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July 24, 2012

232600

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

ENTERED
Office of Proceedings
July 24, 2012
Part of
Public Record

re: Docket No. FD 35459, V & S Railway, LLC--Petition for Declaratory
Order--Railroad Operations in Hutchinson, Kans.

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Petition for Reconsideration of
V & S Railway, LLC.

Information about the \$250 filing fee was faxed to the Board earlier this
afternoon.

If you have any question concerning this filing or if I otherwise can be of
assistance, please let me know.

This letter and its attachments are being served on counsel for the other parties.

Sincerely yours,



Fritz R. Kahn

cc: Edward J. Fishman, Esq.
Robert T. Opal, Esq.

FEE RECEIVED
July 24, 2012
SURFACE
TRANSPORTATION BOARD

SURFACE TRANSPORTATION BOARD

Docket No. FD 35459

V & S RAILWAY, LLC -- PETITION FOR DECLARATORY ORDER--
RAILROAD OPERATIONS IN HUTCHINSON, KANS.

PETITION FOR RECONSIDERATION
OF
V & S RAILWAY, LLC

Fritz R. Kahn
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Attorney for

V & S RAILWAY, LLC

Dated: July 24, 2012

SURFACE TRANSPORTATION BOARD

Docket No. FD 35459

V & S RAILWAY, LLC -- PETITION FOR DECLARATORY ORDER--
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V & S RAILWAY, LLC

Petitioner, V & S Railway, LLC ("V&S"), pursuant to 49 C.F.R. §1115.3(b)(2), petitions for reconsideration of the Board's Decision, served July 12, 2012, on the ground that it involved material errors, and in support of its petition V & S respectfully states the following¹:

A.

The Board erred in its discussion of
V & S as a §1150.41 applicant.

The Board, at page 6 of its Decision, correctly stated, "[T]oday V&S is the only entity *authorized* to provide common carrier service over the Line or interchange traffic as a rail carrier with any other rail carrier." V&S secured the authorization to acquire the HN's 5.14-mile railroad line pursuant to its filing of a verified notice of exemption under 49 C.F.R. §1150.41 in STB Finance Docket No. 34875, *V & S Railway, LLC--Acquisition and Operation Exemption--The Hutchinson and Northern Railway Company*, served May 31, 2006.

¹ The petition uses the acronyms of the Board's Decision.

At page 6 of its Decision, the Board committed material error when it said that "despite holding Board authority to acquire the Line, it is not clear that V&S exercised that authority with respect to the portion of the Line that traverses the Salt Mine Property." V&S did indeed exercise the authority granted by the Board by becoming a rail carrier on the entire 5.14-mile railroad line, including the segment which is situated on the Salt Mine Property. HSC/HTC, at pages 3, 7, 13 and 23 of their Response, filed March 29, 2011, alleged that V&S had rendered such poor service on the Salt Mine Property track that HSC/HTC has ceased using it for more than three years' time.² At page 12 of his attached Verified Statement, Mr. Max Liby claimed, "Primarily because of poor and untimely service which essentially did not improve from August, 1990, the V&S has not been asked by HSC/HTC for several years to travel over the Salt Mine Real Estate to move rail cars from the mine, or to return empty cars to the mine." How could HSC/HTC have complained about V&S' supposedly "poor, untimely and substandard" service if V&S had not exercised the authority which the Board had granted it and operated on the Line, including the segment situated on the Salt Mine Property? Thus, contrary to the Board's assertion, at page 6 of its Decision, HSC/HTC's own admission rendered it clear that V&S exercised the Board's grant of authority, even on the portion of the Line that traverses the Salt Mine Property. The Board's finding to the contrary constitutes material error.

At page 6 of its Decision, the Board committed material error when it said, "To exercise that [Board grant of] authority, the carrier must complete the acquisition by

² The Board committed further material error in ignoring V&S' s assertion, at page 8 of its Rebuttal, filed March 29, 2011, that if HSC/HTC believed V&S 's service to have been unsatisfactory, their remedy was to file a complaint with the Board pursuant to 49 U.S.C. §11701(b). They, however, did not do so, as the records of the Board will confirm.

obtaining the necessary rights under state property and/or contract law to initiate the proposed rail operations on the line," citing Docket No. FD 35412, *Middletown & N.J.R.R.--Lease & Operation Exemption--Norfolk S. Ry.*, served September 23, 2011, slip op. at 4. The Board's holding in the cited case actually is to the contrary. In its Decision in that proceeding, the Board had said, "M&NJ became a rail carrier on the date that it acquired the Middletown-Slate Hill line pursuant to the Board's authorization of that acquisition, rather than on the date when it commenced rail operations or the date when it published information in [the Official Railway Station List and Official Railway Guide]."³ Indeed, the Board in its Decision in STB Finance Docket No. 34867, *General Railway Corporation, d/b/a Iowa Northwestern Railroad --Exemption for Acquisition of Railroad Line--in Osceola and Dickinson Counties, IA*, served June 15, 2007, held that the initiation of operations pursuant to a grant of authority by the Board did not need to be postponed until any controversies under state property and/or contract law have been resolved.⁴ The Board, slip op. at 4, said, "Allowing the notice of exemption in this proceeding to become effective will not affect the contract interpretation issues that involve state law. It is well settled that the Board's issuance of a notice of exemption authorizing the acquisition of a line gives the petitioner permission to acquire the line, but does not mandate the acquisition [citation omitted]." As already noted, V&S acquired the 5.14-mile line of railroad pursuant to the Board's authorization and became a rail carrier

³ A footnote read, in part, "See San Joaquin Valley R.R.--Aban. Exemption--In Tulare County, Cal. AB-398 (Sub-No. 7X)(STB served June 6, 2008) (noncarrier became a rail carrier when it consummated Board-authorized transaction to lease and operate rail lines)."

⁴ The Board cited the *General Railway* decision at the top of the following page, page 7 of its Decision, for the uncontroverted generalization "that state courts are the proper venue for resolving contract and property disputes and that the Board's grant of authority 'is permissive, not mandatory, and is not dispositive of ownership of the Line'" The Board also cited its Decision in Docket No. FD 35304, *San Francisco Bay R.R.--Mare Island--Operation Exemption--Cal. N.R.R.*, served December 6, 2010, incorrectly stating that the applicant's authority had been voided when in fact it never was granted by the Board, because the applicant's notice was held to be void *ab initio* for its false and misleading information.

on its entirety without there being any suggestion that the necessary rights under state property and/or contract law to initiate the proposed rail operations on the line issues first needed to be acquired. The Board's finding to the contrary constitutes material error.

B.

The Board erred in its holding relating to a shipper's nonconsensual operation on a rail carrier's tracks.

In footnote 14 on page 10 of its Decision, the Board committed material error in stating, "V&S has asserted that it has exclusive use of the tracks that make up the Line because the Board authorized it to operate as a common carrier on the Line." The Board's attribution simply is incorrect. V&S at no time said its use of the Line was exclusive. It recognizes that the Board might have authorized another rail carrier to operate on the line. *See*, STB Finance Docket No. 34551, *Standard Terminal Railroad of New Jersey, Inc.--Acquisition Exemption--Rail Line of Joseph C. Horner*, served October 8, 2004; STB Finance Docket No. 34114, *Yolo Shortline Railroad Company--Lease and Operation Exemption--Port of Sacramento*, served February 3, 2003. The Board, however, did not do so. What V&S did say, at pages 1 and 6-7 of its Petition for Declaratory Order, filed December 28, 2010, was that HSC/HTC "may not operate on the Line without the consent of V & S or interchange traffic with BNSF notwithstanding that HSC and/or HTC may own parcels of the real estate underlying the Line and/or claim ownership of some of the tracks and improvements of the Line which the Board authorized V & S to acquire and operate." At pages 10 and 12-13 of its Rebuttal, filed March 29, 2011, V & S again stated, "HSC and/or HTC may not operate on the line [which the Board authorized V & S to acquire and operate] without the consent of V & S

or interchange traffic with the BNSF notwithstanding that HSC and/or HTC may own some parcels of the real estate underlying the line and claim ownership of segments of the track and improvements on it." The Board's misrepresentation of V&S's stance in this proceeding constitutes material error.

In footnote 14 on page 10 of its Decision, the Board committed material error in its misrepresentation of its decisions which follow *Maine, DOT--Acq. Exemption, ME. Central R. Co.*, 8 I.C.C.2d 835 (1991). At pages 5 of its Petition for Declaratory Order and pages 9-10 of its Rebuttal, V&S had noted that pursuant to *State of Maine* the new owners of the rights-of way were precluded from rendering operations on the acquired properties since the transferring railroads had retained permanent and exclusive easements to render freight operations their railroad lines. The Board responded by saying, "The use of the word 'exclusive' in that context does not mean that the noncarrier acquiring the underlying rail assets may not run trains on the rail line. To the contrary, one of the reasons for entering into a State of Maine-type transaction is to permit a noncarrier to conduct non-common carrier rail operations on the rail line (for example, commuter rail operations)." The Board's response would suggest that the noncarrier can conduct noncarrier operations, such as commuter rail operations, at its discretion, whenever it suited its purposes. To the contrary, the noncarrier can conduct non-common carrier operations only pursuant to one or more agreements entered into by the parties which consent to the noncarrier's rendition of the non-common carrier operations, such as commuter rail operations on the acquired track. *See*, Docket No. FD 35394, *Regional Transportation District---Acquisition Exemption--Union Pacific Railroad Company in Adams, Denver, and Jefferson Counties, Colo.* , served December 21, 2010; STB Finance

Docket No. 34405, *Transportation Agency of Monterey County--acquisition Exemption-- Certain Assets of Union Pacific Railroad Company*, served January 23, 2004; STB Finance Docket No. 33838, *Metro Regional Transit Authority--Acquisition Exemption-- CSX Transportation, Inc.*, served October 10, 2003. The Board's failure to acknowledge that, pursuant to *State of Maine*, the noncommon carrier rail operations, such as commuter rail operations, on the acquired rights-of-way in every instance have been consensual constitutes material error.

At page 10 of its Decision, the Board committed material error in failing to acknowledge that a shipper may not move trainloads of its freight on a rail carrier's line without the rail carrier's consent. At pages 2 and 20 of their Response, filed March 9, 2011, HSC/HTC contended that "the STB and its predecessor the ICC have repeatedly acknowledged that private rail operations can occur over common carrier trackage, where the private operator is moving its own goods and is not holding itself out to serve the general public for compensation. See, e.g., *The Boeing Company -- Acquisition and Operation Exemption -- Chehalis Western Railway Company*, Finance Docket No. 31916 (ICC served October 10, 1991)(non-carrier moving its own property over 13 mile line of railroad owned by rail carrier); *S.D. Warren Company d/b/a Sappi Fine Paper North America -- Acquisition and Operation Exemption -- Maine Central Railroad Company and Springfield Terminal Railway Company*, Finance Docket No. 34133 (STB served September 30, 2002)(shipper performed own switching over line of railroad owned by carrier); *Brotherhood of Locomotive Engineers v. Interstate Railroad Company, et al.* Finance Docket No. 31078 (ICC served November 20, 1987)(shipper moving own property over 13 miles of common carrier trackage)." At page 5 of its Rebuttal, filed

March 29, 2011, V&S sought to explain, "What the Board and ICC held in each of the cases cited by Respondents is that **with the consent of the rail carrier** a shipper may be able to operate its own trains in private carriage on the rail carrier's tracks {emphasis in the original}." At page 10 of its Decision, the Board did not dispute V&S' observation that in each of the decisions cited by HSC/HTC the rail carrier had consented to the shipper's operation on the rail carrier's track. The Board simply repeated, as HSC/HTC had argued, that "the Board and ICC have allowed private rail operations to be conducted on common carrier track. See S.D. Warren; Boeing; BLE."⁵ At page 12 of its Decision, the Board finally acknowledges that in each of the cited proceedings "the parties had indeed entered into consensual agreements allowing the private carriage on the common carrier owned line." The Board, however, says that "[t]he decisions do not state that an entity must always obtain the consent of the common carrier to conduct private carriage on rail lines that are part of the interstate rail system." The Board neglects to explain why it should have elected to make such a broad policy pronouncement in any one of the cited proceedings given their very limited records. More importantly, the Board fails to cite a single decision -- and V & S knows not of a single Board decision -- in which the Board actually said that a shipper is allowed to operate its private trains on the track of a rail carrier without the consent of the rail carrier.⁶

According to the Board, there is nothing to keep Kia from operating trainloads of its automobiles from its plant a West Point, GA, even though CSX Transportation, Inc.

⁵ At pages 10-11 of its Decision, the Board noted that "the original grant of authority to V&S' predecessor (HN) to operate common carrier service on the Line specifically recognizes that other types of rail service may be conducted on the Line [footnote omitted]." That other type of service that was contemplated very well may have been consensual private rail operations.

⁶ The Board's citation of 49 U.S.C. §11101 is inapposite, for it deals with a rail carrier's obligation to render service on reasonable request.

hasn't consented to its doing so. Paramount Coal Company can operate unit trains of coal from its mine at Norton, VA, without bothering to obtain the consent for Norfolk Southern Railway. Alcoa can operate trainloads of aluminum products from its plant in Chandler, AZ, although Union Pacific Railroad has not given its consent. That simply is not the way the general system of railroad transportation works in this country.

The failure of the Board to acknowledge that private rail operations can be conducted on a rail carrier's track only with the consent of the rail carrier constitutes material error.

In footnote 17 on page 11 of its Decision, the Board misrepresents how the concerns of ARM/TRAIN had been alleviated. In Finance Docket No. 34952, *Devens Recycling Center, LLC--Petition for Declaratory Order*, served January 10, 2007, slip op. at 2, the Board had said, "The agency's jurisdiction . . . does not extend to wholly private operations conducted over private track, even when such operations are conducted by an operator that conducts common carrier operations elsewhere, if it operates on the private track exclusively to serve the owner of the track pursuant to a contractual arrangement with the owner." In its Petition for Declaratory Order, served December 28, 2010, V&S paraphrased the Board's pronouncement by stating, "The Board . . . has made it perfectly clear that 'private rail operations [can only] be conducted over private track.'" In their letter to the Board, filed January 18, 2011, ARM/TRAIN expressed their concern about V&S' paraphrase, because "[m]any ARM/TRAIN members operate non-common carrier tourist (etc.) passenger service over rail lines owned or leased by common carrier freight railroads [footnote omitted]. In its Reply, filed February 7, 2011, V&S sought to assure ARM/TRAIN that, as far as V&S was concerned, "Nothing in the Board's Devens

decision or in its decision in STB Finance Docket No. 34013, B. Willis, C.P.A., Inc.--Petition for Declaratory Order, served October 3, 2001, also cited in ARM/TRAIN's petition, gives any indication that the Board would find improper the consensual operations of a private carrier on the tracks of a rail carrier . . ." In their letter to the Board, dated March 9, 2011, ARM/TRAIN accepted V&S' explanation and accordingly concluded that "there appears to be no reason for ARM/TRAIN to submit additional argument as to this issue." In footnote 17 on page 11 of its Decision, the Board mistakenly stated, "We believe that ARM/TRAIN's concerns have been resolved by our disavowal of V&S' false and misleading restatement of language in Devens Recycling Center." The Board's failure to recognize that it was V&S' explanation, as set forth in its Reply, filed February 7, 2011, which alleviated the concerns of ARM/TRAIN constitutes material error.

C.

The Board erred in its discussion of HSC/HTC's handling of traffic moved over the entire length of the 5.14-miles line of the HN.

Neither the ICC Termination Act of 1995 nor the Board's implementing regulations define the term "private track". Citing its Decision in STB Finance Docket No. 34013, *B. Willis, C.P.A., Inc.--Petition for Declaratory Order*, served October 3, 2001, slip op. at 2, the Board, at page 8 of its Decision, said, "Private track is 'typically build and maintained by a shipper (or for a shipper at the shipper's expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper's own goods, so that there is no "holding out" to serve other shippers for compensation.'" And citing its Decision in STB Finance Docket No. 34952, served January 10, 2007, slip op.

at 2, the Board, at page 8 of its Decision, added, "Private track is not considered part of the national rail system even if a common carrier operates on the track, as long as the common carrier 'operates on the private track exclusively to serve the owner of the track pursuant to a contractual arrangement with that owner.'" V & S finds no fault with the Board's definition of private track and accepts it.

At page 8 of its Decision, the Board committed material error in failing to acknowledge that HN at no time was private track. Although Carey Salt Company began mining salt in Hutchinson in 1923, the HN was built well before then. The ICC in certifying the HN as a common carrier railroad in *Operation of Hutchinson & Northern Ry.*, 111 I.C.C. 403, 404 (1926), stated that the HN "was built by local citizens interested in the promotion and development of the industrial district of East Hutchinson." It was thereafter that the HN was acquired by the Carey Salt Company. According Mr. Liby the salt mine and the HN were sold to the American Salt Company some time in 1988. Only two years later, American Salt Company sold the salt mine to HSC, formed in 1990 to acquire the salt mine from the American Salt Company. American Salt Company, however, did not sell the HN to HSC.

In his Verified Statement, Mr. Liby said that he began working for Carey Salt Company in 1971, became manager of the salt mine in 1979 and was responsible for running the day to day operations of the HN. He stated that HN was used by Carey Salt Company to move rail cars loaded with salt from the salt mine to a major rail carrier and to return empty cars to the mine. When American Salt Company bought the mine, Mr. Liby continued to serve as Manager of the salt mine and the person running the HN. When the mine was bought by HSC in 1990, Mr. Liby remained the Manager of the salt

mine, but, since the HN was not sold to HSC, he ceased being responsible for running the HN.

It is evident, therefore, that HN at no time was a rail carrier owned or controlled by HSC. At page 8 of its Decision, the Board acknowledges that there is no evidence in the record demonstrating that, when in 1990 it acquired the salt mine from American Salt Company, HSC sought the ICC's approval for its acquisition of even that segment of the HN's line situated on the Salt Mine Property, previously referred to as Parcel 1 and Parcel 10, located on one-half mile at the east end of HN's 5.14-mile railroad line.

Indeed, between 1990 and 1995 HSC continued to use the HN as the rail carrier for the movement of carloads of salt from its mine to a connecting mainline railroad at the west end of the HN's line and for the return of the empty cars. According to Mr. Liby, HN's poor and untimely service after he stopped running the HN in 1990 prompted HSC in 1994 to arrange for the construction of the private track connecting the railroad tracks situated on the Salt Mine Property with the BNSF to the north, installed in 1995. The Board's failure to acknowledge that HSC for approximately five years' time had used the HN as the rail carrier handling its traffic on the entire length of its 5.14-mile line constitutes material error.

At pages 2 and 12 of its Decision, the Board committed material error in holding that V&S may not block HSC/HTC from operating its trains in private carriage on the segment of HN's 5.14-mile railroad line situated on the Salt Mine Property unless those private freight operations would unreasonably interfere with the ability of V&S to satisfy its common carrier obligation. In effect, the Board by its Decision has granted nonconsensual overhead trackage rights to a shipper to operate on the railroad line of a

rail carrier which is situated on the property of the shipper so long as the rail carrier is not hindered in rendering service on its railroad line. Just to state the proposition is to expose its fallacy. The Board fails to cite a single decision -- and V & S knows of no decision -- in which the Board has held that it has the authority to allow a shipper to operate trains carrying its freight on the tracks of a rail carrier which traverses the shipper's property provided the shipper's operations do not unreasonably interfere with the rail carrier's service.⁷

According to the Board, Mr. Macrie can operate trains on the New Jersey Seashore Lines, Inc., since he owns the property on which the railroad is situated, as long as he does not unreasonably interfere with the rail carrier's operations.⁸ Afton Trucking Company can transport carloads of grains and related products over the tracks of Afton Terminal Railroad Company, since it own the property on which the railroad is situated, as long as it does not unreasonably interfere with the rail carrier's operations.⁹ MidTexas International Center, Inc, can move trainloads of automobiles for the its tenants over the track of Texas Central Business Lines Corporation, since it owns the property on which the railroad is situated, as long as it does not unreasonably interfere with the rail carrier's operations.¹⁰ That simply is not the way the general system of railroad transportation works in this country.

⁷ The Board's Decision is internally inconsistent. At pages 7-8 of its Decision, the Board said that, assuming that V & S had acquired the easement to operate on the tracks situated on the Salt Mine Property, "then V&S would be the rail carrier authorized by the Board to operate over the entire Line, including the portion on the Salt Mine Property, and may provide common carrier service on the entirety of the Line without undue interference."

⁸ See Docket No. FD 35297, *Anthony Macrie--Continuance in Control Exemption--New Jersey Seashore Lines, Inc.*, served August 31, 2010.

⁹ See, Docket No. FD 35390, *Afton Terminal Railroad Company--Operation Exemption--Afton Trucking Company*, served March 30, 2012.

¹⁰ See STB Finance Docket No. 33997, *Texas Entral Business Lines Corporation--Operation Exemption--MidTexas International Center*, served September 20, 2002.

A rail carrier's railroad line is its own to operate and manage. If it is agreeable, it can elect to grant trackage rights to another rail carrier to operate on its railroad line, subject to the Board's approval, pursuant to 49 U.S.C. §11323(a)(6) or an exemption therefrom, under 49 U.S.C. §10502(a). The Board, however, cannot require a rail carrier to grant trackage rights to another rail carrier, except as a condition to its approval of a merger or acquisition, pursuant to 49 U.S.C. §11324(c). The Board most assuredly cannot require a rail carrier to grant trackage rights to a shipper to operate its trains carrying its freight on a segment of the rail carrier's line situated on the shipper's property even if the shipper's operations would not unduly interfere with the rail carrier's operations.

In the instant proceeding, assuming that V&S is authorized to operate the entire 5.14-mile Line, including the portion that traverses the Salt Mine Property, all of which thereupon would be part of the general railroad system of transportation, HSC/HTC would not be able to operate trains carrying their own goods even on the tracks situated on the Salt Mine Property unless the tracks met the safety standard of the Federal Railroad Administration ("FRA"), 49 C.F.R. §213.1, *et seq.*, their locomotive were inspected and tested pursuant to FRA's regulations, 49 C.F.R. §229.21, *et al.* and the locomotive were crewed by FRA certified engineers and conductors, in compliance with 49 C.F.R. §§240.101, *et seq.* & 242.101, *et seq.* It would be appropriate to inquire of the Board whether it consulted with FRA to determine whether HSC/HTC operates on FRA inspected track, using a FRA compliant locomotive operated by FRA certified personnel. Nothing in its Decision suggests that the Board contacted FRA to learn whether such was the case.

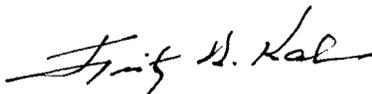
Moreover, the Board's holding that HSC/HTC can carry their own goods on tracks that are part of the common carrier line, without the consent of the common carrier, as long as HSC/HTC do not unduly interfere with the common carrier operations on the Line is oblivious of the industry practice that would require the personnel operating the HSC/HTC's locomotive be trained by the rail carrier and be qualified by the rail carrier to operate on its railroad line.

In *The Tap Line Case*, 23 I.C.C. 535, 550 (1912), the ICC declared, "It is not uncommon for one railroad to give use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers." Pursuant to section 204 of the ICC Termination Act of 1995, that statement continues to be good law, except, of course, a rail carrier's rates no longer need to be published and made equally available to other shippers. The Board's conclusion that, insofar as V&S continues to have a valid easement on the tracks traversing the Salt Mine Property, V&S may not block HSC/HTC from operating its trains carrying salt from its mine and empty cars to the mine unless those private freight rail operations unreasonably interfere with the ability of V&S to satisfy its common carrier obligation constitutes material error.

Respectfully submitted,

V & S RAILWAY, LLC

By its attorney:

A handwritten signature in black ink, appearing to read "Fritz R. Kahn". The signature is written in a cursive style with a long horizontal stroke at the end.

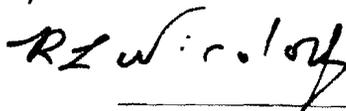
Fritz R. Kahn
Fritz R. Kahn, P.C.
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Tel.: (202) 263-4152

Dated: July 24, 2012

VERIFICATION

I, Rhonda Nicoloff, Managing Member of V & S Railway, LLC, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Petition for Reconsideration of V & S Railway, LLC and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of V & S Railway, LLC. I know that willful misstatements or omission of material fact constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Salt Lake City, UT this 23rd day of July 2012.

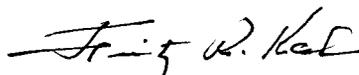


Rhonda Nicoloff

CERTIFICATE OF SERVICE

I certify that I this day served copies of the foregoing Petition for Reconsideration upon HTS, HTC and BNSF by e-mailing a copy to their counsel, Edward J. Fishman, Esq., at ed.fishman@klgates.com, and on ARM and TRAIN by e-mailing a copy to their counsel, Robert T. Opal, Esq., at RobertTOpal@aol.com.

Dated at Washington, DC, this 24th day of July, 2012.



Fritz R. Kahn