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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 35459

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**V&S RAILWAY, LLC –  
PETITION FOR DECLARATORY ORDER**

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ENTERED  
Office of Proceedings

APR 12 2011

Part of  
Public Record

**MOTION OF HUTCHINSON SALT COMPANY, INC., HUTCHINSON  
TRANSPORTATION COMPANY, INC., AND BNSF RAILWAY COMPANY FOR  
LEAVE TO RESPOND TO V&S RAILWAY, LLC'S REBUTTAL**

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**Attorneys for Respondents  
Hutchinson Salt Company, Inc.,  
Hutchinson Transportation Company,  
Inc., and BNSF Railway Company**

Dated: April 12, 2011

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HUTCHINSON TRANSPORTATION COMPANY, INC.,  
AND BNSF RAILWAY COMPANY FOR LEAVE TO RESPOND TO V&S RAILWAY,  
LLC'S REBUTTAL**

Respondents Hutchinson Salt Company, Inc. ("HSC"), Hutchinson Transportation Company, Inc., ("HTC") (collectively, "HSC/HTC"), and BNSF Railway Company ("BNSF"), (collectively, "Respondents"), submit this Motion for Leave to file the accompanying Response to the Rebuttal of V&S Railway, LLC. ("Rebuttal"). The Response addresses an entirely new factual claim and legal argument made by V&S Railway ("V&S") in its Rebuttal concerning an Operating Rights Agreement which is central to this dispute.

In its Petition for Declaratory Order ("Petition"), V&S argued that it possesses an exclusive right to operate over the line of railroad between Milepost 0.0 and Milepost 5.14 in Hutchinson, Kansas (the "Subject Line") and that HSC/HTC allegedly cannot use any part of the Subject Line without V&S' consent. In their reply, the Respondents presented evidence, uncontroverted by V&S, establishing that HSC/HTC's use of the Subject Line is purely for private carrier operations, that such use does not interfere with V&S' rights or obligations as a common carrier, and that HSC/HTC owns a predominant portion of the Subject Line and the underlying real estate except for 500 feet located on V&S property, which HSC/HTC can use

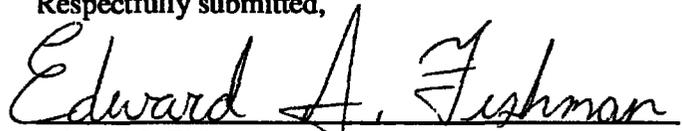
pursuant to the Operating Rights Agreement (“Agreement”). A copy of the Agreement is attached to Respondents’ Reply filed on March 9, 2011.

V&S now claims for the first time in its Rebuttal that the Agreement was not assigned to V&S pursuant to its provisions, and, therefore, the Agreement does not allow HSC/HTC to use the 500 feet of track owned by V&S.

The Respondents seek leave to file the attached Response in order to demonstrate that V&S’ new assertion is inconsistent with the Agreement’s language, Kansas contract and property law, and the parties’ conduct. In accordance with precedent, the Response will provide the Board with “clarif[ication] of certain matters, . . . and more fully explain the factual situation; and [will be] filed in time for [the Board] to adequately consider them.” Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY, STB Docket No. AB-369 (Sub-No. 3X) (STB served Sept. 18, 1998) at 2. Given that V&S’ theory here rests overwhelmingly on its contention that HSC/HTC are operating over the Subject Line without V&S’ consent, the Board should be aware of all relevant facts concerning the Operating Rights Agreement.

For the foregoing reasons, the Respondents respectfully request that the Board accept and consider the accompanying Response in the interest of a more complete record.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward A. Fishman". The signature is written in black ink and is positioned above a horizontal line.

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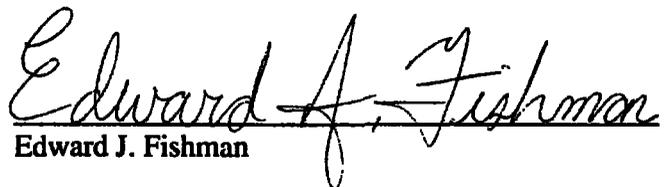
**Attorneys for Respondents  
Hutchinson Salt Company, Inc.,  
Hutchinson Transportation Company, Inc.,  
and BNSF Railway Company**

Dated: April 12, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I this day served a copy of the foregoing Motion of Hutchinson Salt Company, Inc., Hutchinson Transportation Company, Inc., and BNSF Railway Company for Leave to Respond to V&S Railway, LLC's Rebuttal upon V&S Railway, LLC by e-mailing a copy to its counsel Fritz R. Kahn, Esq., at xicgc@verizon.net, and upon the Association of Railway Museums, Inc., and the Tourist Railroad Association, Inc., by e-mailing a copy to their counsel, Robert T. Opal, Esq., at RobertTOpal@aol.com.

Dated at Washington, DC, this 12th day of April, 2011

  
Edward J. Fishman