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March 1, 2013

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-001

233871

ENTERED
Office of Proceedings
March 1, 2013
Part of
Public Record

Re: Docket No. EP 711 - Petition for Rule Making to Adopt Revised Competitive Switching Rules

Dear Ms. Brown:

This filing is made on behalf of Glacial Lakes Energy, LLC in Docket No. EP 711, Petition for Rule Making to Adopt Revised Competitive Switching Rules. The address for Glacial Lakes Energy, LLC is:

Glacial Lakes Energy, LLC
c/o Bert Magstadt
301 20th Avenue, SE
Watertown, SD 57201-5922

Attached to this transmittal letter are the Comments and Verified Statement of The Tom O'Connor Group, LLC on behalf of Glacial Lakes Energy, LLC. These comments were prepared by Tom O'Connor and John Legieza of The Tom O'Connor Group, who are experts on railroad costing and economics. The comments support adoption of the proposal submitted by the National Industrial Transportation League in this proceeding. They also conclude that doing so can provide meaningful relief for captive rail traffic shipped by Glacial Lakes Energy, LLC without imposing any significant financial or operating hardship on the railroad system or other shippers.

In addition to adding Glacial Lakes Energy, LLC to the service list in this proceeding as party of record, please add the undersigned and the following individual as a party of record:

John Legieza
13222 Point Pleasant Drive
Fairfax, VA 22033

This filing is being made electronically in compliance with the Board's electronic filing requirements. As indicated below, I am authorized to represent Glacial Lakes Energy, LLC in this proceeding.

Sincerely yours,

/s/ John M. Robinson

John M. Robinson

Counsel to Glacial Lakes Energy, LLC

Comments and Verified Statement by
The Tom O'Connor Group, LLC
on behalf of Glacial Lakes Energy, LLC

Comments before the

SURFACE TRANSPORTATION BOARD

In Docket No. EP 711

PETITION FOR RULEMAKING TO ADOPT
REVISED COMPETITIVE SWITCHING RULES

March 1, 2013

I. Introduction

My name is Tom O'Connor. I am President of The Tom O'Connor Group, LLC ("The Tom O'Connor Group"). I have prepared this verified statement working in conjunction with John Legieza who is a principal of The Tom O'Connor Group. The Tom O'Connor Group is an economic and management consulting company with offices located at 13222 Point Pleasant Drive, Fairfax, Virginia 22033. The firm focuses primarily on transportation, telecom and logistics industries. A statement of Tom O'Connor's qualifications and experience is included as Exhibit No. (TOC-1) to this verified statement. A summary of John Legieza's qualifications and experience is included as Exhibit No. (JL-1) to this statement.

At the request of Glacial Lakes Energy, LLC ("GLE"), The Tom O'Connor Group reviewed its prior work on behalf of GLE and the record to date in Surface Transportation Board (the "Board") EP 711, Petition for Rulemaking to Adopt Revised Competitive Switching.¹ The Tom O'Connor Group reviewed the Board's decisions in this proceeding dated July 25, 2012,² and October 25, 2012.³ The July 25, 2012 decision summarized this proceeding as follows:

This decision begins a proceeding to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition. Under its proposal, certain shippers located in terminal areas that lack effective competitive transportation alternatives would be

¹ Petition for Rulemaking to Adopt Revised Competitive Switching, EP 711 (STB served July 25, 2012).

² *Id.*

³ Petition for Rulemaking to Adopt Revised Competitive Switching, EP 711 (STB served October 25, 2012).

granted access to a competing railroad, if there is a working interchange within a reasonable distance (30 miles under NITL's proposal). The Surface Transportation Board (the Board) is seeking empirical information about the impact of the proposal, if it were to be adopted. Specifically, the Board is seeking public input on the proposal's impact on rail shippers' rates and service, including shippers that would not benefit under NITL's proposal; the proposal's impact on the rail industry, including its financial condition and network efficiencies; and methodologies for the access price that would be used in conjunction with competitive switching.⁴

The initial analysis and findings follow.

✚ *GLE supports the NITL proposal*

GLE supports the NITL proposal, which will help to remedy several issues regarding access to competition while recognizing and accommodating the ongoing need for railroads to maintain adequate financial strength and continue to build efficiency and productivity.

✚ *Access Price to be used in competitive switching*

GLE supports the use of a mutually agreed trackage rights fee or haulage rights fee for covering the costs associated with reaching the competitive switching carrier. Both trackage rights fees and haulage rights fees are well established concepts in the rail industry.⁵ If the parties in a given switching access situation cannot agree on such fees, GLE recommends that the Board prescribe a reasonable access fee.

⁴ Petition for Rulemaking to Adopt Revised Competitive Switching, EP 711 (STB served July 25, 2012) at 1.

⁵ Trackage rights are agreements whereby a railroad company secures the right to run its trains on tracks owned by another railroad company. Generally speaking, with trackage rights railroad A allows railroad B the authority to operate over railroad A's tracks using railroad B's locomotive power and crews. Haulage rights are more restrictive - usually railroad A agrees to handle railroad B's traffic at an agreed upon per car or per mile rate, utilizing railroad A's crews. Locomotive power for use in haulage

Commodities Analyzed

In this testimony the focus is on commodities transported by GLE. These commodities are: Corn, Ethanol and Distillers Dried Grain (“DDG”). The Tom O’Connor Group analysis reflects the Board’s 2010 confidential Waybill Sample made available for use in this proceeding. However, The Tom O’Connor Group relies primarily on analyses of GLE’s data. Corn is the feedstock to the GLE production processing facilities located at Mina and Watertown, South Dakota. Both Mina and Watertown are points that are captive⁶ to the BNSF Railway (“BNSF”). Ethanol and DDG are the GLE outputs and are shipped primarily by rail. Since GLE’s Mina and Watertown plants are solely served or captive⁷ to the BNSF, all Mina and Watertown rail movements originate or terminate, or both, on the BNSF. The Tom O’Connor Group focuses here on outbound shipments of DDG hopper cars shipped from Mina and Watertown. This analysis also focused on outbound shipments of ethanol in tank cars shipped from Mina and Watertown. Corn is transported inbound to the GLE processing facilities primarily by modes other than rail and is not the principal focus of this analysis.

The Board’s confidential Waybill Sample includes data for the three GLE commodities analyzed in this testimony. The following chart reflects 5 digit Standard

rights is also negotiated and could be provided by either railroad A or B depending on the specific agreement.

⁶ Captive rail freight lacks economic access to transportation alternatives. The NITL proposal seeks to mitigate lack of competition.

⁷ A captive rail customer has no competitive transportation alternative to the railroad serving its location. A rail customer may be captive at the facility where traffic originates (for example, a grain elevator that ships corn to a processing plant), or at the destination where traffic terminates (for example the plant that processes the corn), or both or on a segment between captive locations. Captivity may exist over an entire rail route or only over a "bottleneck" portion.

Transportation Commodity Code (“STCC”) aggregations and reports average, minimum and maximum Revenue to Variable Cost (“R/VC”) percentages reflecting R/VC 180% and 240% selection thresholds for the commodities The Tom O’Connor Group analyzed.

Commodity	R/VC Metrics	R/VC	R/VC= or >240%	R/VC = or >180%
Ethanol STCC 28184	Average	169%	320%	251%
	Minimum	19%	243%	180%
	Maximum	632%	632%	632%
DDG STCC 20823	Average	169%	281%	222%
	Minimum	22%	240%	180%
	Maximum	358%	358%	358%
Corn STCC 01132	Average	153%	317%	236%
	Minimum	3%	240%	180%
	Maximum	855%	855%	855%

The preceding chart is a summary of the three principal GLE commodities at the 5 digit STCC level and is drawn from the Board’s confidential Waybill Sample. These results reflect all railroads included in the Board’s confidential Waybill Sample and are germane to our determining the reasonableness of the rates received or proposed by BNSF and other carriers serving GLE. GLE had previously requested The Tom O’Connor Group to review and bench mark the level of certain rail rates. In this analysis The Tom O’Connor Group draws on its prior work for GLE. That prior work analyzed rail rates for inbound feedstock movements of corn and outbound shipments of the products, ethanol in tank cars and DDG in hopper cars from GLE’s plants in Mina and Watertown.

The Tom O'Connor Group calculates here the rate levels for the various commodities involved using rates, costs, and the ratio of railroad revenue to R/VC of transporting ethanol and DDG. Both of these are produced using corn as the input. The R/VC ratio is a measure of profitability and the railroad markup of rail rates above the variable costs incurred. By calculating the variable costs of the particular movement, it is possible to determine margins and levels of the profitability of GLE shipments to BNSF and other rail carriers. The variable cost calculations from the R/VC analysis provide a base line of the railroad's variable cost and margins. The Tom O'Connor Group based its calculations of a railroad's variable costs on unit costs developed using the Board's Uniform Rail Costing System ("URCS"). URCS is the Board's railroad general purpose costing system used to estimate variable and total unit costs for Class I U.S. railroads.

URCS is used by the Board for a variety of statutory and non-statutory functions. URCS is statutorily required for making the jurisdictional determination in railroad maximum rate reasonableness proceedings. URCS is also used to develop variable costs for making cost determinations in abandonment proceedings, to provide the railroad industry and shipper with a standardized costing model, as well as for costing the Board's Carload Waybill Sample to develop industry cost information; and to provide interested parties with basic cost information. The Tom O'Connor Group uses the 2010 costs, the most recent URCS costs available in the Board's costed Waybill Sample.

II. Analytical Methodology

The methodology The Tom O'Connor Group used to calculate variable costs follows the procedures used in the Board's rate reasonableness proceedings.⁸ In Ex Parte 589, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*,⁹ the Board concluded that it is appropriate to use Class I railroad regional unit costs to calculate the variable costs of a short line railroad in regulatory proceedings. As standard practice the Tom O'Connor Group uses primarily the Class I railroad unit costs in its analyses. In the Major Issues and Simplified Standards decisions the Board mandated the use of only nine (9) operating inputs for the URCS Phase III program analysis when calculating the variable costs for issue traffic. These are:

- (1) the railroad;
- (2) loaded miles (which should include "loop track miles" for high volume coal shipments);
- (3) shipment type (originated and terminated (local), originated and delivered, received and delivered (bridge), received and terminated);
- (4) number of freight cars;
- (5) tons per car;
- (6) commodity;
- (7) type of movement (single, multiple car (6 to 49 cars), and unit train (50 or more cars));
- (8) car ownership (railroad or private); and
- (9) type of car.

⁸ See 49 U.S.C. § 10707(d)(1)(B); Ex Parte 657 (Sub-No.1); Major Issues in Rail Rate Cases (Served October 30, 2006) at 60 ("Major Issues"); and Ex Parte 646, Simplified Standards for Rail Rate Cases (served September 5, 2007) at 26 (Simplified Standards).

⁹ *Ex Parte 589, Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*, 6 S.T.B. 798 (2003).

 **The proposed 240 percent R/VC is a reasonable standard**

The Tom O'Connor Group reviewed the Board's costed Waybill Sample and the Board's 2010 stratification report which also reflects URCS costs. Those empirical results support the use of 240% R/VC as indicating highly remunerative traffic for the railroad involved. As the following table shows, the 2010 shipments for the sample that generated an R/VC greater than 180 percent typically generated an R/VC well above 200 percent and overall that highly rated traffic produced a 249 percent R/VC.

Commodity Revenue Stratification Report for 2010								
Summary of Revenues and URCS Variable Costs by Two-Digit STCC and Revenue-to-Variable Cost (RVC) Ratio Category								
Based Upon 2010 Waybill Data (000s)								
STCC	Description	RVC < 100		100 <= RVC < 180		RVC >= 180		RVC
		Revenues	Variable Costs	Revenues	Variable Costs	Revenues	Variable Costs	
01	Farm Products	\$ 373,912	\$ 437,581	\$ 3,311,675	\$ 2,277,965	\$ 1,849,747	\$ 843,790	219%
08	Forest Products	\$ 448	\$ 516	\$ 3,525	\$ 2,846	\$ 1,618	\$ 630	257%
09	Marine Products	\$ 100	\$ 158	\$ 5,390	\$ 3,905	\$ 229	\$ 112	205%
10	Metallic Ores	\$ 45,961	\$ 69,007	\$ 241,985	\$ 179,235	\$ 331,551	\$ 146,748	226%
11	Coal Products	\$ 1,763,186	\$ 2,476,891	\$ 5,328,621	\$ 3,814,767	\$ 7,025,538	\$ 2,575,093	273%
13	Petroleum Products	\$ 13,250	\$ 18,520	\$ 111,395	\$ 82,496	\$ 38,306	\$ 17,789	215%
14	Nonmetallic Minerals	\$ 82,725	\$ 103,636	\$ 1,021,462	\$ 727,841	\$ 835,587	\$ 346,862	241%
19	Ordnance	\$ 139	\$ 168	\$ 822	\$ 629	\$ 33,175	\$ 7,992	415%
20	Food Products	\$ 568,694	\$ 687,086	\$ 3,302,723	\$ 2,452,127	\$ 1,076,146	\$ 498,052	216%
21	Tobacco Products	\$ 33	\$ 39	\$ -	\$ -	\$ -	\$ -	
22	Textile Mill Products	\$ 4,719	\$ 6,441	\$ 18,363	\$ 13,523	\$ 7,321	\$ 3,292	222%
23	Finished Textiles	\$ 19,691	\$ 29,448	\$ 133,718	\$ 95,007	\$ 85,106	\$ 38,743	220%
24	Wood Products	\$ 276,338	\$ 345,371	\$ 889,285	\$ 703,063	\$ 131,905	\$ 61,477	215%
25	Furniture	\$ 4,795	\$ 6,623	\$ 49,698	\$ 34,859	\$ 48,835	\$ 19,816	246%
26	Pulp & Paper Products	\$ 284,833	\$ 349,542	\$ 1,414,867	\$ 1,085,046	\$ 234,678	\$ 107,155	219%
27	Printed Matter	\$ 5,112	\$ 6,451	\$ 15,591	\$ 11,553	\$ 6,132	\$ 2,977	206%
28	Chemical Products	\$ 336,043	\$ 498,223	\$ 3,223,730	\$ 2,309,062	\$ 4,500,344	\$ 1,740,841	259%
29	Petroleum or Coal Products	\$ 69,394	\$ 94,665	\$ 887,036	\$ 637,501	\$ 891,225	\$ 367,951	242%
30	Plastic Products	\$ 20,185	\$ 25,596	\$ 99,701	\$ 74,842	\$ 38,646	\$ 16,584	233%
31	Leather Products	\$ 309	\$ 339	\$ 1,852	\$ 1,370	\$ 2,251	\$ 957	235%
32	Stone & Glass Products	\$ 38,959	\$ 48,028	\$ 770,409	\$ 547,058	\$ 631,089	\$ 271,360	233%
33	Metal Products	\$ 220,046	\$ 282,571	\$ 1,207,866	\$ 880,369	\$ 551,263	\$ 239,363	230%
34	Fabricated Metal Products	\$ 9,416	\$ 13,568	\$ 51,910	\$ 37,374	\$ 45,011	\$ 18,037	250%
35	Machinery	\$ 5,446	\$ 6,800	\$ 46,204	\$ 31,928	\$ 91,186	\$ 27,290	334%
36	Electrical Machinery	\$ 27,902	\$ 33,628	\$ 101,835	\$ 75,640	\$ 112,156	\$ 24,415	459%
37	Transportation Equipment	\$ 760,448	\$ 996,684	\$ 2,289,157	\$ 1,764,896	\$ 786,153	\$ 332,246	237%
38	Scientific Instruments	\$ 1,356	\$ 1,798	\$ 7,755	\$ 5,823	\$ 2,757	\$ 1,339	206%
39	Miscellaneous Products	\$ 6,613	\$ 9,437	\$ 40,721	\$ 29,017	\$ 27,595	\$ 12,276	225%
40	Scrap Materials	\$ 145,549	\$ 174,740	\$ 680,355	\$ 508,086	\$ 352,999	\$ 157,254	224%
41	Miscellaneous Freight	\$ 16,572	\$ 23,597	\$ 83,661	\$ 60,881	\$ 112,385	\$ 42,347	265%
42	Empty Containers	\$ 307,827	\$ 515,901	\$ 272,040	\$ 215,514	\$ 61,015	\$ 28,264	216%
43	Express Mail	\$ 1,781	\$ 2,790	\$ 4,292	\$ 3,119	\$ 1,588	\$ 768	207%
44	Freight Forwarder Traffic	\$ 21,228	\$ 24,538	\$ 62,125	\$ 44,449	\$ 205,559	\$ 88,458	232%
45	Shipper Association Traffic	\$ 110	\$ 143	\$ 746	\$ 525	\$ 152	\$ 62	247%
46	Misc Mixed Shipments Exc, Forwa	\$ 1,133,892	\$ 1,479,644	\$ 3,935,760	\$ 2,910,931	\$ 2,036,265	\$ 867,874	235%
47	Small Packages	\$ 194	\$ 247	\$ 15,353	\$ 9,986	\$ 172,774	\$ 68,357	253%
48	Hazardous Waste	\$ 1,304	\$ 2,632	\$ 16,583	\$ 11,161	\$ 51,702	\$ 19,891	260%
	Total	\$ 6,568,509	\$ 8,773,047	\$ 29,648,210	\$ 21,644,393	\$ 22,379,986	\$ 8,996,462	249%

Source: Surface Transportation Board Costed 2010 Waybill Sample

Using 240 percent R/VC as an indicator of highly profitable traffic is a reasonable standard that satisfactorily addresses market dominance issues that are part of the rate reasonableness process.

✚ *The 240 percent R/VC threshold used in conjunction with the presence of a workable interchange within 30 miles produces a reasonable screen for determining whether to allow competitive switching access*

Based on its review The Tom O'Connor Group found that most of the dozens of GLE DDG and ethanol shipment lanes analyzed had access to a competing railroad switch provider within 30 miles.¹⁰ However most of GLE's ethanol and DDG lanes did not pass a second screening test since they did not generate an R/VC greater than or equal to 240 percent.

III. Findings and Conclusions

This analysis, which focused on lanes with an R/VC greater than 180 percent, found that only about 30 percent of the Ethanol lanes produced an R/VC greater than or equal to 240 percent. Looking at DDG lanes with an R/VC greater than 180 percent, The Tom O'Connor Group found a similar, but slightly lower percentage of DDG lanes, produced an R/VC greater than or equal to 240 percent. These results support the pro-competitive benefits of the NITL proposal and do not support concerns which may be voiced by some parties that the NITL proposal could cause dislocations in the markets to which it would apply. The relatively low percentages of ethanol and DDG lanes meeting the 240 percent threshold (about 30 percent) suggests that for these commodities there may be relatively modest gains made by shippers with new

¹⁰ As noted above the GLE Corn shipments typically do not move by rail.

competitive switching access and consequently less adverse impact on other shippers than some have projected.

The Tom O'Connor Group also reviewed the Board's confidential Waybill Sample for ethanol and DDG, the GLE commodities. The incidence of GLE Waybill Sample lanes involving Mina or Watertown, with R/VC greater than 240 percent was less than that found in independent analyses by The Tom O'Connor Group. The Tom O'Connor Group ascribes this in large part to the fact that it analyzed 2012 rates and cost levels while the Board's confidential Waybill Sample reflects lower 2010 cost and revenue levels. The conclusion based on this analysis of over 200 lanes in ethanol and DDG markets is that the NITL proposal will have beneficial effects in those markets without leading to significant adverse effects on other shippers or the rail system as a whole.

IV. Recommendation

The findings presented in this report support implementing the NITL proposal and GLE recommends that the Board do so.

Verification

I declare that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on February 27, 2013

/s/ Tom O'Connor

Tom O'Connor *signed electronically*

Verification

I declare that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on February 27, 2013

/s/ John Legieza
John Legieza *signed electronically*

Exhibit No. (TOC-1)

Tom O'Connor Experience

The Tom O'Connor Group, LLC, Fairfax, VA President (2012 - Present)

Tom O'Connor assists clients by providing expert regulatory and litigation support and by offering management consulting services. The firm's regulatory and litigation support activities involve the development, preparation and presentation of expert witness testimony before courts and regulatory agencies. Tom O'Connor has participated in dozens of proceedings before state courts and commissions and Federal courts and commissions that regulate the transportation industries in both the U.S. and Canada. Tom O'Connor and the Members of the firm have provided litigation support in the form of expert witness or economic research services in antitrust, merger, divestiture, rate and other cases before Federal and state courts.

In the area of management consulting, we assist both government and private sector clients in developing management information systems, evaluating contract performance and conducting management audits.

Tom O'Connor specializes in the analysis of the operations, costs, revenues and services of enterprises, both public and private, involved in all modes of surface transportation. He has developed an array of transportation and logistics related negotiation planning and financial and management tools, including detailed models for negotiations, litigation, cost allocation, accounting, traffic flow, and carrier operations.

Those tools have been successfully applied on behalf of clients in well over 500 projects, including merger proceedings, contract negotiations, strategic planning and operational analyses. His transportation practice extends beyond the U.S. borders throughout North America and into Eastern Europe.

Snavelly King Majoros & O'Connor, Inc., Washington, DC Vice President (1988 - 2012)

Mr. O'Connor authored a series of guidelines on transportation negotiations and contracting and has conducted transportation negotiations and contracting seminars for a wide range of clients. Mr. O'Connor has also designed and lead transportation contract negotiations resulting in tens of millions in cost savings.

Mr. O'Connor also appeared as an expert witness on rail line merger and abandonment cases and in rail rate litigation, achieving millions of dollars in savings for the client. He served many clients as an expert advisor on technical and policy issues including the Rail Cost Adjustment Factor ("RCAF").

He also created and managed numerous computerized management and regulatory systems to address complex economic problems and is a widely recognized expert on

costing and economics. He appeared as an expert on the former Interstate Commerce Commission ("ICC") and Surface Transportation Board (the "Board") rail rate, merger and abandonment regulations. He also developed the most widely used line economic analysis system in the U.S. rail industry; the United States Railway Association ("USRA") Light Density Line Analysis system.

He has also conducted analyses of tug and barge operations, both inland and off shore, for governmental and private sector clients.

Mr. O'Connor has conducted analyses for the Government of Canada used to shape policy for freight transportation and studies for the U.S. Government used to shape Freight and Passenger Transport Policy, including in depth analyses of Amtrak.

For the Government of Bulgaria, he developed the Master Plan for Management Information Systems, including telecom and computer facilities designed to operate, measure, manage and monitor both rail freight and rail passenger operations of the Bulgarian State Railways, in Bulgaria and the Balkan Peninsula in Eastern Europe.

Mr. O'Connor has analyzed more than 45 rail merger scenarios and cases. He has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has also testified as an expert on computerized transportation analytical systems, rail operations, antitrust issues and transportation economics and costing. Mr. O'Connor has served as an impartial and expert monitor of data and processes at issue in litigation on transportation.

Mr. O'Connor also conducted management audits, focused on identifying the cause and effect relationships underlying claimed cost incidence. The management audits were directed toward testing the cost basis for rail rate positions advanced by major railroads.

Mr. O'Connor also has experience in telecoms spanning the period since 1995. He designed and developed the business and operations plan for an Eastern European telecoms startup company. Mr. O'Connor designed and presented the plan and conducted liaison with international commercial, banking and government interests in the United States and Europe.

DNS Associates Inc., Washington, DC Vice President (1982 - 1988)

Mr. O'Connor directed and participated in numerous projects including merger analyses, transportation infrastructure analyses, plant and network rationalization and feasibility studies.

He designed and implemented mainframe and microcomputerized systems for analyzing rail, truck and barge logistics. The computerized cost systems Mr. O'Connor created have been used throughout the United States and Canada. Mr. O'Connor also advised the U.S. Rail Accounting Principles Board ("RAPB") on the costing aspects of

regulatory reform policies. The RAPB mission included advising the ICC as to the inclusion of productivity in the RCAF.

He provided expert testimony on coal rates, computerized data bases and cost systems and rail cost issues before the ICC and STB.

**Association of American Railroads, Washington, DC
Assistant Vice President, Economics (1979 - 1982)**

Mr. O'Connor managed a large staff of professionals and designed and managed major economic analysis projects. He helped formulate industry economic policy positions culminating in the Staggers Rail Act of 1980. He submitted expert testimony on behalf of the railroad industry in numerous cases before the ICC and state regulatory commissions.

Mr. O'Connor directed the most significant computerized industry Costing System project in 40 years, URCS, the cost system now used by all major U.S. railroads. Mr. O'Connor's staff was responsible for development of the RCAF. He testified before the ICC on this new costing system and also conducted industry seminars on URCS and related economic issues. He also directed development and installation of a commercial computerized economic and market analysis system now used by virtually all major U.S. railroads.

**Consolidated Rail Corporation, Philadelphia, PA
Assistant Director, Cost & Economics (1977 - 1979)**

Mr. O'Connor managed a staff of about 30 professionals and was responsible for all Conrail management and regulatory cost analyses in both freight and passenger areas, including line abandonments. He testified before the ICC on the development of rail line subsidy standards now widely used in the U.S. railroad industry.

He also finalized the design, installed and managed Contribution Simulator and Calculator ("COSAC"), a computerized internal management economic analysis system at Conrail. The COSAC system uses specific management accounting data to develop economic costs. COSAC replaced earlier systems and was used to guide virtually all transportation management decisions, including competitive market initiatives, consolidations, line abandonments and service discontinuance.

Mr. O'Connor did technical cost allocation analyses for negotiations between Amtrak and Conrail on cost sharing of joint facilities on the North East corridor. He initiated and directed profit maximization and plant rationalization programs. He also designed and implemented computerization and improvement of a wide range of economic and cost analysis systems used to manage and turn around this multi-billion dollar corporation.

R.L. Banks & Associates Inc., Washington, DC Consultant (1976 - 1977)

Mr. O'Connor conducted and directed numerous transportation-related projects in the U.S. and Canada ranging from national logistics analyses to site-specific studies. He specialized in costing systems and appeared as an expert witness on such systems in a precedent setting proceeding before a Canadian Crown Commission.

U.S. Railway Association, Washington, DC Manager, Local Rail Service Planning (1974 - 1976)

In a project of unprecedented scope and historic impact, Mr. O'Connor developed, computerized, and implemented the light density lines cost analysis system, which defined Conrail. This system was used to reach asset disposition and line service decisions including evaluation of abandonment for thousands of miles of railroad. He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments, and planning agencies. The light density lines cost analysis system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system. Mr. O'Connor subsequently appeared as an expert witness to present and defend the operation of the USRA light density lines cost analysis system.

Interstate Commerce Commission, Washington, DC Economist (1973 - 1974)

Mr. O'Connor served as a staff economist and authored a report analyzing industry investment patterns and ICC regulatory policy, including ICC use of cost evidence.

Education

University of Massachusetts, Amherst, B.A. Economics
University of Wisconsin, Graduate Course Work, Economics
University of Delaware, Graduate Course Work, Business Management
The American University, Graduate Course Work, Computer Science

Professional Organizations

Transportation Research Board
Past Chairman of the Transportation Regulation Committee
Transportation Research Forum
Past President of the Cost Analysis Chapter
National Defense Transportation Association
Past Member of Board of Directors, National Capital Chapter

Academic honors

Phi Kappa Phi academic honors society
Phi Beta Kappa academic honors society

 **Military**

U.S. Army; Sergeant, Combat Engineers

Exhibit No. (JL-1)

John Legieza Experience

The Tom O'Connor Group, LLC, Fairfax, VA Consultant (2009 - Present)

Mr. Legieza provides clients with economic and policy analyses of commercial operations supporting negotiation, settlement and strategic planning. His preparations include assumptions based analysis and a rigorous due diligence on all data inputs.

Major projects Mr. Legieza participated in have included: extensive cost and revenue analyses of rail freight logistics, along with preparation and validation of models used for rate negotiations with railroads.

Mr. Legieza has assisted in the preparation of client presentations and prepared testimony for submission to the Surface Transportation Board. His telecommunications and public utility experience includes preparation of complex regulatory reports for submission to regulatory agencies.

Mr. Legieza has expertise in logic, statistics, economics, financial analysis, econometrics, markets and computer modeling. With over 25 years commercial and consulting experience Mr. Legieza has in-depth knowledge of commercial and industrial operations in the transportation, telecommunications and utilities industries and is familiar with a wide range of financial and economic tools and current technology.

CFO Power LLC. Managing Partner (2001 - 2009)

Manager of a small consulting firm; responsible for providing quality financial support to start-up, small and medium size companies. Provided expert counsel on economic and financial analyses and audits of commercial operations used by management in formulating and implementing commercial best practices strategy.

ICO Communications Global Brand Manager (1997 - 2001)

Responsible for financial, economic and market analysis in assignments in corporate strategic planning including researching rate structures, cost of service studies, market identification, and economic projections.

Mobile Telesystems, Inc., Gaithersburg, MD Director, European Operations (1989 - 1997)

Responsible for daily operations of the European market.

Developed and implemented appropriate market, product, pricing strategies and field service practices to meet customer requirements and profitably achieve business objectives.

Directed project teams, including proposal preparation and technical analysis resulting in the award of two sole-source profitable contracts totaling \$15 million dollars with the U.S. Government.

Developed and managed a solid European distribution network, which contributed annual regional revenues exceeding \$10 million for two consecutive years.

**Ford Aerospace, Washington, DC
Manager, Financial Planning and Analysis (1983 – 1989)**

Responsibilities included corporate financial analysis and planning.

Managed development of financial models, which evaluated business projects and opportunities. Prepared the financial and strategic plans. Conducted annual and semi-annual audits.

**RCA Americom, Princeton, NJ
Administrator (1979 - 1983)**

Responsibilities included Capital Budget analysis and Appropriations review.

Responsible for preparation of all capital expenditure requests.

Interfaced with Business Unit managers for purposes of monitoring program/project performance.

Prepared tariff filings for rate making proceeding submitted to the FCC for approval.

Education

Pace University 1979 – MBA in Finance

Kings College 1975 – BA in Economics and Sociology

Mr. Legieza is an active member of the Mobile Satellite Users Association, and sits on their Board of Directors.

Certificate of Service

Docket No. EP 711

I certify that I have this day served copies of the forgoing document upon all parties of record in this proceeding, by first class mail postage prepaid.

/s/ John M. Robinson

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