordinance 5436 improperly attempts to manage and govern interstate transportation, and conflicts with the WTA's operations because the ordinance places an unreasonable burden on the WTA to comply with its provisions while conducting its interstate rail operations. Section 2 of the ordinance states in relevant part:

The said Association shall construct and maintain in good order the portion of sidewalks crossed and railway crossings, and shall keep said track in good repair, and in such condition that teams and vehicles on such street can safely pass over such tracks at any point on said street. . .

Wichita Ordinance 5436, § 2. The ordinance is preempted because as written, the ordinance manages and governs rail transportation because it requires the WTA to construct and maintain the IT for the crossing of teams and vehicles at any point over the IT while railcars are interchanged or sought to be interchanged over the IT.

Congress intended to preempt state and local laws that come within the Board's jurisdiction. *Texas Cent. Business Lines Corp. v. City of Midlothian*, 669 F.3d 525, 530 (5th Cir. 2012). As stated above, the Board has jurisdiction over "transportation by rail carriers." 49 U.S.C. § 10501(b)(1). Determining whether the ICCTA preempts a state or local law is a two-step inquiry. First, the law must seek to regulate "transportation," and second, that transportation must be conducted "by a rail carrier." *Id.* The ICCTA defines transportation as "services related to ... movement" by locomotive "including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, **storage**, handling, and interchange of passengers and property." *Id.* § 10102(9) (emphasis added).

Here, FYG has interpreted Section 2 to mean that it is permitted to cross the IT from its property at any point along the entirety of the IT. (FYG Reply, p. 30). If the Board agrees with FYG's "access at any point" argument, then it is impossible for the WTA to have functioning IT. Put differently, if 1 railcar were at any point of the IT, the WTA would be in violation of the ordinance under FYG's interpretation because FYG would not have "access" across that point. And because FYG takes issue with the WTA's *storage* of railcars on the IT, which FYG repeatedly refers to as a "parking lot" that purportedly does not provide FYG access to and from its property, then the WTA, according to FYG, cannot engage in rail transportation as defined by federal law. Because the evidence shows that the WTA railcars are engaged in interstate commerce, the ordinance cannot be applicable to the issues addressed in this case.

The ordinance has no applicability to this declaratory proceeding. If the ordinance were repealed today, the WTA's use of the IT would not be interrupted because the ordinance does not regulate the WTA's activities. Indeed, the IT would continue engaging in interstate commerce because the WTA's operations and use of the IT are not dependent on the ordinance, which provides no regulatory authority over the WTA.

## **VI. CONCLUSION**

For the foregoing reasons, the WTA urges the Board to declare that the crossing sought to be installed by FYG across the IT are preempted by federal law because the installation of the proposed Emporia Court crossing would unreasonable impact interstate commerce, regardless of whether or not the north IT track were removed and/or relocated. In the alternative, if the Board deems that a crossing is necessary for FYG, the WTA proposes that the temporary crossing at the west end of the IT be made permanent.

Dated: June 30, 2014

Respectfully submitted,



**STATEMENT REGARDING SERVICE**

I hereby certify that on this 30<sup>th</sup> day of June, 2014, I have served Respondents in this proceeding with this Opening Statement of Evidence and Arguments, via First-Class mail, postage pre-paid, upon the following counsel of record:

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*s/ K. Paul Day* \_\_\_\_\_  
K. Paul Day

**EXHIBIT A**

**VERIFIED STATEMENT OF SIMON WALBRUCH  
WICHITA TERMINAL ASSOCIATION**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35765

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**PETITION OF WICHITA TERMINAL ASSOCIATION, BNSF RAILWAY COMPANY,  
and UNION PACIFIC RAILROAD COMPANY FOR DECLARATORY ORDER**

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**VERIFIED STATEMENT OF SIMON WALBRUCH IN SUPPORT OF  
THE WTA'S OPENING STATEMENT OF EVIDENCE AND ARGUMENTS**

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My name is Simon Walbruch. I am the Superintendent at the Wichita Terminal Association (the "WTA"), a position I have held since April 2013. In this position, I am responsible for all covered property of the WTA in Wichita and for the efficient and economical movement of freight for the WTA's customers. I report to the WTA's Management Board, and am responsible for implementing the board's strategic initiatives. I am also responsible for employing and supervising enginemen, switchmen, trackmen, and other employees such as office help who are necessary for the operation of the WTA.

The purpose of my verified statement is to verify and/or explain: (1) the history of the WTA; (2) the nature and use of the WTA's interchange tracks ("IT"); (3) the day-to-day operations of the WTA; and (4) the harmful effect on interstate commerce if the Emporia Court crossing sought by F.Y.G. Investments, Inc. and Treatco, Inc. ("FYG") is installed across the IT.

**Education and Work Experience**

In 2001, I graduated from the University of Montana with a Bachelor of Arts degree in Economics and a Bachelor of Science degree in Forest Management/Forest Resources Management. My relevant work history began in August 2008, when I was a trainmaster for

BNSF Railway. My tenure as trainmaster ended in April 2013, when I became Superintendent of the WTA.

### **History of the WTA**

The WTA's opening statement provides accurate information regarding the WTA's history. The Wichita Terminal Association was formed in September 1889 by agreement between four railroads: Rock Island, Atchison, Pacific, and Frisco for the purpose of ownership and operation of tracks in the stockyards and packing house district of northern Wichita. These railroads formed the Wichita Union Stockyards & Packing House Tracks Association that switched a small area of tracks near 21<sup>st</sup> Street in Wichita.

In the early 1900's, Wichita's economy began to grow and more industries were created in north Wichita, particularly in the milling industry. Due to the increase, spur tracks were built to connect the factories and mills with the long haul rail carriers. On June 29, 1923, control of these tracks transferred to the four major railroads in town; the Chicago, Rock Island & Pacific Railway Company, the Atchison, Topeka and Santa Fe Railway Company, the Missouri Pacific Railroad Company and the St. Louis – San Francisco Railway Company. This new partnership became the Wichita Terminal Association. Each parent company owned a ¼ share and one official from each carrier served on the WTA board.

Since the new partnership, the WTA has remained the same and continues to service customers in the stock yards, packing houses and milling district. Today, the Wichita Terminal Association is owned equally by BNSF Railway Company (The Atchison, Topeka and Santa Fe Railway Company and the St. Louis – San Francisco Railway Company) and Union Pacific Railroad Company (The Chicago, Rock Island & Pacific Railway Company and the Missouri Pacific Railroad Company) and together, provide switching of railcars for industries on the

WTA's tracks in Wichita. With more than a dozen industries and a steady flow of business from the flour mills, grain elevators, feed mill, oilseed processing and other shippers, the WTA moves freight to and from this area of Wichita in interstate commerce.

The Wichita Terminal Association currently does not have a yard that enables railcars to be switched into and subsequently stored on those tracks pending customers' requests. Instead, the WTA has a series of main line spur/stub tracks spread throughout north Wichita. The WTA provides maintenance for the Wichita Union Terminal Association ("WUT"). The WUT is a jointly owned corporation that operates elevated trackage near downtown Wichita.

### **The Nature and Uses of the IT**

The IT are double parallel main line tracks located in the right-of-way of 25th Street in Wichita, Kansas. The IT are approximately 920 feet from east and west clearance points, and connects with main line tracks owned by BNSF whose tracks are directly to the west of the IT. The WTA uses the IT to receive and ship agricultural products such as wheat, milo, corn, barley malt, flour and soybeans; aggregates such as clay, granite, billet ore and plastics; materials such as bricks, lumber, steel and paper; and chemicals such as petroleum distillates, waste oil and fuel additives to states across the United States, and to territories in Canada.

The IT are also used to bridge railcars between BNSF and UP, and vice versa. BNSF spots reciprocal cars from UP and provides line haul movement for WTA customers of UP railcars. The IT are the only tracks that can be used in Wichita where cars are interchanged between BNSF and the WTA, BNSF and UP, and vice versa. While BNSF owns the Frisco Yard and lines, the Frisco Yard is out of service because of track conditions.

WTA customers in Wichita have two options to move product on the interstate rail transportation system: over the IT to BNSF or by UP. The customers the WTA serves are

Americold, Bartlett Grain, Midwest Scrap Management, Beachner Grain, Cargill Oil, Wichita Terminal Elevator, Cereal Food Processors, Glickman Metal Recycling, and Horizon Milling. Railcars are interchanged to and from these customers from the BNSF yard over the IT to each customer for loading and/or unloading. Many of the products shipped across the IT go outside the State of Kansas. The WTA's customers are engaged in interstate commerce, and the IT are a vital artery used to assist these customers ship their products in interstate rail transportation.

### **Daily Operations of the WTA**

The process by which the WTA interchanges and bridges over the IT is a time-consuming task that requires coordination of the railroads and staff involved, including the several customers served in north Wichita. Daily operations of the WTA, specifically regarding interchange and bridge moves on the IT, depends on several variables such as demand for commodities, general economic condition, size of the railcar, weather, harvest production, among other variables. Demand for interchange typically increases during the summer and fall months, mainly because of increased demand for grain shipments. Everyday requires a coordinated effort between the Wichita Terminal Association, BNSF and UP in order to maximize efficiency at the IT and each carrier's main lines.

The WTA will generally spot railcars on the IT that are being interchanged to the BNSF for onward movement on BNSF's network. The WTA will also use the IT to interchange railcars between BNSF and UP, and vice versa. Both tracks of the IT are used for all such interchange moves. The time it takes to place these railcars is dependent on the number of railcars in a given train. Such trains can be as small as 1 or 2 railcars to over one hundred railcars in length. Ultimately, the WTA's use of the IT is to deliver traffic to BNSF or receive traffic from BNSF.

If all of the railcars will fit on one track then the engines are cut away and the crew will depart the IT. Such a move would take between 10-20 minutes. If the train is of such a size that both tracks are to be used the move will take roughly twice as long. (20-40 min.). Such trains remain on the IT until moved to BNSF's main line or bridged between BNSF and UP for transportation in interstate commerce. How long such trains remain on the IT largely depends on train traffic on BNSF's main line to the west and in BNSF's yard to the north.

In order for the Board to quantify the WTA's daily operations on the IT, I have compiled interchange data regarding interchange over the IT from January 1, 2012 to May 20, 2014. The information I have provided is from the WTA's operating system. This compilation is marked as Exhibit J. The data shows that during this period, 28,613 railcars were interchanged between BNSF and the WTA, and the WTA bridged 8,937 railcars between BNSF and UP. Because the IT has a limited capacity of just over 900 feet on both tracks, and because the WTA lacks a formal yard, daily demand for interchange and storage often exceeds WTA's capacity.

#### **Emporia Court Crossing's Impact on the WTA's Operations**

The IT are a vital link between BNSF and the WTA, between BNSF and UP, and between UP and BNSF because all customer rail traffic that is interchanged with BNSF in Wichita moves across these two tracks. The Emporia Court crossing would effectively end, or severely limit, the WTA's operations on the IT. First, the proposed crossing would slash the IT's railcar capacity by at least 60%. Kansas law requires that railcars stay "a reasonable distance" from a crossing when not in motion so as to not interfere with the visibility of approaching motor vehicles. The WTA internal rules, in addition to industry guidelines, state that such a reasonable

distance is not less than 250 feet from the edge of a crossing when railcars are on multiple adjacent tracks.

Such clearance requirements allow motorists to see down the tracks to observe trains that may be approaching next to railcars on the adjacent track. The IT currently has approximately 850 - 920 feet of usable space per track, or 1800 feet in total, depending on railcar length. Although railcars vary in length, on average, railcars that are interchanged over the IT are approximately 60 feet long. As such, the current capacity of the IT are 30 railcars. The crossing itself is proposed to be 32 feet wide. Because the proposed Emporia Court crossing would bisect the IT, over 1000 feet of usable track space would be lost when trains are cut to comply with the required 250 feet of clearance from the crossing. Thus, the Emporia Court crossing would reduce the IT's capacity from 30 railcars to at most 12 (or 3 per track on each side of the crossing). Such a limitation on capacity would greatly hinder, and possibly even halt, interchange activity on the IT.

The proposed Emporia Court crossing would functionally cut the IT in two, dramatically limiting the WTA's ability to interchange railcars between these vital BNSF and UP arteries, and would stall traffic along these interstate rail networks. Moreover, the proposed Emporia Court crossing would reduce the interchange capacity of the IT by nearly two-thirds causing severe interference with interstate commerce by effectively halting or slowing interchange traffic on the IT.

Without a fully functioning IT, interchange and bridge movements would back railcars up to the BNSF and WTA tracks for extended periods of time, as well as hinder the WTA's ability to pull railcars from the UP yard. Such a result would halt flow traffic along these key

BNSF and UP arteries and delay interstate rail traffic through Wichita with potentially detrimental effects on traffic throughout the BNSF and UP rail networks.

This decreased capacity of the IT would increase the number of overall moves needed to interchange these railcars. Well over 100 railcars have traversed the IT daily, especially during summer and fall months, with numerous railcars coupled, uncoupled, and recoupled on the IT during these interchange and bridge activities. By drastically increasing the number of cuts and switching moves and increasing the time needed for such moves, the proposed crossing would backup traffic onto BNSF's main line to the west, and the WTA's main line to the east. This railcar backup, combined with the railroad gymnastics needed to comply with these onerous additional switching moves caused by the crossing installation, would substantially hinder traffic on the adjoining BNSF and UP arteries thus unreasonably burdening interstate commerce.

Removal of the north track would result in a more catastrophic effect on the WTA's interstate commerce operations. Loss of one track and installation of a crossing would cut IT capacity in half to approximately 160 feet, and for railcars 60 feet in length, the IT would only be able to hold 2-3 railcars. This result would cause even more strain on the WTA's operations, as track removal would increase the number of required interchange moves. In other words, removal of the north track would decrease the IT's capacity by 80% and cause a significant increase in the required amount of interchange moves. Such a result is unsustainable for the only interchange facility in Wichita.

Relocation of the north track to be installed to the south of the south IT track would also be detrimental to interstate commerce because if the crossing is installed, the WTA cannot interchange, bridge, switch, or shove railcars in order to meet the demands of its customers and

put railcars in the possession of BNSF and UP in a timely and efficient manner if the crossing is installed.

**VERIFICATION**

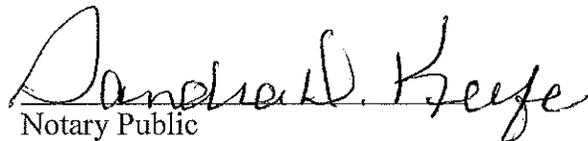
I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on June 27, 2014

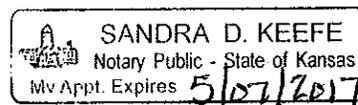
  
Simon Walbruch

STATE OF Kansas )  
COUNTY OF Sedgwick ) ss.

Sandra D. Keefe being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

  
Notary Public

My Commission Expires:



**EXHIBIT B**

**VERIFIED STATEMENT OF TONI HANSON  
BNSF RAILWAY COMPANY**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35765

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**PETITION OF WICHITA TERMINAL ASSOCIATION, BNSF RAILWAY COMPANY,  
and UNION PACIFIC RAILROAD COMPANY FOR DECLARATORY ORDER**

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**VERIFIED STATEMENT OF TONI HANSON IN SUPPORT OF  
THE WTA'S OPENING STATEMENT OF EVIDENCE AND ARGUMENTS**

---

My name is Toni Hanson. I am the Director for Blocking and Haulage for BNSF Railway Company ("BNSF"), a position I have held since November 1, 2012. In this position, I am responsible for logistically routing and blocking traffic to move intrastate and interstate over the BNSF rail network.

BNSF provided Simon Walbruch, Superintendent of the Wichita Terminal Association, with data compiled on Microsoft Excel proving that the IT is an integral part of interstate commerce. (Exhibit K-1). The data shows railcar movements on the IT from January 3, 2012 to May 20, 2014, and was compiled from business records such as waybills and BNSF internal records that are kept in the regular course of BNSF's business. It is a regular practice for a BNSF employee with knowledge of intrastate and interstate rail transportation to create such spreadsheets. Mr. Walbruch analyzed the data, and compiled an abbreviated version of BNSF's data. (Exhibit J).

BNSF's data shows in Exhibit K-1 that from January 3, 2012 to May 20, 2014, 28,613 BNSF cars were interchanged over the IT. (Exhibit K-1, WTA-DD and WTA-RR tabs). Of the 28,613 cars interchanged over the IT, 14,405 cars interchanged to BNSF by the WTA (Exhibit K-1, RR tab), and 14,208 cars interchanged from BNSF. (Exhibit K-1, DD tab). Columns



**EXHIBIT C**

**SEPTEMBER 4, 1916  
COMMISSIONERS PROCEEDINGS**

# COMMISSIONERS PROCEEDINGS

September 4, 1916.

Resol.  
4-A-12

Resolution declaring it necessary to construct Sub. No. 4 of District "A" of S. S. No. 12, read for the first time and under the rules laid over.

Resol.  
pave Ellis

Resolution declaring it necessary to curb, gutter, excavate and pave Ellis Avenue from South Park Avenue to Waterman Street, in the City of Wichita, with concrete pavement, read for the second time. Murry moved that the resolution be adopted. Vote: Yeas: Dorsey, Howard, Murry, Schell, Bentley.

## ORDINANCE NO. 5435

Ord. 5435

An ordinance apportioning and assessing the cost of paving, excavation, curb and gutter on Litchfield Avenue from Riverside to Franklin Avenue in the City of Wichita, Kansas, was read for the second time. Murry moved that the ordinance be placed upon its passage and adopted by sections. Motion carried. Final vote on adoption as a whole: Yeas: Dorsey, Howard, Murry, Schell, Bentley.

## ORDINANCE NO. 5436

Ord. 5436

An ordinance granting to Wichita Terminal Association, composed of the A. T. & S. F. Ry. Co., the C. R. I. & P. Ry. Co., and Jacob M. Dickinson, its receiver, the Mo. Pac. Ry. Co., and B. F. Bush, its receiver, and the St. L. & S. F. Ry. Co and Jas. W. Lusk, W. B. Biddle and W. C. Nixon, its receivers, and the successors and assigns of such association, the right to construct, operate and maintain industrial tracks on and across what is ordinarily known and called 25th Street, in the City of Wichita, Kansas, was read for the second time. Murry moved that the ordinance be placed upon its passage and adopted by sections. Motion carried.

Sec. 1. Murry moved that the section be amended by making certain changes. No second to motion.

Schell moved to adopt section as originally drafted. Vote: Yeas: Dorsey, Howard, Schell, Bentley. No. Murry.

Sec. 2. Murry moved to amend. No second.

Schell moved to adopt section. Motion carried. Yeas: Dorsey, Howard, Schell Bentley. No. Murry.

Sec. 3. Murry moved to strike out and substitute a forfeiture clause. No second. Schell moved to adopt section. Motion carried. Yeas: Dorsey, Howard, Schell, Bentley. No. Murry.

Sec. 4. Schell moved to adopt. Yeas: Dorsey, Howard, Schell, Bentley. No. Murry.

Vote on adoption as a whole: Yeas: Dorsey, Howard, Schell, Bentley. No. Mur

On motion commission adjourned.

Attest:-

  
City Clerk

Mayor.

**EXHIBIT D**

**WICHITA ORDINANCE NO. 5436**

walk or curbing next to the street or to hang over on to the walk or street, or if permitted to grow, in cutting the same, they shall not permit them to fall on to the walk or street and remain there for over twenty-four (24) hours without cleaning them up, leaving the streets and walks clear from the litter of said weeds or crops of any kind that may have been allowed to grow on land adjacent to the walk or on the parking.

SECTION 2. That no person, firm or corporation, either as principal, agent, servant or employee, shall haul along any of the streets, of the City of Wichita, any unbaled hay, straw, cane or corn fodder without first raking down the load and binding it sufficiently so as to prevent the same from scattering on the streets.

SECTION 3. That no person, firm or corporation, either as principal, agent, servant or employee, shall haul along any of the streets, traversed by a street car line, any unbaled hay, straw, cane or corn fodder, except to deliver at a point which is inaccessible without traveling said streets that are traversed by a street car line, without hauling on the said street for a short distance.

SECTION 4. That any person, firm or corporation, either as principal, agent, servant or employee, convicted of violating any of the terms of this ordinance, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$10.00 and imprisoned in the City Jail until such fine and costs are paid.

SECTION 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 6. This ordinance to take effect and be in force from and after its publication once in the official city paper.

APPROVED: At Wichita, Kansas, on this 24th day of July, A.D., 1916.

O. H. BENTLEY,  
Mayor.

Attest: H. D. LESTER,  
City Clerk.

WICHITA TERMINAL ASSOCIATION  
(Published in the Daily Record September 12, 1916)

### ORDINANCE No. 5436

AN ORDINANCE GRANTING TO THE WICHITA TERMINAL ASSOCIATION, composed of The Atchison, Topeka & Santa Fe Ry. Co., the Chicago, Rock Island & Pacific Ry. Co. and Jacob M. Dickinson, its Receiver, The Missouri Pacific Ry. Co. and B. F. Bush, its receiver, and the St. Louis & San Francisco Rd. Co., and James W. Lusk, W. B. Biddle and W. C.

Nixon, its receivers, and the successors and assigns of such association, the right to construct, operate and maintain Industrial Tracks on and across what is ordinarily known and called Twenty-fifth Street, in the City of Wichita, Kansas.

Be It Ordained By the Board of Commissioners of the City of Wichita:

SECTION 1. That permission and right are hereby granted to The Wichita Terminal Association, hereinafter called "Association" composed of The Atchison, Topeka & Santa Fe Railway Company, The Chicago, Rock Island & Pacific Ry. Co. and Jacob M. Dickinson, its Receiver, The Missouri Pacific Ry. Co., and B. F. Bush, its Receiver, The St. Louis & San Francisco Rd. Co., and James W. Lusk, W. B. Biddle and W. C. Nixon, its Receivers, and the successors and assigns of such association, to construct, operate and maintain industrial tracks and switches, and also such roadbed and embankments as may be or become necessary along and across what is known and called 25th Street, from a point sixty (60) feet east of the west line of Section 4, in Twp. 27 S. of Range 1 east of the 6th P.M. to the west line of Washington Avenue, in the City of Wichita, Kansas, as follows: The center line of the south track, being 21½ feet south of the north line of the SW¼ of said Section 4, with the right to cross said 25th Street, and build such curves and connections for such tracks as may be desired, also a second track 13 feet from center to center north of and connected by switches with the above described track but extending only from near Topeka Avenue on the west to near Mead Avenue as platted in Illinois Add. to the City of Wichita on the east.

SECTION 2. This permission is hereby made subject to the following conditions, terms and stipulations: Said Association shall construct said tracks under such directions and supervisions of the City Engineer of the City of Wichita, as by law provided, as to lines, grades, crossings and methods of carrying on the construction work in so far as public use of streets is concerned. Said Association shall at all times keep and maintain said tracks on grade set by the City Engineer, and should the grade be changed at any time said Association shall immediately change said tracks to conform to such grade at its own expense. The said Association shall construct and maintain in good order the portion of sidewalks crossed and railway crossings, and shall keep said track in good repair, and in such condition that teams and vehicles on such street can safely pass over such tracks at any point on said street. The said Association when duly ordered to do so, shall pay the cost of paving its track as provided by law, and the work shall be done in accordance with the plans and specifications furnished by the City Engineer. Said Association shall hold the City of Wichita forever harmless for damages that may result by reason of the construction, maintenance and operation of said tracks, including all damage, if any to adjacent property.

SECTION 3. That this grant is hereby made subject to all valid laws governing cities of the first class now in force or that may hereafter be enacted, and all valid ordinances and parts of ordinances of Wichita, Kansas, in relation thereto.

SECTION 4. Amended and Repealed by Ordinance 5624.

SECTION 5. This ordinance shall take effect and be in force from and after its publication once in the official city paper.

APPROVED: This 5th day of Sept., 1916.

O. H. BENTLEY,  
Mayor.

Attest: H. D. LESTER,  
City Clerk.

(Acceptance filed Oct. 11, 1916. No. 344 Misc. File of 1916).

**EXHIBIT D**

**EXHIBIT E**

**SEPTEMBER 30, 1889 AGREEMENT**

ARTICLES OF AGREEMENT made this 30th day of September, A. D. 1889, by and between the Chicago, Kansas & Nebraska Railway Company, the Wichita & Southwestern Railway Company, the Fort Scott, Wichita & Western Railway Company and the Kansas Midland Railway Company, corporations existing in, and doing business under the laws of the State of Kansas, for the building, operating and maintaining of a system of switches and tracks into and about the packing houses of Jacob Dold & Son, and Francis Whittaker & Sons, and the Union Stock Yard Company, known as the Stock Yards & Packing House Association of Wichita, all of the City of Wichita, County of Sedgwick, and State of Kansas, as shown by blue print hereto attached and forming a part of this agreement.

First: Tracks A, B, C, D, E, F, G and H are to be considered as permanently located, and the value thereof shall be ascertained by appraisement by arbitrators; and Messrs. R. Harding, J. R. Wentworth and A. Turner are hereby designated as such appraisers, the value of said tracks to be borne equally by the parties hereto and paid to the company owning the same.

Second: As certain tracks and track material are now on the property of the two packing houses and stock yard, but not permanently in place, it is agreed that the appraisers provided for in Article I shall place a value on such tracks and material, the question of labor in placing same as now laid not to be considered, which value so ascertained shall be apportioned as provided in the preceding section.

Third: The expense of existing tracks as agreed upon by appraisers, and of such additional tracks as may be necessary to construct in order to conform to attached plan, shall be borne equally by the parties hereto.

(1)

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EXHIBIT E

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Fourth: That if any additional tracks or renewals of existing tracks shall be required in the future, such tracks shall be paid for by all the roads interested, equally, and the necessity of such tracks shall be determined by the unanimous vote of the Superintendents of the said lines.

Fifth: The maintenance and operation of such tracks as are represented on attached print, and any additional tracks that may be put in shall be by some one of the companies under the direct supervision of the Superintendent of the joint property, such Superintendent to be appointed by the unanimous consent of all parties at interest, but subject to removal upon the written request of either party hereto; the expense of such maintenance and operation, including compensation of Superintendent of joint property, shall be borne equally by the parties hereto, save as affected by the provisions of the sixth clause hereof. The managing company shall be named by a majority vote of the General Superintendents of the companies interested.

Sixth: Switching, or the operating of such tracks, shall, the business so demands, be done by a special switch engine and crew, and the company furnishing such switch engine and crew shall be elected by the General Superintendents. The manner of dividing such expense shall be determined by the number of loaded cars handled for each company, the charge being made for empty cars; when determined, bills shall be made monthly by the operating company against each of the remaining companies, payment to be made within thirty days after presentation of bill. Provided, that the cost of furnishing a switch engine, including engineer, fireman, wiper, fuel, water, oil, waste and other engine supplies, repairs and maintenance of engine, and interest on the cost of the engine shall as a whole not exceed Two Dollars (\$2.00) per hour's service, and that if there is any question as to this being a fair price, that each railroad company, party hereto, may, in their turn,

PQ

furnish such switch engine and crew for a period of three (3) consecutive months, each at said above price, it being understood that this switching clause is subject to modification upon majority vote of the companies at interest.

Seventh: Should it be determined at any time that a switch engine assignment is not necessary to do the business offered, then each company forming part of this agreement shall have the undisputed right to run its own switch engines, or engines and crews, over and upon the system of tracks as above described, and shall have the right to place its cars at any point upon the tracks as may be directed by the Superintendent of joint property.

The system of tracks is so arranged that it will not be necessary for one road to use the main line of another, therefore, it shall not be permitted except by written permission from the proper authority. All main line switches shall be kept locked with the standard switch locks of the road to which they belong.

All main line switches shall be put in by, and at the expense of the company from whose main line the switch may depart.

Eighth: Each company interested shall provide, at their own expense, storage tracks connected with the joint system of tracks sufficient for the accommodation of their interchange of business with this joint property.

Ninth: Expenses of wrecks occurring on joint property while being operated by joint switch engines, or employees, shall be settled on wheelage basis. If wrecks occur on joint property while being operated by road engines, expense shall be paid as may be decided by Superintendent of joint property after thorough and formal investigation by him. He shall make a full written report to all parties hereto of all accidents to persons or property occurring under his jurisdiction.

PQ

Tenth: It is mutually agreed that if any other line or railroad shall at any time wish to join in and enjoy the use of said system of tracks, the right shall be given to the said road or roads, provided that such road, or roads, shall pay to the lines interested (as per this agreement) its, or their, equal proportion of the entire cost of construction of such tracks or switches.

Eleventh: As the system of tracks shown on attached print indicates, it is necessary to use a portion of the right-of-way of the Kansas Midland Railway Company, Chicago, Kansas & Nebraska Railway Company, the Fort Scott, Wichita & Western Railway Company and the Wichita & Southwestern Railway Company in order to form connections, it is agreed by all parties concerned that if at any time it may become necessary for either of the four companies named to use that portion of the right-of-way now occupied by this system of tracks, such tracks shall be removed and additional right-of-way shall be purchased and the cost of the same shall be borne by all companies interested, equally.

Twelfth: Whereas the Kansas Midland Railway Company has heretofore condemned certain additional right-of-way for the purpose of constructing an independent track to the Dold Packing House, which is, by the execution of this agreement, rendered useless and unnecessary; and which said right-of-way, or easement thereof, has by said Kansas Midland Railway Company been turned over by lease for the use of the said Stock Yard Company heretofore mentioned, - said lease being for ten (10) years and as much longer as said Stock Yards & Packing House Association of Wichita may be extended: THEREFORE, it is hereby agreed that the parties hereto shall bear one-fifth of the expense of the original cost of said right-of-way, - it being understood that said Stock Yard Company is to pay the other one-fifth.

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Thirteenth: Any complaints made by any of the parties interested in this agreement in regard to the management of the said switches and tracks- such as poor service in switching, neglect of duty by employes in charge of switch engine and crew (in case special switch engine and crew are employed)- shall be reported direct to the Superintendent in charge who will at once take the matter up and investigate to the full satisfaction of the party making the complaint.

Fourteenth: This contract shall be and remain in force for the period of ten years from and after the date of its execution unless sooner terminated as hereinafter provided, and thereafter shall remain in full force and effect until such time as the same may be terminated as hereinafter provided.

Fifteenth: Any of the parties hereto, after the expiration of said ten years may terminate said contract and withdraw therefrom by giving twelve (12) months' notice of such determination and withdrawal, which notice shall be in writing and shall be served upon the Superintendent in charge of said joint property, and on the expiration of the time fixed for such determination, said contract shall be deemed determined and at end, and so much of the joint property of said several companies as may then be in use and situated upon the right-of-way or grounds owned by any of the said companies shall become the property of the company upon whose ground the same is situated, compensation therefor and for all other joint property to be paid proportionately to the other companies, parties hereto, which compensation shall be determined in each case by arbitrators, one to be selected by the company on whose ground the track or other property is situated, the other to be selected by a majority of the other companies, and in case of failure to agree said two arbitrators shall have the privilege of selecting a third arbitrator, in which case the decision of a majority shall be binding upon the parties hereto.

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In case of a selection by any of the parties hereto as herein provided, written notice of such selection shall be made to the Superintendent in charge of the joint property; and in case of failure on the part of said other company to select an arbitrator within fifteen days after the service of such notice, the first arbitrator so selected shall proceed to act and his action shall final.

Sixteenth: If, at any time, prior to the expiration of said ten years, any of the parties hereto desire to withdraw from said agreement, they shall have the privilege of so doing upon the same terms and conditions as provided for the determination of this contract after said period of ten years: Provided that in case the remaining parties to this contract desire to continue the same so far as they are concerned, then such withdrawal shall only affect so much of the joint property as is situated upon the right-of-way or grounds owned by the company withdrawing and the appraisers in estimating the amount to be paid to or by such withdrawing party shall take into consideration the value of the property situated upon the right-of-way and grounds of said company, and also the interest which said company has in the joint property situated on the ground of the other companies.

IN TESTIMONY WHEREOF, the parties hereto have caused this instrument to be executed in four parts, each of which shall be deemed an original, the day and year first above written.

CHICAGO, KANSAS & NEBRASKA RAILWAY COMPANY,

By M. A. Lane Its President

WICHITA & SOUTHWESTERN RAILWAY COMPANY,

By A. V. Robinson Its General Manager

FORT SCOTT, WICHITA & WESTERN RAILWAY COMPANY,

By A. H. Clark Its General Manager

KANSAS MIDLAND RAILWAY COMPANY,

By H. H. Merrill Its Genl. Mgr.

PQ

**EXHIBIT F**

**JUNE 23, 1923 AGREEMENT**

LE & COPY

CONTRACT NO. \_\_\_\_\_

---oOo---

Between

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

MISSOURI PACIFIC RAILROAD COMPANY

and

ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY

---oOo---

AGREEMENT

Covering ownership, operation  
and maintenance of Wichita Ter-  
minal Association.

DATED June 29th, 1923.

EXHIBIT F

AGREEMENT, dated this 29th day of June, 1923, between THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, (an Illinois and Iowa corporation duly qualified to do business in Kansas), hereinafter for convenience sometimes called the "Rock Island Company", party of the first part; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, (a Kansas corporation) hereinafter for convenience sometimes called the "Atchison Company", party of the second part; MISSOURI PACIFIC RAILROAD COMPANY, (a Missouri corporation duly qualified to do business in Kansas) hereinafter for convenience sometimes called the "Pacific Company", party of the third part; and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, (a Missouri corporation duly qualified to do business in Kansas) hereinafter for convenience sometimes called the "Frisco Company" party of the fourth part.

R E C I T A L S :

The parties (hereinafter called the "Proprietary Companies") own in equal undivided shares all certain real and personal property including tracks aggregating Sixty-three Thousand, Four Hundred Eighty-five feet (63,485 ft.) in length (hereinafter called the "Association Tracks") in the stock yards, packing houses and milling district at Wichita, Sedgwick County, Kansas, such tracks being shown in red coloring upon print hereto attached marked Exhibit "A" and made a part hereof.

A valuation of such property and Tracks as of December 1, 1921, is shown in detail on Schedule "B", also attached and made a part hereof. Subsequent additions shall be added to Schedule "B" by the filing of exhibits numbered "C", "D", "E", etc., supported by maps and actual cost data.

For purposes of economy and efficiency in the handling of the business in said District, the parties have formed the Wichita Terminal Association (hereinafter called "Association") to have direct charge over the maintenance of said property and tracks and of the switching thereover. The Proprietary Companies now desire to set forth in writing their several rights and obligations in respect to the Association and to each other.

A G R E E M E N T:

The Proprietary Companies mutually agree as follows:

1. The Association shall be governed by a Managing Board, composed of a General Superintendent, or other ranking officer, of each Proprietary Company, said Board to select as chairman one of its members who shall hold office for a period of two years or until the election of his successor by a majority vote. The Managing Board shall hold regular quarterly meetings, the exact dates thereof to be fixed by the Chairman, and shall hold such special meetings as a Chairman, or any two of the Board members may request, each Proprietary Company to have at least ten (10) day's advance written notice of any such special meeting. A majority vote of the Managing Board shall be sufficient to bind the parties hereto.

2. The Managing Board shall appoint a Superintendent which appointment shall be by majority vote of the entire Managing Board. Said Superintendent, in turn, subject to the approval of the Board, shall appoint such of the following officers and employes as he or the Board shall deem necessary for the maintenance and operation of said tracks:

POSITION

Chief Clerk and Cashier  
Station Agent  
Yardmaster ✓  
Track Foreman

The Superintendent shall also from time to time through his subordinate officials employ such office help, engineman, switchmen, trackmen, and other employes as shall in his judgment, concurred in by the Managing Board, be necessary for the efficient and economical operation of the business of the Association. Salaries of such officials and employes shall be subject to approval of the Board.

3. THE SUPERINTENDENT shall have direct charge of the Association Tracks and the working forces. He shall be responsible for the property and for the efficient and economical conduct of the work. He shall report to and receive instructions from the Managing Board through its Chairman, and shall make such reports to the Board and the Proprietary Companies as may from time to time be required by the Board or any of such Companies. He shall countersign all checks against the bank deposits of the Association. He may also act as Station Agent.

THE CHIEF CLERK AND CASHIER shall certify to the correctness of all bills, vouchers and timechecks, and shall, subject to counter signature of the Superintendent, sign all checks against the bank deposits of the Association. He shall have charge of the office of the Superintendent, under the direction of the Superintendent, and the force employed therein, and shall otherwise assist the Superintendent in handling the affairs of the Association.

THE STATION AGENT, if any, shall report to and receive instructions from the Superintendent and shall have direct charge of all outside transportation work and of matters relating to traffic of the Association. He shall make such reports to the Proprietary Companies as may from time to time be requested by such Companies, or any of them.

THE YARDMASTER shall have direct charge of yard forces and switching operations. He shall report to and receive instructions from the Agent respecting station matters, but in all other duties he shall report to and receive instructions from the Superintendent. He shall be responsible for the prompt movement of cars and proper position of switches, and shall make such reports as the Proprietary Companies may request from time to time.

THE TRACK FOREMAN shall report to and receive instructions from the Superintendent and shall be responsible for the efficient and economical maintenance of the Association Tracks and any other physical property belonging to or used by the Association. He shall construct such new tracks or structures as may from time to time be authorized by the Managing Board. He shall make requisition on the Superintendent for materials and supplies necessary for his work.

The Association shall bond each the Superintendent, Chief Clerk and Cashier, or other employes having to do with the handling of moneys or negotiable paper, for the full amount of the working fund or in such other amounts as the Managing Board may direct. Such bonds to run in favor of Wichita Terminal Association, a voluntary association composed of The Chicago, Rock Island and Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railroad Company and the St. Louis-San Francisco Railway Company.

4. The Proprietary Companies shall furnish the switch engines necessary to properly handle the business of the Association. The Rock Island shall furnish such engines during the first six months' period of the term of this of this agreement, the Atchison Company shall furnish the same for the second six months' period, the Pacific Company during the third six months' period, the Frisco Company during the fourth six months' period and so on in rotation until the termination of this agreement.

*New for period of one year*

All such switch engines so furnished shall be acceptable to the Chairman of the Managing Board and shall be in good condition and running order when delivered to the Association, and shall be adequate for the maximum service to be performed. When an engine is leased to the Association or released by the Association a joint inspection by the Chairman of the Managing Board or his representative and a representative of the owner line shall be had and a definite record of same shall be made and copy filed with the Association. When an engine is leased to the Association, it shall remain in its service during the entire period that the Proprietary Company owning it may be required to furnish a switch engine to the Association, and another engine shall not be substituted therefor unless the engine first furnished shall be damaged while in service of the Association or shall require repairs which cannot be made during the period of time provided for roundhouse attention.

*wes*

As rental, which shall start upon the date accepted by Chairman of the Managing Board, the Association shall pay to the owning Proprietary Company monthly within twenty (20) days after bills are rendered therefor, at the rate of one (1) mill per pound of tractive power per day of twenty-four hours, or at such different rate as may from time to time be decided upon by a majority of all members of the Managing Board, and the Association shall also pay for all ordinary or running repairs to such engines during the time they are leased to the Association. The owning Proprietary Company whose turn it may be to furnish the Association with power shall deliver said power to the Association at Wichita at its own expense and at the end of such period shall accept said power from the Association at Wichita in like manner. When turned back to the owner Proprietary Company it shall be in as relatively good condition as when delivered, ordinary wear and tear excepted. This to also be determined by a joint inspection.

The Association shall bear and pay the cost of all repairs to engines damaged while in its service, and shall also pay rental at the rate above described during the time actually consumed in making repairs and in transporting the damaged engines to and from the nearest shop of the owning Proprietary Company, and in addition shall pay for the transportation of such engine to and from from such shop at the rate of twenty (20) cents per engine mile.

The Proprietary Company at the time furnishing such engines shall, at the option of the Association, care for the same in its roundhouse facilities at Wichita, charging for such service at the rate of Two Dollars (\$2.00) for each engine passing over turntable, such charge to include all roundhouse service except the washing of boilers and the changing of water in boilers. A charge of Three Dollars (\$3.00) may be made for each boiler washed and One Dollar (\$1.00) for each change of water in boilers, said charges being in addition to the said rate of Two Dollars (\$2.00). Such roundhouse care shall include the use, at the sole risk of said Association and under the direction of the Proprietary Company, of so much of said Proprietary Company's tracks as may be necessary in reaching said roundhouse facilities.

Any party hereto may be relieved from furnishing such engines for any such period, provided it shall arrange with the party immediately theretofore furnishing the same or with the party next following to furnish an engine for such period in its stead; but no such arrangement shall relieve such party from its obligation for any subsequent rotational period, unless again so arranged.

5. If any Proprietary Company shall perform any labor for said Association or shall furnish the Association with any materials or supplies, it will charge the Association therefor the cost plus ten percent (10%) to cover supervision and handling, and plus freight on materials and supplies at the rate of one-half cent ( $\frac{1}{2}\%$ ) per ton per mile for the distance transported over the rails of each Proprietary Company, or at such different rate per ton from time to time be fixed by a majority of the members of the Managing Board.

6. Each Proprietary Company shall advance to the Association for use as a WORKING FUND, the sum of Two Thousand Dollars (\$2,000.00) and shall also from time to time within twenty (20) days after written call therefor from the Chairman of the Managing Board,

advance an equal share of such further sum or sums as the majority of the members of the Managing Board shall deem necessary, to make the Working Fund adequate for the proper conduct of the business of the Association. If, however, at any time the majority of the Managing Board shall deem the amount of the Working Fund larger than reasonably necessary for the business of the Association, then said fund shall be reduced to such amount as will suffice, and the difference shall be paid to the Proprietary Companies in equal shares. The Working Fund shall be kept on deposit in a Wichita bank or banks acceptable to the Managing Board, subject to check by the Chief Clerk and Cashier of the Association with the countersignature of the Superintendent.

7. The Association shall perform all the switching service required on the Association Tracks, and shall make no charge against the Proprietary Companies therefor except as provided in Section 8 hereof. None of the Proprietary Companies shall permit its engines (except those at the time leased to the Association under Section 4) to enter upon the Association Tracks for the purpose of switching, except upon the request of the Superintendent and under the supervision of the Station Agent and Yardmaster of the Association.

Each Proprietary Company shall collect and retain switching revenue accruing on business from or to an Industry on such Proprietary Company's rails and an Industry on Association Tracks, or from or to an Industry on Association Tracks, and connecting lines not members of the Association, where such Proprietary Company acts as intermediate carrier.

The Association shall collect all switching revenue accruing through Intra-Plant or Intra-Terminal switching each month, such revenue as received to be credited to the Proprietary Companies; and at the close of each month the Association shall pay to each Proprietary Company its proportion of such revenues in the same ratio as such Proprietary Company contributes to the operating expenses of the Association in said month.

8. Each Proprietary Company shall pay to the Association within twenty (20) days after bills are rendered therefor, the following sums:

(a) Monthly, a share of the cost of managing, operating, maintaining, repairing and renewing the Association, including premiums on insurance or Surety Bonds, and the Association's tracks and property in the proportion that the number of loaded or empty cars switched for its account during such month bears to the number of loaded or empty cars switched for the account of all the Proprietary Companies during such month.

(b) From time to time one-fourth of any taxes and assessments paid by the Association on account of or in respect to the property of the Association. *JMS*

The Association is authorized to make sight drafts against any Proprietary Company for any sums remaining unpaid after the same shall become due and payable hereunder. Errors or disputed items shall be adjusted in subsequent bills.

9. Each Proprietary Company shall at its sole cost provide storage tracks connecting with the Association Tracks, having a capacity ample to accom-

modate all cars interchanged with the Association. Any main line switches shall be constructed and maintained by and at the sole cost of the company owning the main line, and the Association's engines shall not pass through such switches onto the main line of any Proprietary Company until the express permission of the Superintendent of such company has been obtained.

10. If any Association Tracks now or hereafter located upon the exclusive right of way of any party hereto shall interfere with the use such party desires to make thereof, then upon written notice to such effect, the track or tracks causing the interference shall be relocated at the expense of the parties hereto, and in case it shall be necessary to remove said track or tracks entirely from said exclusive right of way, then the parties shall contribute equally to the purchase of the additional right of way needed for said track or tracks and the right of way so purchased shall forthwith become and be treated as a part of the Association Tracks hereunder.

11. The Association shall from time to time construct such additional tracks or other structures as may be authorized by the Managing Board with the consent of each Proprietary Company, and the cost thereof, less any share to be borne by an industry, shall be borne equally by the Proprietary Companies. That portion of any such additional track or structures, which is not owned by an Industry, shall become a part of the property owned equally and in common by the parties hereunder. In the case of an industry track, an agreement shall first be executed by the Industry, the Association, and each Proprietary Company, providing for the construction of the track upon such basis as may be decided upon from time to time by the Proprietary Companies. The Industry shall be required to furnish free of cost, by lease, ordinance, or in such other manner as the Managing Board may designate, the necessary right of way for that part of the track, if any, lying outside the right of way of any Proprietary Company, with the right in the Association to enter upon such right of way for the purpose of constructing, maintaining and renewing such track and of operating thereover, and of removing such track upon any termination of said agreement. The Industry shall be required to deposit with the Association in advance of construction the estimated cost of the track and roadbed, to be borne by it. The Industry, under the direction of the Superintendent of the Association, may itself do the grading.

Upon any additional fixed property being acquired or provided as in this Section 11 provided, prints lettered "Exhibit C", "Exhibit D", "Exhibit E", and so on, identified in four counterparts by the General Manager of each Proprietary Company, suitably and fully identifying and describing same, shall be attached to and become a part of this agreement.

In determining whether any expenditures are for additions and betterments, or for maintenance, the parties shall be governed by current Interstate Commerce Commission Classification or the lawful rules then in force governing such matters.

12. Other Railway Companies may from time to time be admitted to membership in the Association upon such terms and conditions as shall first have been approved in writing by each of the Proprietary Companies.

13. If any of the Proprietary Companies shall fail to pay any sum payable by it hereunder on or before the date when the same shall become due, or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this agreement, and such default shall continue for a period of sixty (60) days after written demand for such payment, performance or compliance shall have been made upon such Proprietary Company by the Association or by the other Proprietary Companies, then and in any such case the Association or such other Proprietary Companies shall have and hereby are given the right to exclude the defaulting Proprietary Company from the privileges of this agreement until such time as it shall have fully satisfied, performed, or complied with its covenants and agreements herein contained then accrued or to be performed, and in addition thereto shall have paid to the Association, for the account of the other Proprietary Companies, interest at the rate of six (6) percent per annum on any sums such other Proprietary Companies may have been required to advance in payment of the defaulting Company's share.

14. (a) All liability for loss of or damage to the property of any Proprietary Company or property of others in its custody, occurring in any manner (except as provided in paragraph (c) hereof) while such property is in the possession of the Association or upon the Association Tracks, shall be borne solely by such Proprietary Company.

(b) All liability for loss of or damage to the property of third persons not in the custody of any Proprietary Company, and all liability for loss of or damage to the Association Tracks, or to switch engines or other equipment in the service of the Association, and all liability for death of or injury to employees of the Association or to other persons resulting in any manner from the switching operations of the Association, the defective maintenance of the Association Tracks, or from other cause, (except as provided in paragraph (c) hereof) shall be deemed a part of the expense of operating and maintaining the Association, and apportioned to the Proprietary Company on the basis prescribed in Section 8 hereof.

(c) All liability for loss of or damage to property or injury to or death of persons which shall be caused by or arise solely out of the negligence of any one or more of the Proprietary Companies while operating its or their exclusive engines and cars upon or adjacent to the Association Tracks, including fires set out by sparks or spreading from buildings or structures of such Proprietary Company or Companies, shall be borne solely or in equal shares, as the case may be, by the Proprietary Company or Companies at fault, except that each Proprietary Company so causing or contributing to such loss, damage, injury or death, shall bear and pay the loss resulting to its exclusive engines and cars, including property or persons therein or thereon. When loss, damage, injury or death shall result from the concurrent negligence of the Association and of one or more of the Proprietary Companies, then that part of the loss which partakes of the character described in the foregoing paragraph (b) shall be divided one-half to the Association, to be distributed as prescribed by said paragraph (b) hereof, while the remaining one-half of such loss, together with all other loss resulting from such concurrent negligence, shall be borne by the Proprietary Company or Proprietary Companies at fault, and if more than one Proprietary Company is involved, the loss shall be divided between them in the manner in this paragraph (c) prescribed for the distribution of loss due to the exclusive fault of two or more Proprietary Companies.

Whenever loss, damage, injury or death shall be properly chargeable to an industry, under the provisions of an industry track agreement, the Association shall take all reasonable steps to collect from such industry the loss so sustained. Any sums so collected shall go to reimburse the party suffering the loss, or as a credit to the cost of operating and maintaining the Association, as the case may be.

The parties hereto shall and will indemnify and save harmless each the other from the payment of any losses or damages, costs, charges or expenses other than such as such party is required to pay under the provisions of this agreement.

If any suit shall be brought against any party hereto and any judgment shall be recovered which such party shall be compelled to pay and any other parties hereto shall, under the provisions of this agreement, be solely liable therefor, then such other party shall on demand promptly repay to the party paying the same, any moneys which it (the party paying the same) may have paid or been required to pay whether in the way of damages, costs, fees or other expenses; and if the liability in any such case or cases is joint between the parties to this agreement, the party defendant therein shall be reimbursed its expenditure pro rata accordingly.

None of the parties shall be concluded by any judgment at law or in equity against any other party or parties unless it has had reasonable notice from such other party or parties requiring it to appear in an action or suit and make defense thereto for its own account or jointly with the other parties. If such notice shall have been given by any party to any other party or parties and the party or parties receiving the same shall have failed to appear and make defense, it or they shall be concluded by the judgment or decree in said suit.

15. In case any disagreement shall arise between any two or more of the parties hereto, touching the construction of any part of this agreement, or concerning the business or manner of transacting business carried on under its provisions or concerning the observance or performance of any of its terms or conditions, such question shall be submitted to the arbitrament of disinterested persons experienced in railway operation, to be chosen as follows: If the question in controversy shall concern one or more of the parties hereto on the one hand, and one or more of the parties hereto on the other hand, the party or group of parties hereto desiring arbitration shall select an arbitrator and give written notice thereof to the other party or group, and shall in such notice state precisely the matter or matters which it is proposed to bring before the arbitrators, and only the matter or matters so stated shall be considered or decided by them. If the other party or group shall fail to name a second arbitrator within thirty (30) days after notice as aforesaid has been given to it or them, as aforesaid, the arbitrator named by the party or group giving such notice may and shall name and appoint an arbitrator for and on behalf of the party or group so in default, and the arbitrator so named and appointed shall have the same power and authority as if he had been chosen by such party or group. The two arbitrators thus chosen shall select a third arbitrator, thus completing the board. If in any case as aforesaid the arbitrators so chosen shall fail to agree upon the selection of an additional arbitrator, such

arbitrator shall be appointed, upon twenty (20) days' written notice by any party or group to the controversy given to each other party or group which shall be interested, of its intention to make application therefor, by any judge of the District Court of the United States for the district which shall then include the City of Wichita, Kansas.

The arbitrators, having taken and subscribed an oath before some person authorized by law to administer oaths, to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability, which oath shall be filed with their award, shall as soon as possible after their selection, meet to hear and decide the question or questions submitted to them and shall give to each party to the controversy reasonable notice of the time and place of such meeting. The hearing of the board of arbitrators shall be conducted in the manner prescribed by the laws of the State of Kansas, and at the time and place designated, as aforesaid, and after hearing all parties interested, and taking such testimony or making such investigation as they may deem necessary, they shall decide the matter in controversy according to the very right of the matters, and shall reduce their decision to writing and serve a copy of such award upon each party interested, and such award, when made and delivered, as aforesaid, shall become and be binding and conclusive upon the parties thereto, and each of such parties agrees to be conclusively bound thereby; and such award, when made, may be filed by the successful party with the Clerk of the District Court of the County in which said hearing was had, as the basis of a judgment, and execution may issue from such Court for the collection or other enforcement of such award. Upon the making of such award, each party shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such award may be required of it.

The books and papers of all parties hereto, so far as they relate to matters submitted to arbitration, shall be open to the examination of the arbitrators, and the party or parties against whom the award shall be made shall pay all of the fees and expenses of the arbitration, or such fees and expenses may be apportioned by the board of arbitrators as they may determine.

Until the arbitrators shall make their award upon any question submitted to them, the business, settlements, and payments to be transacted and made under this agreement shall continue to be transacted and made in the manner and from existing prior to the rise of such question.

All notices which are hereinbefore provided to be given by any party to any other party or parties may be given by serving the same upon any executive or general officer of such other party or parties within whose jurisdiction said City of Wichita shall be.

16. This agreement shall take effect as of the 1st day of December 1923, and shall continue in effect until terminated by any party giving to each of the others one year's notice in writing of its desire to withdraw from said Association, provided, however, if the remaining parties shall desire to continue said Association, then upon paying to the withdrawing party its pro rata share of the then fair value of all the then present personal and real property of the Association, this agreement, modified, only as to the increased pro rata shares by

reason of the lessened number of parties, shall continue until terminated by another party giving to the others one year's notice of withdrawal, and so on. Any Association Tracks located on the right of way of the withdrawing Company shall either be removed or shall be covered by an easement, providing for the payment of ground rental.

Upon the termination of this agreement as to one or more of the parties, the party or parties so withdrawing shall be refunded its share of the working fund previously advanced to the Association.

In the event of complete termination of this agreement and consequent dissolution of the Association, such disposition shall be made of the then personal and real property as the parties may agree upon, and in the event of their failure to agree, the matter shall be determined by arbitration as hereinbefore provided.

17. That certain agreement dated September 30, 1889, between the Chicago, Kansas & Nebraska Railway Company (now the Rock Island Company), the Wichita & Southwestern Railway Company (now the Atchison Company), Fort Scott Wichita & Western Railway Company (now the Pacific Company), and the Kansas Midland Railroad Company (now the Frisco Company) relating to the joint ownership and operation of tracks in the stock yards and packing house district of Wichita, is by mutual agreement cancelled as of November 30th, 1923.

18. This agreement shall be binding upon and inure to the benefit of the respective parties, their successors and assigns, but no party shall transfer or assign its interest to or in any personal or real property of the Association to an outside Company or person without the written consent of each of the other Proprietary Companies.

IN WITNESS WHEREOF the parties have caused this agreement to be executed in quadruplicate the day and year first above written.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

(SEAL)

ATTEST:

By L. C. Fritch

W. Vanderpool

Its Vice President

Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

(SEAL)

ATTEST:

By W. B. Storey

E. L. Copeland

Its President

Secretary

**EXHIBIT G**

**THE WICHITA DAILY EAGLE,  
“TERMINAL COMPANY TODAY TAKES OVER  
RAILROAD PROPERTY,” FEBRUARY 1, 1910**

**AWAY GOES DYSPESIA, HEARTBURN, STOMACH GAS AND OTHER MISERY.**

Take a little Diapason now and your stomach will feel fine five minutes later.

At there is often some one in your family who suffers an attack of dyspepsia or some form of stomach trouble, why have they not tried Diapason? Why Diapason? Diapason is a natural medicine, it does not irritate the stomach, it does not cause heartburn, it does not cause gas, it does not cause indigestion, it does not cause any of the other ailments which are the result of a weak stomach. It is a natural medicine, it is a natural remedy, it is a natural cure for all the ailments which are the result of a weak stomach. It is a natural medicine, it is a natural remedy, it is a natural cure for all the ailments which are the result of a weak stomach.

**A SANITARY SEWER WANTED BY PEOPLE OF THE SOUTH END**

Club in Meeting Names Committee to Look Into the Matter—That Section of City Growing Rapidly.

**NEW LIQUOR ORDINANCE**

Commissioners Passed It Yesterday and Police Can Again Control It.

**SOUTH OF ORIENT TRACKS IS DISTRICT**

Residents of That Neighborhood Will Urge Prompt Action—Too Many Cars Parked Along Buell.

The district mentioned in a campaign for a sanitary sewer in the south end of the city is the section known as the south end of the city. It is a section of the city which is growing rapidly and is becoming more and more densely populated. The residents of this section are suffering from the lack of a sanitary sewer and are urging prompt action to be taken to remedy this condition.

**PAVE SEVERAL STREETS**

Commissioners Approve Preliminary Estimates for Several More Blocks.

The city commissioners yesterday approved preliminary estimates for the paving of several streets in the city. The streets mentioned are those in the south end of the city. The commissioners also approved preliminary estimates for the paving of several more blocks in the city.

**WILL PAVE FIRST STREET**

Crosscut Blocks Will Be Placed Between Main and Market Streets.

At last, at last, it seems. First street in the city will be paved. The city commissioners yesterday approved preliminary estimates for the paving of first street. The paving will be done in blocks between main and market streets.

**TO PROTECT PAVING**

Commissioner Means to Devises Plan to Place Water Mains Before Paving Is Laid.

The city commissioner has devised a plan to protect the paving of streets in the city. The plan is to place water mains in the streets before the paving is laid. This will prevent the water mains from being damaged by the paving process.

**NO ALUM**

**No Lime Phosphate**

**Fifty Years the Standard**

**Dr. PRICE'S CREAM BAKING POWDER**

Made from Grapes

Makes the food of superior healthfulness and finest quality



**TERMINAL COMPANY TODAY TAKES OVER RAILROAD PROPERTY**

Holdings of All Companies in the City Will Be Transferred to Terminal Association Recently Organized.

**WILL REBUILD AND EXTEND FACILITIES**

Are Planning to Spend \$100,000 for Additional Tracks and Equipment—Work Is Outlined.

This morning at 10 o'clock the Wichita Terminal Association will be organized at the office, that Wichita enterprise project will be a successful one and filled with glowing anticipation. The association of four tracks, which will be completed by the end of the year, has been organized by the Terminal Association. The association will be organized by the Terminal Association. The association will be organized by the Terminal Association.

The transfer of the gas station business will mean considerably lessening the gas tax and increasing the revenue of the city. The gas station business will be transferred to the Terminal Association. The Terminal Association will be organized by the Terminal Association. The Terminal Association will be organized by the Terminal Association.

The city commissioners yesterday approved preliminary estimates for the paving of several streets in the city. The streets mentioned are those in the south end of the city. The commissioners also approved preliminary estimates for the paving of several more blocks in the city.

The city commissioner has devised a plan to protect the paving of streets in the city. The plan is to place water mains in the streets before the paving is laid. This will prevent the water mains from being damaged by the paving process.

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**The Big Clearing Sale**

AT THE GLOBE IS DRAWING THE CROWDS

You can get a \$22.50 Hart Schaffner & Marx Suit for...\$16.75  
You can get \$4.00 pair of good Pants for..... 2.85  
You can get a \$20.00 Overcoat for..... 14.75  
You can get a \$1.75 Manhattan Shirt for..... 1.10  
You can get a \$2.00 Munsing Union Shirt for..... 1.50

**\$1.00 and \$1.50**  
Shirts For **85c**

**WICHITA**  
**Globe**  
MADE & CLOTHING CO.  
**PITTSBURG** IOLA WEIR CITY, KAN.

**50c**  
Underwear for **35c**

Six Stores—Wichita, Pittsburg, Iola, Cheryvale, Weir City, Oklahoma City

**DR. COE'S SANITARIUM**

FOR INVALIDS, HOME OF THE WEAK, NERVOUS, AND ALL AFFECTIONS OF THE NERVOUS SYSTEM.

DR. C. M. COE, SANITARIUM CITY, MINN.

**ROBISON'S PERCHERON**

**FEB. 15th 1910** **FEB. 15th 1910**

**SALE**

Fair Grounds Wichita, Kan.

30 Stallions, 30 Mares and Colts

This will be the greatest lot of Registered Percheron Horses ever sold at auction in the West. Address for catalogue

**J. C. ROBISON, Towanda, Kansas**

**KONDON'S CATARRHAL JELLY**

Will YOU Accept This Instant Relief FREE?

At All Drugists

Ask Your Physician or Druggist

Kondon Mfg. Co., Minneapolis, Minn.

THE DAILY RECORD

MARRIAGE LICENSES

DEATHS AND FUNERALS

PERMITS

**EXHIBIT H**

**FULL TEXT OF WICHITA ORDINANCE NO. 5436**

*J. L. Jones*

City Clerk.

*Car. 8/24*  
*Emile 8/24*  
*Sept 4 1916*  
*C. J. ...*

ORDINANCE NO. 5436

AN ORDINANCE GRANTING TO THE WICHITA TERMINAL ASSOCIATION, COMPOSED OF THE A. T. & S. F. RAILWAY COMPANY, THE C. R. I. & P. RAILWAY COMPANY AND JACOB H. DICKINSON, ITS RECEIVER, THE MO. PAC. RAILWAY COMPANY AND B. F. RUSH, ITS RECEIVER, AND THE ST. L. & S. F. RAILROAD COMPANY, AND JAMES W. LUSK, W. B. BIDDLE AND W. C. NIXON, ITS RECEIVERS AND THE SUCCESSORS AND ASSIGNS OF SUCH ASSOCIATION, THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN INDUSTRIAL TRACKS ON AND ACROSS WHAT IS ORDINARILY KNOWN AND CALLED 35th STREET IN THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WICHITA.

SECTION 1. That permission and right are hereby granted to The Wichita Terminal Association, hereinafter called "Association", composed of the A. T. & S. F. Railway Company, the C. R. I. & P. Railway Company and Jacob H. Dickinson, its receiver, the Mo. Pac. Railway Co. and B. F. Bush, its receiver, and the St. L. & S. F. Railroad Co. and James W. Lusk, W. B. Biddle and W. C. Nixon, its Receivers, and the successors and assigns of such Association, to construct, operate and maintain industrial tracks and switches, and also such roadbed and embankments as may be or become necessary, along and across what is known and called 35th Street, from a point sixty feet east of the west line of Section 4, in Township 27 S of Range 1 east of the 6th P.M., to the west line of Washington Avenue, in the City of Wichita, Kansas, as follows: The center line of the south track, being 31 1/2 feet south of the north line of the SW 1/4 of Sec. 4, with the right to cross said 35th Street and build such curves and connections for such tracks as may be desired, also a second track 15 feet from center to center north of and connected by a switch with the above described track but extending only from near Tongue Avenue on the west to near Mead Avenue as plotted in Illinois Addition to the City of Wichita on the east.

SECTION 2. This permission is hereby made subject to the following conditions, terms and stipulations: Said Association shall construct said tracks under such directions and supervision of the City Engineer of the City of Wichita, as by law provided, as to lines, grades, crossings and methods of carrying on the construction work in so far as public use of streets is concerned. Said Association shall at all times keep and maintain said tracks on grade set by City Engineer, and should the grade be lowered at any time said Association shall immediately change said tracks to conform to such grade at its own expense. The said Association shall construct and maintain in good order the portion of sidewalk crossings and railway crossings, and shall keep said tracks in good repair, and in such condition that teams and vehicles on such street

ORDINANCE No.

can safely pass over such tracks at any point on said street. The said association when duly ordered to do so, shall pay the cost of paving its track as provided by law, and the work shall be done in accordance with the plans and specifications furnished by the City Engineer. Said Association shall hold the City of Wichita forever harmless for damages that may result by reason of the construction, maintenance and operation of said tracks, including all damage, if any, to adjacent property.

SECTION 3. That this grant is hereby made subject to all valid laws governing cities of the first class now in force or that may hereafter be enacted, and all valid ordinances and parts of ordinances of Wichita, Kansas, in relation thereto.

SECTION 4. That said Association shall accept this ordinance and the provisions thereof in writing to be filed with the City Clerk within 40 days after the publication of this ordinance, and the tracks described in Section 1 hereof must be built complete on or before November 1st, 1916, otherwise this ordinance is null and void.

SECTION 5. This ordinance shall take effect and be in force from and after its publication once in the official city paper.

Approved this 5th day of Sept., A.D., 1916.

Attest:-

*[Signature]*  
City Clerk

*[Signature]*  
Mayor

STATE OF KANSAS  
SEDGWICK COUNTY  
CITY OF WICHITA---SS

I HEREBY CERTIFY THAT THE AFORESAID ORDINANCE NO. 5436 WAS PASSED AT A REGULAR MEETING OF THE COMMISSIONERS HELD SEPT. 5, 1916, WAS PUBLISHED IN THE DAILY RECORD SEPT. 13, 1916 AND IS RECORDED ON PAGE 247 OF JOURNAL OF THE COMMISSIONERS PROCEEDINGS.

*For compliance see Ord. No. 5444-1916  
General Page 248 Journal of the*

*[Signature]*  
City Clerk

ORDINANCE NO. 5437

AN ORDINANCE MAKING APPROPRIATIONS FOR MISCELLANEOUS PURPOSES  
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WICHITA:

SECTION 1. The following sums or so much thereof as may be necessary are hereby appropriated out of any moneys in the general fund of the City Treasury of said City of Wichita not otherwise appropriated for miscellaneous purposes:

Ways Pharmacy Police	4.25	M. J. Harrover	1.50
Taylor Elec. Co.	10.75	McVey Tinker Shop	.25
J. H. Turner	9.10	C. B. McCullough	1.00
Steel Mill Co. Bridge	1.00	Frank S. Cramb	11.65
Startzman & Bond, St. Dept.	4.50	Johnson Larrimer D. S. Co.	2.41
Chris Bloss	80.00	Chas. Drug Co.	1.00
J. Arch Butts	1.00	Cookson Drug Co.	.50
Titus Higley Lbr. Co.	141.75	C. W. Cooper	25.00
King Lawrence Lbr. Co.	105.30	Burner Print	19.00
Brace Hay Co.	10.00	J. M. Fowler	.49
Youngmeyer Lbr. Co.	1.00	Wichita Tel. & C. Co.	55.00
Young Bros. Deco. & E. Cross	303.35	Wichita 16. Plac. Co.	83.00
Long Bell Lbr. Co.	200.00		

EXHIBIT H

**EXHIBIT I**

**WICHITA ORDINANCE NO. 5624**

WICHITA TERMINAL ASSOCIATION  
(Published in the Daily Record May 25, 1917)

ORDINANCE No. 5624

AN ORDINANCE AMENDING SECTION 4, OF ORDINANCE NO. 5436, BEING AN ORDINANCE ENTITLED "An Ordinance granting to the Wichita Terminal Association, composed of the Atchison, Topeka & Santa Fe Railway Co., the Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, its receivers, the Missouri Pacific Railway Company and B. F. Bush, its receiver, and the St. Louis & San Francisco Railroad Company and James W. Lusk, W. B. Biddle and W. C. Nixon, its receivers, and the successors and assigns of such association, the right to construct, operate and maintain industrial tracks on and across what is ordinarily known and called 25th St. in the City of Wichita, Kansas" and repealing said original section.

Be It Ordained By the Board of Commissioners of the City of Wichita.

SECTION 1. That Section 4 of Ordinance No. 5436, be and the same is hereby amended to read as follows:—

"That said association shall accept this ordinance and the provisions thereof in writing to be filed with the City Clerk within forty days after the publication of this ordinance and the tracks described in Section 1 hereof must be built complete on or before August 1, 1917, otherwise this ordinance is null and void.

SECTION 2. That Section 4 of Ordinance No. 5436, is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official city paper.

APPROVED: This 23rd day of May, 1917.

Attest: H. D. LESTER,  
City Clerk.

L. W. CLAPP,  
Mayor.

(Acceptance not recorded).

**EXHIBIT J**

**WTA INTERCHANGE DATA (2012 -2014)**

***SEE COMPACT DISC***

**EXHIBIT K**

**BNSF AND UP DATA (2012-2014)**

***SEE COMPACT DISC***

**K-1 – BNSF DATA OF WTA RAIL MOVEMENTS**

**K-2 – UP DATA OF WTA RAIL MOVEMENTS**

**EXHIBIT L**

**VERIFIED STATEMENT OF ROBERT MEDER  
UNION PACIFIC RAILROAD COMPANY**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35765

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**PETITION OF WICHITA TERMINAL ASSOCIATION, BNSF RAILWAY COMPANY,  
and UNION PACIFIC RAILROAD COMPANY FOR DECLARATORY ORDER**

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**VERIFIED STATEMENT OF ROBERT MEDER IN SUPPORT OF  
THE WTA'S OPENING STATEMENT OF EVIDENCE AND ARGUMENTS**

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My name is Robert Meder. I am the Manager for Transportation Planning and Service Design for Union Pacific Railroad Company ("UP"), a position I have held since 2005. In this position, I am responsible for maintaining train schedules, network stations, and data inquiries.

UP has submitted data to the Board regarding UP's operations in north Wichita. (Exhibit K-2). The data shows, in part, bridge movements with BNSF on the WTA's IT from January 2, 2012 to May 31, 2014, and was compiled from business records kept in the regular course of UP's business. It is a regular practice for a UP employee with knowledge of intrastate and interstate rail transportation to create such data. UP's data shows in Exhibit K-2 that from January 2, 2012 to May 31, 2014, the WTA bridge moved 4,804 cars across the IT between UP and BNSF. (Exhibit K-2, BNSF Related tab). Columns N, O, P, and Q within the BNSF Related tab show the intrastate and interstate transportation of these cars. The data proves that the IT interchanges thousands of railcars into interstate commerce across the United States every year. UP relies heavily on the Wichita Terminal Association's operation of the IT for its interstate rail operations.

