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February 13, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings

FEB 13 2012

Part of
Public Record

Re: *Canexus Chemicals Canada, L.P. v. BNSF Railway Company*, STB Docket No. NOR 42132

Dear Ms. Brown:

Accompanying this letter is the original and 10 copies of the Opening Evidence of Canexus Chemicals Canada, L.P. ("Canexus"). Canexus is filing both a Confidential and Public version of its Opening Evidence. Pursuant to the Board's procedures, Canexus is filing the Confidential version under seal. The Confidential version contains Highly Confidential information and exhibits that contain Sensitive Security Information ("SSI), which has been designated and labeled in accordance with paragraph 3 of the Protective Order in effect in this proceeding and the documents referenced therein. Confidential and SSI information is redacted from the Public version and is denoted with brackets [ ] in the Confidential version.

Also accompanying this letter for filing are three (3) copies of (4) compact disks, which contain the Opening Evidence and the electronic workpapers of Canexus' witnesses Mr. Thomas D. Crowley and Mr. Charles A. Stedman.

Finally, please note that the Confidential version contains a color exhibit (Counsel's Exhibit 1).

Please feel free to contact me with any questions.

Sincerely,

Thomas W. Wilcox

Thomas W. Wilcox

Enclosure

cc: Counsel for Defendant

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA, L.P.	)	
Complainant,	)	
v.	)	Docket No. NOR 42132
BNSF RAILWAY COMPANY	)	
Defendant.	)	

COMPLAINANT'S OPENING EVIDENCE

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February 13, 2012

PUBLIC VERSION

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BEFORE THE
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BNSF RAILWAY COMPANY	)	
Defendant.	)	

COMPLAINANT'S OPENING EVIDENCE

Complainant Canexus Chemicals Canada, L.P. ("Canexus") hereby submits its Opening Evidence in this proceeding. This Opening Evidence consists of two parts: (a) Counsel's Argument that summarizes the evidence submitted and discusses the legal standards to be applied in this case; and (b) the Verified Statements of (1) Mr. Martin W. Cove, Manager, Logistics, Canexus Chemicals Canada, L.P. ("Cove V.S."); and (2) Mr. Thomas D. Crowley and Mr. Charles A. Stedman, President and Vice President, respectively, of L.E. Peabody & Associates, ("Crowley/Stedman V.S."), providing written testimony and evidence in support of Canexus' Opening Evidence.

BEFORE THE

SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA, L.P	)	
Complainant,	)	
v.	)	Docket No. NOR 42132
BNSF RAILWAY COMPANY	)	
Defendant.	)	

PART I - COUNSEL'S ARGUMENT

This case involves a straightforward application of the Surface Transportation Board's ("STB" or "Board") Three-Benchmark methodology[1] for reviewing the reasonableness of railroad rates to two single-line movements of chlorine by the BNSF Railway Company ("BNSF") from the Canexus' chlorine production facility in North Vancouver, British Columbia, Canada, to destinations in Albuquerque, NM and Glendale, AZ. As explained in more detail in this Opening Evidence, Canexus filed this case on November 14, 2011 after BNSF increased the prior rates for these and other Canexus movements of chlorine by nearly 100% commencing March 16, 2011. Such increases were unilaterally imposed by BNSF on a non-negotiable basis despite the fact that Canexus incurred significant costs and took other measures specifically

[1] Ex Parte No. 646 (Sub - No. 1) *Simplified Standards for Rail Rate Cases*, (served September 5, 2007) ("*Simplified Standards*"); *recon. denied* March 19, 2008; *aff'd, CSX Transportation, Inc. et al v. Surface Transportation Board,* 568 F.3d 236 (D.C. Cir. 2009)("*Simplified Standards*").

designed to mitigate the perceived and actual risks to BNSF of transporting chlorine by railroad, including reducing the amount of chlorine Canexus shipped on BNSF's system altogether. As shown in this Opening Evidence and the included verified statements of Messrs. Cove, Crowley and Stedman, application of the Board's Three-Benchmark rules to the relevant facts demonstrates that the challenged rates for the issue movements are presumptively unreasonable. Moreover, based on the relevant facts and information provided by BNSF in the discovery phase of this case, Canexus does not believe that there are any "other relevant factors," as that term is used in the Three-Benchmark rules, that would justify adjusting the presumed maximum reasonable rates upward or downward under the Board's strict standards for seeking such adjustments.

I. BACKGROUND OF THE DISPUTE

A. Identification of Canexus and its North Vancouver Facility

Canexus is a privately owned limited partnership with offices in North Vancouver, British Columbia, Canada. Cove V.S. at 2. Canexus manufactures and markets chlor alkali products at its main production facility located in North Vancouver ("North Vancouver Facility"). *Id.* The North Vancouver Facility produces, for sale, approximately 150,000 tons of chlorine per year, all of which must be transported to the customers of Canexus and Canexus U.S. - the latter handles the sale and distribution by railroad of chlorine in the United States. *Id.* The chlorine is transported in specialized rail tank cars supplied by Canexus. Canexus is the corporate entity with responsibility for arranging rail transportation on behalf of itself and Canexus U.S. *Id.*

Canexus sells the chlorine made through its manufacturing process to end-users for a variety of purposes, including water purification, pharmaceutical manufacturing, and plastics

manufacturing. Chlorine is used at water treatment plants across the United States, thereby playing a critical role in ensuring safe drinking water for millions of Americans. Additionally, it is estimated that chlorine and its derivatives and by-products contribute more than $46 billion to the United States economy each year.[2]

B. Description of the Movements at Issue

The movements whose rates are the subject of this Complaint (referred to as the "Glendale Movement" and the "Albuquerque Movement") originate at the North Vancouver Facility and terminate at the rail facilities of Canexus customers located on BNSF tracks in Glendale, AZ and Albuquerque, NM. The North Vancouver Facility is physically connected to the Canadian National Railway ("CN"), which provides Canadian government regulated switching services between the North Vancouver Facility and an interchange point with BNSF in Vancouver. Complaint at Paragraphs 4 and 5. The customer destinations in Glendale and Albuquerque are rail-served only by BNSF. Canexus does not know the exact routings of its chlorine and other TIH movements in the normal course, since BNSF and the other Class I railroads do not disclose this information. However, maps showing the two movements based on information provided by BNSF in this proceeding are attached as Counsel's Exhibit 1. According to BNSF's disclosure in this proceeding pursuant to 49 C.F.R. 1111.4(b), [ ] where it is interchanged with the [ ] for movement from [ ] where it is then interchanged back to BNSF for movement to Glendale. Crowley/Stedman V.S. at 5. However, the rates challenged in this proceeding are both single-line, origin to

[2] See "Benefits of Chlorine" at the Chlorine Institute website, http://www.chlorineinstitute.org/Stewardship/content.cfm?itemnumber=557&navItemNumber=3504.

destination rates established by BNSF for this service,[3] which means 100% of the CN switch charge is absorbed by BNSF, and in the case of the Glendale Movement, the relationship between BNSF and the [ ] is transparent to Canexus. Complaint at 4.

As calculated by BNSF and accepted by Canexus, the Glendale Movement is [ ] miles one way from the North Vancouver Facility, and the Albuquerque Movement is [ ] miles one way from the North Vancouver Facility. This includes approximately [ ] out-of-route miles for each movement, which are deviations from the origin-to-destination routing reflected in the Confidential Waybill Sample and PC*Miler/Rail. *See,* Crowley/Stedman V.S. at 9-10; Counsel's Exhibit 1. In 2011, Canexus shipped [ ] railcars of chlorine to its customer in Glendale, AZ and [ ] railcars of chlorine to its customer Albuquerque, NM. Canexus estimates that between 2011 and 2015 it will ship an average of [ ] railcars per year in the aggregate to both customers. *See,* Cove V.S. at 4.

C. Events Leading to the Filing of the Complaint

In late 2010, BNSF informed Canexus that starting in 2011, it would significantly increase Canexus' chlorine rates to Glendale, Albuquerque, and other BNSF-served destinations. Those increases were, on average, 99% higher than the 2010 rates. Cove V.S. at 4. In response to the rate increase notification, Canexus attempted to negotiate with BNSF. It sought to understand BNSF's concerns about risk and respond to those concerns. *Id.* Canexus implemented changes to its routing protocols in an attempt to reduce BNSF's participation. Canexus committed to significant investment in new railcar technology (which Canexus undertook at BNSF's urging). *Id.* Canexus further explained how it planned to reduce chlorine

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[3] Both movements are designated as local BNSF movements in the Confidential Waybill Sample provided to the parties at the outset of this case. Crowley/Stedman V.S. at 5. The [ ] participation in the Glendale movement has been accounted for in the URCS variable costs calculations pursuant to the Board's rules. *Id.*

transportation volumes in general through increased production of chlorine derivatives at the North Vancouver Facility. *Id.* Canexus believed these initiatives would alleviate BNSF's stated concerns about transporting Canexus' chlorine, and forestall the significant, abrupt increases BNSF had announced, which would severely impact Canexus' business. *Id.* at 4-5. However, all attempts by Canexus to convince BNSF to reconsider its rate increases were rebuffed, and the rate increases went into effect on March 16, 2011 at the levels initially announced by BNSF. This complaint proceeding was eventually commenced by Canexus on November 14, 2011.

II. BNSF HAS CONCEDED IT HAS MARKET DOMINANCE OVER THE TRANSPORTATION TO WHICH THE CHALLENGED RATES APPLY

The Board only has jurisdiction over the reasonableness of railroad rates if the defendant railroad has market dominance over the traffic at issue. 49 U.S.C. §10707. Market dominance is both quantitative, in that the challenged rates must be greater than 180% of the railroad's variable costs of providing the service as calculated by STB procedures, and qualitative, in that there can be no effective inter- or intramodal alternatives to the defendant for the transportation at issue. In this case, BNSF admits that it has both quantitative and qualitative market dominance over the transportation of chlorine from Canexus' North Vancouver Facility to Canexus' customers in Glendale and Albuquerque. Specifically, BNSF admitted in Paragraph 15 of its Answer to Canexus' Complaint that BNSF's rates for the issue movements produce revenues in excess of 180% of BNSF's cost of providing the transportation as estimated by the unadjusted figures produced by the URCS Phase III program. BNSF's admission of quantitative market dominance is confirmed by the URCS Phase III variable cost calculations of Crowley/Stedman in support of Canexus' maximum rate calculations, which produce revenue to variable cost ("R/VC") ratios of 300% for the Glendale Movement and 315% for the Albuquerque Movement. Crowley/Stedman V.S. at 7. In Paragraph 11 of its Answer, BNSF

also admitted that it has qualitative market dominance over the issue movements, stating that "BNSF admits that there is no effective intramodal competition for the rail transportation of chlorine from the North Vancouver Facility to Glendale or Albuquerque under the Board's current market dominance standards."[4] This admission of qualitative market dominance was in response to the discussions of market dominance in paragraphs 11-14 of the Complaint included pursuant to 49 C.F.R. §1111.1(a)(10), and the Disclosure required by 49 C.F.R. §1111.1(b), which are hereby incorporated by reference. *See also*, Cove V.S. at 1-2. Accordingly, Canexus has met its burden of demonstrating market dominance over the transportation to which the rates challenged by its Complaint apply. 49 U.S.C. §10707.

III. CANEXUS' COMPARISON GROUPS BEST MEET THE COMPARABILITY FACTORS ADOPTED BY THE STB IN *SIMPLIFIED STANDARDS*, AND CANEXUS HAS DEMONSTRATED THAT THE CHALLENGED RATES ARE PRESUMPTIVELY UNREASONABLE

A. Canexus' Comparison Groups for the Issue Movements

In *Simplified Standards*, the Board established that "[t]he purpose of the R/VC_{COMP} benchmark is to use the R/VC ratios of other 'potentially captive traffic' (i.e., traffic priced above the 180% R/VC level) as evidence of the reasonable R/VC levels for traffic of that sort." *Simplified Standards* at 17. In order for a party's comparison rate group to be selected, it must be "most similar in the aggregate to the [challenged] movement[]." *Id.* at 18. While the only requirement for a comparison group is that all of the traffic must be "captive", *i.e.*, have R/VC ratios greater than 180%, the Board also enumerated several factors to be considered in establishing a comparison traffic group that achieves the goal of being most similar in aggregate to the challenged movement. The non-inclusive list includes length of movement, commodity

[4] There are also no effective intermodal alternatives to transport chlorine the distances of the issue movements.

type, traffic densities of the likely routes involved, and demand elasticity. *Id.* The Board has stated that "[a]ll else being equal, local single-line chlorine movements would be the preferable comparison group for" movements such as the Glendale Movement and the Albuquerque Movement. STB Docket No. 42114, *U.S. Magnesium, L.L.C. v. Union Pacific Railroad Co.* (served January 28, 2010)[5] at 9 ("*USM*"). However, the Board has also recognized that the dearth of chlorine movements in the four year Confidential Waybill Sample provided to the parties pursuant to the Three-Benchmark rules makes assembling the "preferable" comparison group difficult for a long distance chlorine movement. *Id.* at 9, note 12 (acknowledging that the failure of either party in *USM* to submit an ideal comparison group was likely due to Waybill Sample data limitations, and announcing a Notice of Proposed Rulemaking in STB Ex Parte No. 385 (Sub-No. 7), *Waybill Data Reporting for Toxic Inhalation Hazards* (served January 28, 2010).

The testimony set forth in the Crowley/Stedman V.S. describes the procedures Canexus used to select the initial comparison group ("Canexus R/VC_{COMP} Group") for the Glendale Movement and for the Albuquerque Movement following the *Simplified Standards* and the Board's *USM* and *DuPont*[6] decisions. The movements making up the Canexus R/VC_{COMP} Group for each issue movement[7] were selected from the 2006-2009 unmasked Confidential Waybill Sample provided to the parties by the Board on November 23, 2011, and each group contains the following characteristics:

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[5] *Affirmed, Union Pacific RR Co. v. Surface Transportation Board*, 628 F.3d 597 (D.C. Cir. 2010).

[6] *E.I. Dupont de Nemours and Co. CSX Transportation, Inc.*, STB Docket No. 42100 (served June 30, 2008)

[7] *See* Crowley/Stedman V.S., Exhibits 6 and 7.

1. Car Type and Ownership

Consistent with industry practice, Canexus shipments of chlorine are transported in specialized railroad tank cars supplied by Canexus to BNSF for this transportation. Cove V.S. at 2-3. Since use of private cars has a significant impact on transportation costs and rate-setting, the Canexus R/VC_{COMP} Groups include only TIH shipments that travel in privately-owned rail tank cars. Crowley/Stedman V.S. at 9.

2. Exclusion of Issue Traffic

The Glendale Movement has been excluded from the Canexus R/VC_{COMP} Group for Glendale. The Albuquerque Movement has been excluded from the Albuquerque R/VC_{COMP} Group. *Id.* at 8.

3. Movements in Single-Line BNSF Service

For purposes of assembling a comparison group under the Three-Benchmark methodology, BNSF provides single-line/local service for the issue traffic, meaning from a rate standpoint both movements originate and terminate on BNSF.[8] Accordingly, the Canexus R/VC_{COMP} Groups only include single-line BNSF traffic. Rule 11 and rebilled movements are excluded from the analysis. *Id.* at 8-9.

4. Traffic with an R/VC greater than 180%

The Canexus R/VC_{COMP} Groups are limited to movements with an R/VC greater than 180% in accordance with the *Simplified Standards. Id.*

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[8] For purposes of assembling a comparison group, the [ ] portion of the Glendale movement is irrelevant, since the rate and service to Canexus is structured by BNSF as single-line, local service and, as such, Canexus pays a single bill to BNSF for this transportation.

5. Movements of Similar Distance

The loaded miles represented by BNSF in its Answer and Disclosures are approximately [ ] miles longer than both (a) the loaded miles calculated by Canexus and included in its Complaint, and (b) the distances for these two movements shown in the Confidential Waybill Sample provided to the parties. As previously mentioned, Canexus has determined that the differential is due to out-of-route movements of the issue traffic by BNSF. Crowley/Stedman V.S. at 9-10; Counsel's Exhibit 1.[9] Nevertheless, Canexus has elected to accept the loaded miles for each issue movement used by BNSF in its December 5, 2011 Disclosure pursuant to 49 C.F.R. §1111.4(b). As explained by Messrs. Crowley and Stedman, Canexus has accounted for the out-of-route movement by applying a loaded mile range of plus or minus [ ] miles, comprised [400] mile band consistent with *USM* and *DuPont*, plus an allowance for the approximately [ ]-mile difference between the miles put forth by BNSF and the movement miles contained in the Confidential Waybill Sample caused by the out-of-route movement. Crowley/Stedman V.S. at 9-10.

6. Movements of Like Commodities

The Canexus R/VC_{COMP} Group for each issue movement consists entirely of movements of chlorine and other TIH commodities that move by rail tank cars supplied by the customer, and which have other comparable demand elasticity and operational characteristics on BNSF's system. The comparability of BNSF chlorine movements to other BNSF TIH movements in the Confidential Waybill Sample is evidenced in part by the fact that the R/VC ratios for all of the movements in both comparison groups are on average within a few percentage points of each other. *Id.* at Exhibits 6 and 7. The Canexus R/VC_{COMP} Group for Albuquerque contains [ ]

[9] A list of the BNSF operating subdivisions that the issue movements traverse from origin to destination is included as Exhibit 3 to the Crowley/Stedman VS.

BNSF chlorine and anhydrous ammonia movements. The Canexus R/VC_{COMP} Group for Glendale contains [ ] chlorine, anhydrous ammonia, and hydrogen fluoride movements. *Id.*

7. Contract and Common Carrier Traffic

The Board stated in *Simplified Standards* that, "holding everything else constant, a comparison group that consists of just common carrier traffic will be selected over a group that includes contract traffic." *Simplified Standards* at 83. According to data and clarifying information produced by BNSF in the discovery phase of this proceeding, both of the Canexus R/VC_{COMP} Groups consist of all common carrier movements. Crowley/Stedman VS at 10.[10]

B. Calculation and Application of the Ratio of the RSAM ÷ R/VC>180

The next step in the procedures outlined in *Simplified Standards* is to apply the "Revenue Shortfall Allocation Method" ("RSAM") and R/VC>180 benchmarks to the selected Comparison Group. *Simplified Standards* at 19-21. The RSAM benchmark is intended to measure the average markup that a railroad would need to collect from all "its potentially captive traffic" to earn adequate revenues. *Id.* at 10. The R/VC>180 benchmark measures the average markup that was actually applied by a railroad in its rates for potentially captive traffic. These two benchmarks are used to compute a revenue need adjustment factor for the railroad. *Id.* at 19. Messrs. Crowley and Stedman calculated the revenue need adjustment for this proceeding using the four year average of BNSF's RSAM and R/VC>180 from 2006 to 2009 contained in the

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10 [

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STB's decision served on July 14, 2011 in Ex Parte No. 689 (Sub-No. 2), *Simplified Standards for Rail Rate Cases – 2009 RSAM and R/VC>180 Calculations*. This application resulted in an adjustment of 1.061404 to the R/VC of each movement in the comparison groups. Crowley/Stedman V.S. at Exhibit Nos. 6 and 7. Crowley/Stedman then calculated the maximum R/VC for each of the two issue movements following the procedures set forth in *Simplified Standards* by first adjusting each movement in each comparison group by the 1.061404 revenue need adjustment ratio, and then calculating the mean and standard deviation of the adjusted R/VC ratios for each comparison group. Using the mean and standard deviation of each comparison group, Crowley/Stedman next calculated the 90% confidence interval around the estimate of the mean to determine the upper boundary level of the mean estimate of each comparison group. The challenged rate is presumed unreasonable if the challenged rate's R/VC ratio is greater than the upper boundary mean of the adjusted comparison group. *Simplified Standards* at 21. To develop the maximum R/VC ratios for each issue movement, Crowley/Stedman relied on the STB's Upper Boundary Model (3 Benchmark Small Rate Cases). Crowley/Stedman V.S. at 11.

The table set forth below summarizes Crowley/Stedman's computations of the maximum reasonable rates and maximum R/VC ratios for the Glendale Movement and the Albuquerque Movement for the first quarter of 2011.

Maximum Rate and R/VC 1Q 2011			
Ln	Item	Glendale	Albuquerque
1.	Issue Rate per Carload, including fuel surcharge	$15,251	$18,113
2.	Variable Cost - 1Q 2011	$5,084	$5,748
3.	R/VC ratio	300%	315%
4.	Maximum R/VC ratio	222%	213%
5.	Maximum Rate per Carload	$11,286	$12,243
6.	Amount BNSF Rate per Carload exceeds Maximum Rate per Carload	$3,965	$5,870

Crowley/Stedman V.S. at 12, and related Verified Statement Exhibits and electronic work papers.

V. OTHER RELEVANT FACTORS

Canexus has demonstrated that the common carrier railroad rates that BNSF began charging on March 16, 2011 for transportation from North Vancouver to Glendale, AZ and Albuquerque, NM, are presumptively unreasonable. Under the Three-Benchmark Methodology, either party may present evidence that the presumed maximum lawful rate should be higher or lower, due to narrowly prescribed "other relevant factors." *Simplified Standards* at 22. The burden is on the party proposing to increase or decrease the rate based on "other relevant factors" to rebut the presumption of unreasonableness, and the party seeking such adjustments to the rates must quantify them. Based on the relevant facts available to it, and data and information provided by BNSF responses to Canexus' discovery requests, Canexus believes this case presents a straightforward application of the Three-Benchmark rules and that there are no "other relevant factors" that justify either raising or lowering the presumed maximum reasonable rate levels.

VI. CONCLUSION

In conclusion, Canexus has demonstrated that the common carrier rate levels established by BNSF for the Glendale Movement and the Albuquerque Movement are presumptively unreasonable and unlawful. Accordingly, Canexus hereby respectfully asks the Board to:

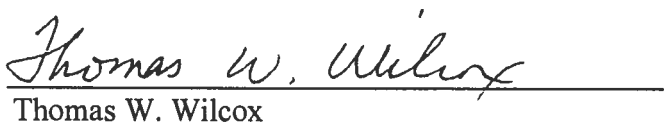
(1) find that BNSF's common carrier rates applicable to the transportation of chlorine between North Vancouver and Glendale, AZ and Albuquerque, NM are unreasonable;

(2) prescribe just and reasonable rates for the future applicable to the rail transportation of Canexus' traffic, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a);

(3) award Canexus reparations, plus applicable interest, in accordance with 49 U.S.C. §11704 for unlawful rates set by BNSF for the period beginning March 16, 2011 to the date BNSF establishes just and reasonable rates prescribed by the Board in this proceeding; and

(4) grant to Canexus such other and further relief as the Board may deem proper under the circumstances.

Respectfully submitted,



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Attorneys for Complainant Canexus Chemicals Canada, L.P.

Dated: February 13, 2012

COUNSEL EXHIBIT 1

Canexus Route of Movements
From N. Vancouver, BC to Glendale, AZ

REDACTED

Canexus Route of Movements
From N. Vancouver, BC to Albuquerque, NM

REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA, L.P.	)	
Complainant,	)	
v.	)	Docket No. NOR 42132
BNSF RAILWAY COMPANY	)	
Defendant.	)	

PART II – VERIFIED STATEMENTS

1) Verified Statement of Martin W. Cove, Manager, Logistics, Canexus Chemicals Canada, L.P.

2) Verified Statement of Thomas D. Crowley, President, and Charles A. Stedman, Vice President, L.E. Peabody & Associates, Inc.

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA, L.P. Complainant, v. BNSF RAILWAY COMPANY Defendant.	Docket No. NOR 42132

VERIFIED STATEMENT OF MARTIN W. COVE

My name is Martin W. Cove. I am the Manager, Logistics of Canexus Chemicals Canada, L.P. ("Canexus"). I have been at Canexus since 2005 in my current position. Prior to being employed at Canexus I worked for 23 years with Canadian Pacific Railway in a variety of marketing, sales and operating roles. In my current position at Canexus, I am responsible for the negotiation of freight rates to move Canexus' products across North America, among numerous other duties. This verified statement is offered in support of Canexus' complaint in this proceeding, where Canexus is challenging the common carrier rates established by BNSF for the transportation of chlorine produced by Canexus to destinations in Glendale, Arizona and Albuquerque, New Mexico. BNSF has a monopoly position on these shipment routes and the common carrier rates currently being charged are unreasonable. Alternate modes of transportation such as truck are

impractical and less safe and the infrastructure to ship other than by rail is unavailable and impractical. Canexus, as a Responsible Care® company, does not ship chlorine by truck because we believe it is far less safe than shipping by rail.

A. Description of Canexus Chemicals Canada, L.P. and Efforts Canexus has Made to Mitigate the Risks of Transporting Chlorine by Rail

Canexus is a privately owned limited partnership with offices in North Vancouver, British Columbia, Canada. Canexus manufactures and markets chlor alkali products at its main production facility located in North Vancouver ("North Vancouver Facility"). The North Vancouver Facility produces for sale approximately 150,000 tons of chlorine per year, all of which must be transported to the customers of Canexus and Canexus U.S. - the latter handles the sale and distribution of the chlorine in the United States - by railroad. The chlorine is transported in specialized rail tank cars supplied by Canexus. Canexus is the corporate entity with responsibility for arranging rail transportation on behalf of itself and Canexus U.S.

Canexus sells the chlorine made through its manufacturing process to end-users for a variety of purposes, including water purification, pharmaceutical manufacturing, and plastics manufacturing. Chlorine is used at water treatment plants across the country, thereby playing a critical role in ensuring safe drinking water for millions of Americans. Additionally, it is estimated that chlorine and its derivatives and by-products contribute more than $46 billion to the United States economy each year.[1]

Canexus takes its responsibilities concerning the marketing and shipment of its chlorine extremely seriously. Even though the three most serious rail accidents involving

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[1] See "Benefits of Chlorine" at the Chlorine Institute website, http://www.chlorineinstitute.org/Stewardship/content.cfm?itemnumber=557&navItemNumber=3504.

TIH rail shipments were the fault of the transporting railroads, and rail accidents involving TIH shipments are extremely rare, Canexus has always proactively sought to work with BNSF and other Class I railroads and taken measures to help mitigate the risks – real and perceived - of transporting chlorine by railroad. Among the measures Canexus has taken include purging older railcars from its chlorine tank car fleet that are made of non-normalized steel, which the industry believes are less resistant to puncture. It has ensured all of its cars are equipped with head shields, double-shelf couplers and constant contact side bearings. It has also installed GPS devices on many of its chlorine tank cars. It is also making a significant investment in order to convert its entire fleet of chlorine tank cars to the safest, most up-to-date, state-of-the-art rail tank cars available in the industry today. We plan to have that conversion completed before the end of next year. Canexus has worked with its rail partners to try to ensure that the routing of its chlorine traffic maximizes safety and efficiency. Canexus also participates in Emergency Response training and educational programs across North America, both on its own initiative and in cooperation with programs hosted by its rail carriers.

Specific to BNSF, Canexus listened very carefully to BNSF's concerns that other railroads were short-hauling themselves unreasonably, leaving BNSF in the position of assuming more than its fair share of the risks of transporting chlorine. Canexus evaluated BNSF's argument and concluded that BNSF had a point. In one notable instance, a rail carrier brought our cars to BNSF, then received the cars back from BNSF after a lengthy haul across a number of States, for delivery to its final destination. As a result of our analysis, Canexus took steps to change its transportation arrangements to ensure that, in instances where a railroad both originated and terminated a chlorine movement, that

railroad would be asked to handle the movement itself, removing BNSF from the routing. Those new routing agreements were instituted in the first quarter of 2011.

C. Background Leading to the Filing of this Complaint

Despite incurring substantial costs to help quell BNSF's reservations about hauling chlorine, in late 2010 BNSF informed Canexus that, starting in 2011, it would significantly increase Canexus' chlorine rates to Glendale, Albuquerque, and other BNSF-served destinations. Those increases were on average 99% higher than the 2010 rates. Canexus shipped [ ] railcars of chlorine to its customer in Glendale in 2011, and [ ] rail cars of chlorine to its customer Albuquerque in 2011. While actual volumes of chlorine are hard to predict, Canexus estimates that between 2011 and 2015 it will ship an average of [ ] rail cars per year in the aggregate to Glendale and Albuquerque.

In response to the rate increase notification, Canexus attempted to negotiate with BNSF. We sought to understand BNSF's concerns about risk and respond to those concerns. We implemented changes to our routing protocols as explained above. We explained our significant investment in new railcar technology (which we undertook at BNSF's urging), and we explained how we planned to reduce chlorine transportation volumes through increased production of chlorine derivatives at our North Vancouver plant. We believed these initiatives went a long way toward addressing BNSF's concerns about the risk of transporting our chlorine. In return, we sought BNSF's agreement to reduce the severity of its rate increases, recognize our investment in new equipment technology which reduces the conditional probability of release by providing rate discounts when shipments moved in these cars, and to phase-in those rate increases over a reasonable period of time to alleviate the sudden and severe impact on Canexus'

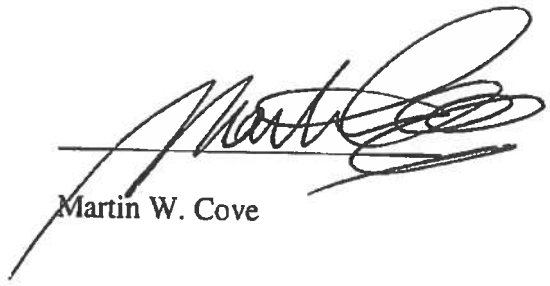
business. However, all attempts by Canexus were rebuffed, and the rates increases went into effect on March 16, 2011.

In the absence of any relief through commercial discussions with BNSF, Canexus filed this Three-Benchmark case to seek reasonable and fair rates from BNSF for the transportation of chlorine from North Vancouver to Glendale, Arizona and Albuquerque, New Mexico.

Verification Page

I, Martin W. Cove, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed, February 10, 2012.



Martin W. Cove

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

Canexus Chemicals Canada, L.P	)	
	)	
Complainant	)	
	)	
	)	
v.	)	**Docket No. NOR 42132**
	)	
	)	
The BNSF Railway Company	)	
	)	
Defendant	)	

Verified Statement

of

Thomas D. Crowley
President

And

Charles A. Stedman
Vice President

L. E. Peabody & Associates, Inc.

On Behalf of
Canexus Chemicals Canada, LP

Due Date: February 13, 2012

TABLE OF CONTENTS

LIST OF EXHIBITS

I. INTRODUCTION

We are Thomas D. Crowley and Charles A. Stedman, economist and President and a Vice President, respectively of the economic consulting firm of L. E. Peabody & Associates, Inc. The Firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737 and 21 Founders Way, Queensbury, NY 12804. A copy of Mr. Crowley's qualifications and experience is attached to this Verified Statement as Exhibit No. 1. A copy of Mr. Stedman's qualifications and experience is attached to this Verified Statement as Exhibit No. 2.

Canexus Chemicals Canada, L.P. ("Canexus") is asking the Surface Transportation Board ("STB") to prescribe reasonable rates, service terms and reparations associated with the transportation of chlorine via The BNSF Railway Company ("BNSF") for the following two (2) movements:

1. North Vancouver, British Columbia, Canada to Glendale, AZ ("Glendale Movement"); and

2. North Vancouver, British Columbia, Canada to Albuquerque, NM ("Albuquerque Movement").

We have been requested to apply the STB's Three-Benchmark Methodology, specified in the STB's September 5, 2007 decision in Ex Parte No. 646 (Sub-No. 1) *Simplified Standards for Rail Rate Cases* ("*Simplified Standards*"), to the two issue movements and to provide the following information to support Canexus' request:

1. The revenue / variable cost ("R/VC") ratio for each issue movement;

2. The selection of comparable BNSF movements from the STB's Unmasked Confidential Waybill Sample ("Waybill Sample") for BNSF for the years 2006 through 2009;

3. The upper boundary of the R/VC ratio for the comparable group (referred to as the "Maximum R/VC Ratio") for each of the issue movements following the STB's procedures specified in *Simplified Standards*; and

4. The relief to which Canexus is entitled for the issue movements.

Our Verified Statement describes how we developed the above information and the results of our analyses. The remainder of our Verified Statement summarizes the analyses we performed and presents the results of our analyses which are summarized under the following headings and in the Exhibits accompanying this Verified Statement.

II. Revenue/Variable Cost Ratios for the Issue Movements

III. Maximum Revenue/Variable Cost Ratios for the Issue Movements

II. REVENUE / VARIABLE COST RATIOS FOR THE ISSUE MOVEMENTS

The first step in the STB's Three-Benchmark methodology is to calculate the R/VC ratio for each issue movement. To develop a R/VC ratio, the rates and variable costs for each movement need to be developed. Our development of rates, variable costs and R/VC ratios for the issue movements is discussed below under the following topics.

A. Rates for the Issue Movements

B. Variable Costs for the Issue Movements

C. R/VC Ratios for the Issue Movements

A. RATES FOR THE ISSUE MOVEMENTS

Canexus' 1Q11 rates (including the March 2011 fuel surcharge) for the issue movements are shown in Table 1 below.

Table 1
1Q11 BNSF Rates Per Car (Including Fuel Surcharge) for Issue Movements

Item (1)	North Vancouver to Glendale (2)	North Vancouver to Albuquerque (3)
1. 1Q11 Rate Per Car [1/]	$14,845	$17,614
2. March 2011 Fuel Surcharge Per Car [2/]	$406	$499
3. Total Rate Per Car – 1Q11 [3/]	$15,251	$18,113

[1/] Source: BNSF Price Authority 90096, Implementing Agreement 5000, Amendment 20.
[2/] BNSF March 2011 surcharge of $0.23 per loaded mile from BNSF Rules book 6100, Item 3376, Section B times 1,764 miles for Glendale and 2,169 miles for Albuquerque (miles used to calculate the BNSF fuel surcharge were identified on BNSF's website)
[3/] Line 1 + Line 2

As shown in Table 1 above, the 1Q11 rate for the Glendale Movement equals $15,251 per car and the 1Q11 rate for the Albuquerque Movement equals $18,113 per car.

B. VARIABLE COSTS FOR THE ISSUE MOVEMENTS

In the STB's October 30, 2006 decision in Ex Parte No. 657 (Sub-No. 1) *Major Issues in Rail Rate Cases* ("*Major Issues*"), the STB revised the procedures to calculate railroad variable costs in maximum rate complaints. The STB stated that variable costs would be calculated using the STB's Uniform Railroad Costing System ("URCS") Phase III cost program for each railroad[1] based on nine specific inputs. The following nine inputs are used to calculate variable costs for each issue movement:

1. Railroad;
2. Loaded miles (including loop track miles);
3. Shipment type (Local, originated/delivered, bridge or received/terminated);[2]
4. Number of freight cars per shipment;
5. Tons per car;
6. Commodity;
7. Type of movement (single car, multiple cars or unit train);
8. Car ownership (railroad or private); and
9. Type of car.

Table 2 below summarized the nine inputs that we incorporated into the STB's URCS Phase III cost program to develop BNSF variable costs for each issue movement.

---

[1] For non-Class I railroads, the STB instructed the parties to use regional URCS costs.

[2] In the STB's URCS Phase III cost program, local is shown as "Originate & Terminate", originated delivered is shown as "Originate & Deliver", bridge is shown as "Receive & Deliver" and received terminated is shown as "Receive & Terminate."

Table 2

STB's URCS Phase III Cost Program Inputs for Each Issue Movement

	Item (1)	North Vancouver to Glendale (2)	North Vancouver to Albuquerque (3)
1.	Railroad	{}	BNSF
2.	Loaded Miles	{}	{}
3.	Shipment Type	{} 1/	Originate & Terminate
4.	Number of Freight Cars Per Shipment	1	1
5.	Tons Per Car	{}	{}
6.	Commodity (3-digit STCC)	2812	2812
7.	Type of Movement	Single Car	Single Car
8.	Car Ownership	Private	Private
9.	Type of Car	Tank < 22,000 gallons	Tank < 22,000 gallons

1/ {}

As shown in Table 2 above, the Albuquerque Movement (Column (3)) is a BNSF local move (Line 3) while the Glendale Movement (Column (2)) {} even though BNSF represents that the Glendale Movement is a direct (local) move in Price Authority BNSF 90096 and bills Canexus as a local move.[3] According to BNSF's disclosure in this proceeding[4], the Glendale Movement is {

}. Canexus has accepted BNSF's routing, miles and tons per car for each issue movement as contained in BNSF's

[3] The Glendale Movement also shows up as a local BNSF move in the STB's Confidential Waybill Sample, a further indication that BNSF treats the Glendale Movement as a local move.

[4] BNSF Railway Company's Disclosure Pursuant to 49 C.F.R § 1111.4(b) ('Disclosure") dated December 5, 2011.

Disclosure. Exhibit No. 3 provides a summary of the BNSF operating subdivisions that the issue movements traverse from origin to destination.

The nine inputs summarized in Table 2 above were used in the URCS Phase III cost program for each movement. Movements over the BNSF were based on the STB's BNSF 2010 URCS unit costs. {[redacted]}. The base year 2010 costs for each issue movement were then indexed to 1Q11 levels using the STB indexing procedures. The details of these calculations are included in Exhibit No. 4 for the Glendale Movement and Exhibit No. 5 for the Albuquerque Movement.

Table 3 below summarizes the base year 2010 variable costs and the 1Q11 indexed variable costs for each issue movement.

Table 3

STB's URCS Phase III Variable Costs Per Car

Item (1)	North Vancouver to Glendale 1/ (2)	North Vancouver to Albuquerque 2/ (3)
1. 2010 Variable Cost Per Car	$4,863	$5,498
2. 1Q11 Variable Cost Per Car	$5,084	$5,748

1/ Exhibit No. 4
2/ Exhibit No. 5

As shown in Table 3 above, the 1Q11 variable costs equal $5,084 per car for the Glendale Movement and $5,748 per car for the Albuquerque Movement.

C. R/VC RATIOS FOR THE ISSUE MOVEMENTS

Table 4 below summarizes the 1Q11 rates (including fuel surcharge), 1Q11 indexed variable costs, and the R/VC ratios for each issue movement.

Table 4

Rates Per Car, STB's URCS Phase III Variable Costs Per Car and R/VC Ratios

Item	North Vancouver to Glendale	North Vancouver to Albuquerque
(1)	(2)	(3)
1. 1Q11 Rate per Car (Including Fuel Surcharge) [1/]	$15,251	$18,113
2. 1Q11 Variable Cost Per Car [2/]	$5,084	$5,748
3. R/VC Ratio [3/]	300%	315%

[1/] Table 1 above.
[2/] Table 3 above.
[3/] Line 1 ÷ Line 2 x 100.

As shown in Table 4 above, the 1Q11 R/VC ratio equals 300% for the Glendale Movement and 315% for the Albuquerque Movement.

III. MAXIMUM REVENUE / VARIABLE COST RATIOS FOR THE ISSUE MOVEMENTS

The STB's decision in *Simplified Standards* specified the procedures to follow when developing the maximum R/VC ratio for the issue movements following the Three Benchmark Methodology. The results of our analyses based on the STB procedures are summarized below under the following topics.

A. Selection of Comparable Movements

B. Maximum R/VC Ratios for the Issue Movements

A. SELECTION OF COMPARABLE MOVEMENTS

The STB provided Canexus with Waybill Samples for 2006 through 2009 containing all waybill records in which BNSF was a participating railroad. Movements with characteristics similar to each issue movement were selected form the "comparable group" for each issue movement. The movements in the comparable group for each issue movement were selected based on the following criteria:

1. The commodity (STCC) is classified as TIH;[5]

2. The movement is classified as a hazardous commodity in the Waybill Sample;

3. The movement is not an issue movement, i.e., Glendale moves in the Waybill Sample were excluded from the Glendale Movement comparable group and Albuquerque moves were excluded from the Albuquerque Movement comparable group;

4. BNSF originates and terminates the movement;

5. The rebill code is zero;[6]

---

[5] A complete listing of the TIH STCC's used for the comparable movements is included in our electronic workpapers in the file "BNSF TIH_List_pdf". This list was obtained from BNSF's website.

[6] The "Rebill Code" field in the Waybill Sample identifies those records that are local movements with a code of "0" and those records that reflect only a portion of the movement with codes of "1", "2" or "3."

6. The R/VC ratio is greater than 180%;

7. The car type is the same as the issue movement (i.e., tank car);

8. The car ownership is private; and

9. The loaded miles are within a range of plus or minus {[ ]} miles of the issue movement loaded miles.[7]

The loaded miles range of plus or minus {[ ]} miles (Item 9 above) was determined based on the following criteria using the Glendale Movement as the example. The Waybill Sample for 2009 includes three issue moves[8] from North Vancouver to Glendale. The miles for each of these movements equal 1,798 miles.[9] Based on *DuPont*[10], a mileage band of plus or minus 400 miles was developed. The 400 mile mileage band represents 22% of the 1,798 total movement miles[11] which is consistent with *DuPont*.

However, BNSF included nearly {[ ]} miles for out-of-route movement[12] in its calculation of miles for both the Glendale Movement and Albuquerque Movement. For each issue movement there are two primary out-of-route movement segments. For the Glendale Movement, the out-of-route segments are from {[ ]} and from {[ ]}. For the Albuquerque Movement, the out-of-

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[7] For example, the loaded miles for the Glendale Movement equal {[ ]}; therefore, the mileage range for comparable movements equals {[ ]} to {[ ]} miles.

[8] The 2008 Waybill Sample issue moves from North Vancouver to Glendale showed 1,798 miles. The 2006 and 2007 Waybill Sample issue moves from North Vancouver to Glendale contained slightly higher miles.

[9] PC*Miler|Rail (Version 17) produces the same 1,798 miles for this move. The PC*Miler|Rail program is produced by ALK Technologies, Inc. ("ALK"). ALK is the contractor used by the STB to add the movement miles to the Waybill Sample that are used by the STB to calculate variable costs for the movements in the Waybill Sample using the URCS Phase III costing program. The miles used by ALK in the Waybill Sample are from the same data base underlying the PC*Miler|Rail program as evidenced by the comparison above.

[10] See the February 4, 2008 Public Opening Evidence in Docket No. NOR 42100 *E. I. DuPont de Nemours and Company v. CSX Transportation, Inc., ("DuPont")* Verified Statement of Thomas D. Crowley where a mileage band of 150 miles was used for movements ranging from 600 miles to 900 miles, or a range of 17% to 25%. The comparable groups submitted by DuPont were accepted by the STB in its June 30, 2008 decision.

[11] The 400-mile band applied to the Albuquerque Movement is 18% of total movement miles.

[12] In this context, out-of-route movement refers to the deviations from the origin-destination route obtained using PC*Miler|Rail, i.e., the same route reflected for movements in the Waybill Sample.

route segments are from {[redacted]} and from {[redacted]}. As all of the movement miles in the Waybill Sample are based on PC*Miler|Rail, and none of them included the {[redacted]} out-of-route miles, it was necessary to adjust the mileage band in order to develop a comparable group. For that reason, the mileage band was increased to plus or minus {[redacted]} miles, i.e., 400 miles plus the {[redacted]} out-of-route miles.

The Waybill Sample includes both common carrier (tariff) and contract movements. Common Carrier (tariff) movements in the Waybill Sample are identified with a "0" in the Rate Flag Field while contract movements are identified by a "1" in the Rate Flag Field. When selecting the comparable groups from the Waybill Samples, Canexus identified 10 common carrier (tariff) and 31 contract TIH movements in the Glendale comparable group and 7 common carrier (tariff) and 16 contract TIH movements in the Albuquerque comparable group. {[redacted]}.

Exhibit No. 6 contains the comparable group for the Glendale Movement and Exhibit No. 7 contains the comparable group for the Albuquerque Movement based on the comparable group criteria identified above.

---

13 {[redacted]}.

B. MAXIMUM R/VC RATIOS FOR THE ISSUE MOVEMENTS

To develop the Maximum R/VC Ratio for each issue movement, we followed the procedures set forth in *Simplified Standards* and employed the model developed by the STB's staff that implements *Simplified Standards*. Specifically, we began by selecting the comparable group for each issue movement.[14] Next, we multiplied the R/VC for each comparable movement by the ratio of the BNSF RSAM and $R/VC_{>180}$ four-year average (2006 – 2009) contained in the STB's July 14, 2011 decision in Ex Parte No. 689 (Sub-No. 2) *Simplified Standards for Rail Rate Cases – 2009 RSAM and $R/VC_{>180}$ Calculations*. We then calculated the mean and standard deviation for the adjusted R/VC ratios for the comparable group. Next, using the mean and standard deviation, we calculated the 90% confidence interval around the estimate of the mean to determine the upper boundary of the mean for the comparable group which becomes the threshold for determining if a rate is unreasonable. As noted above, we utilized the STB's Upper Boundary Model (3 Benchmark Small Rate Cases) to develop the Maximum R/VC Ratio for each issue movement.[15]

Table 5 below compares the issue movement R/VC ratio to the Maximum R/VC Ratio calculated following the STB's procedures.

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[14] The comparable movements and Maximum R/VC Ratios are shown in Exhibit No. 6 for the Glendale Movement and Exhibit No. 7 for the Albuquerque Movement.

[15] The STB's model was provided to the parties in this proceeding on November 23, 2011. See our electronic workpaper files "STB Upper Boundary Model (3 Benchmark Small Rate Cases)_Glendale 4yr.xls" and "STB Upper Boundary Model (3 Benchmark Small Rate Cases)_Albuquerque 4yr.xls".

Table 5

Maximum Rate for Issue Movements Using STB's RSAM and R/VC>180

Item (1)	North Vancouver to Glendale (2)	North Vancouver to Albuquerque (3)
1. 1Q11 Rate per Car (Including Fuel Surcharge) 1/	$15,251	$18,113
2. 1Q11 Variable Cost per Car 2/	$5,084	$5,748
3. R/VC Ratio 3/	300%	315%
4. Maximum R/VC Ratio 4/	222%	213%
5. Maximum Rate per Car 5/	$11,286	$12,243
6. Amount BNSF Rate per Car Exceeds Maximum Rate per Car 6/	$3,965	$5,870

1/ Table 1 above
2/ Table 3 above
3/ Line 1 ÷ Line 2 x 100
4/ Exhibit No. 6 for Glendale and Exhibit No. 7 for Albuquerque.
5/ Line 2 x Line 4
6/ Line 1 - Line 5

As shown in Table 5 above, BNSF's rate for each of the issue movements (Line 1) exceeds the rate based on the Maximum R/VC Ratio (Line 5) for the comparable group by $3,965 per car for the Glendale Movement and $5,870 per car for the Albuquerque Movement.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, THOMAS D. CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D. Crowley, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

Thomas D. Crowley

Sworn to and subscribed
before me this 10th day of February, 2012

Helen M. Lunsford
Notary Public for the State of Virginia

My Commission Expires: May 31, 2015
Registration Number: 7507963

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, CHARLES A. STEDMAN verify under penalty of perjury that I have read the foregoing Verified Statement of Charles A. Stedman, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

Charles A. Stedman

Sworn to and subscribed
before me this 10th day of February, 2012

Helen M. Lunsford
Notary Public for the State of Virginia

My Commission Expires: May 31, 2015
Registration Number: 7507963

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, including unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company*.

CHARLES A. STEDMAN
STATEMENT OF QUALIFICATIONS

My name is Charles A. Stedman. I am a Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maryland from which I obtained a Bachelor of Arts degree in Political Science with a minor in Business Transportation. I have been employed by L. E. Peabody & Associates, Inc. since October, 1981. Prior to joining L. E. Peabody & Associates, Inc., I was employed by the United States Railway Association ("USRA"). At USRA, I monitored the effectiveness of the operating plan of Consolidated Rail Corporation ("Conrail") via a computer model, participated in data manipulation, and analyzed results in order to make projections about Conrail's future operations. I also worked as chief research assistant on a transportation project for the Maryland Department of Transportation and was the co-author of the resulting Report "International Air Cargo Potential at Baltimore-Washington International Airport." Recommendations in this Report were used to increase international air cargo shipments through Baltimore-Washington International Airport. I also worked as a research assistant for the Interstate Commerce Commission ("ICC"), studying the effect of selected railroad mergers on the national railroad system using a computer model to aid in determining shifts in traffic patterns caused by specific rail mergers.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As part of my work for the firm, I have performed and directed

CHARLES A. STEDMAN
STATEMENT OF QUALIFICATIONS

numerous extensive projects and analyses undertaken on behalf of utility companies, chemical companies, short line railroads, state and local governments and other entrepreneurs. These projects include: (a) participation in the development of variable cost evidence presented before the ICC and its successor agency, the Surface Transportation Board ("STB"), in numerous cases; (b) the development of variable costs contained in numerous reports and other analyses presented to our various clients; (c) the development of stand-alone cost evidence presented before the ICC and STB in numerous cases; (d) participation in the development of evidence presented before the STB in simplified stand-alone cost three benchmark proceedings: (e) the development of evidence presented in abandonment cases before the ICC; (f) the development of net liquidation values and rehabilitation costs for interested parties in abandonments and acquisitions; and, (g) the preliminary design (including route layout), construction and maintenance costs associated with the construction of a new rail line. I have conducted several field inspections of eastern and western carriers' rail lines in order to develop and determine the existing and potential operating and economic conditions of these lines.

I have also conducted and directed detailed research into the valuation records of major eastern and western railroads. This research entailed, among other things, detailed reviews of both ICC and railroad valuation maps, land acquisition records (including title status and market value) and the ICC's Bureau of Valuation B.V. Form No. 561, commonly referred to as ICC Engineering Reports.

CHARLES A. STEDMAN
STATEMENT OF QUALIFICATIONS

I have developed variable costs for all types of traffic (unit train, trainload, multiple car and single car) for commodities such as coal, grain and various chemical products. I am also familiar with the STB's Uniform Railroad Costing System ("URCS") formula.

I have presented testimony in a number of proceedings before the ICC and the STB. A list of these proceedings is included as Attachment No. 1 to my statement of qualifications.

I have also attended numerous railroad construction and maintenance seminars across the country. I am a Certified Track Foreman and a member of the American Railway Engineering and Maintenance-of-Way Association.

Prior Testimony Presented To The ICC/STB
By Charles A. Stedman

DOCKET NO.	DOCKET DESCRIPTION
1. 38301S	Coal Trading Corporation, et al. v. The Baltimore and Ohio Railroad Company, et al.
2. 37809 (Sub-No. 1)	McCarty Farms, Inc. et al. v. Burlington Northern Inc.
3. 41191	West Texas Utilities Company v. Burlington Northern Railroad Company
4. 41185	Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company
5. 41989	Potomac Electric Power Company v. CSX Transportation, Inc.
6. 41295	Pennsylvania Power & Light Company v. Consolidated Rail Corporation CSX Transportation, Inc. and Norfolk Southern Railway Company
7. 42022	FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company
8. 42051	Wisconsin Power & Light Company v. Union Pacific Railroad Company
9. 42054	PPL Montana LLC v. The Burlington Northern and Santa Fe Railway Company
10. 42056	Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company
11. 42069	Duke Energy Corporation v. Norfolk Southern Railway Company
12. 42070	Duke Energy Corporation v. CSX Transportation, Inc.
13. 42072	Carolina Power & Light Company v. Norfolk Southern Railway Company
14. 42057	Public Service Company of Colorado D/B/A XCEL Energy v. The Burlington Northern and Santa Fe Railway Company

Prior Testimony Presented To The ICC/STB
By Charles A. Stedman

15. 42058	Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company
16. 42071	Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company
17. 41191 (Sub-No. 1)	AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company
18. 42088	Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company
19. 42110	Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.
20. 42113	Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company

Exhibit No. 3

Summary of BNSF Subdivisions for Each Issue Movement

REDACTED

Exhibit No. 4

1Q11 Variable Costs for Canexus' TIH Movement to Glendale, AZ

REDACTED

Exhibit No. 5

1Q11 Variable Costs for Canexus' TIH Movement to Albuquerque, NM

REDACTED

Comparable Group and Maximum R/VC Ratio for the Glendale, AZ Movement
(Source: 2006-2009 Confidential Waybill Sample - BNSF Movements)

REDACTED

Comparable Group and Maximum R/VC Ratio for the Albuquerque, NM Movement
(Source: 2006-2009 Confidential Waybill Sample - BNSF Movements)

REDACTED

CERTIFICATE OF SERVICE

I do hereby certify that on this 13th day of February, 2012, I have served a copy of the foregoing Complainant's Opening Evidence by hand-delivery upon counsel for Defendant at the following address:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Kathryn Gainey
Steptoe & Johnson LLP
1130 Connecticut Avenue, NW
Washington, DC 20036-1795

and by first-class mail to:

Richard E. Weicher
Jill K. Mulligan
Adam Weiskittel
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76151
(817) 352-2353

Thomas W. Wilcox