

LAW OFFICES
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August 21, 2013

VIA ELECTRONIC FILING

234698
ENTERED

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

Office of Proceedings
August 21, 2013
Part of
Public Record

re: Docket No. FD 35247, Grenada Railway, LLC--Acquisition Exemption--
Illinois Central Railroad Company and Waterloo Railway Company

Dear Ms. Brown:

Enclosed for filing in the subject proceeding are the highly confidential and public versions of the Petition for Leave to File Surreply of Grenada Railway, LLC.

A Payment Form with credit card information in payment of the \$250 .00 filing fee was facsimile transmitted to the Board earlier today.

A copy of this letter and the public version of the Petition this day have been served by me upon each party of record by prepaid first-class mail.

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

Sincerely yours,


Fritz R. Kahn

att.

cc: Each party of record

PUBLIC VERSION

SURFACE TRANSPORTATION BOARD

Docket No. FD 35247

**GRENADA RAILWAY, LLC--ACQUISITION EXEMPTION--
ILLINOIS CENTRAL RAILROAD COMPANY AND
WATERLOO RAILWAY COMPANY**

**PETITION FOR LEAVE TO FILE SURREPLY
OF GRENADA RAILWAY, LLC**

Petitioner, Grenada Railway, LLC ("GRYR"), pursuant to 49 C.F.R. § 1117.1, petitions for leave to file a brief surreply to the replies filed by Mr. Robert J. Riley ("Mr. Riley"), Iowa Pacific Holdings, LLC ("IPH") and four shippers situated on the GRYR so as to correct the misstatements they contain and to provide the Board with a more current and complete record on which to base its actions, and in support thereof GRYR states, as follows:

A.

Introduction

1. By its Notice of Exemption, filed May 13, 2009, GRYR sought the Board's authorization to acquire and operate the 175.4-mile line of the Illinois Central Railroad Company ("IC") between Milepost 403.0 at Southhaven, MS, and Milepost 703.8 near Canton, MS, as well as the connecting 11.42-mile line of the Waterloo Railway Company between MP 603.0 at Bruce Junction, MS, and MP 614.42 at Water Valley Junction, MS. *See*, the Board's Decision, served May 29, 2009; 74 Fed. Reg. 25799, May 29, 2009.

2. Sidney Bondurant, M.D., Representative of the 24th District in the State of Mississippi House of Representatives, on June 9, 2009, filed a petition seeking to have GRYR's Notice of Exemption declared null and void *ab initio* or revoked. GRYR filed its Reply on June 29, 2009. By its Decision, served September 4, 2009, the Board instituted a proceeding, pursuant to 49 U.S.C. 10502(d), to inquire further into the issues raised by Dr. Bondurant's petition to revoke.

3. By its Decision, served December 3, 2009, the Board found, "Grenada's notice meets the Board's requirements under 49 CFR 1150.33 and is neither false nor misleading." The Board continued, "Nor do we find grounds to revoke the exemption here. The Petition does not cite specific concerns that require revocation to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101." The Board concluded, "While the Board is sensitive to Rep. Bondurant's concerns, and all concerns regarding service to shippers, revocation of Grenada's exemption is not proper at this time because no one has brought evidence to us that revocation is necessary to carry out the RTP of 49 U.S.C. 10101 and there is nothing in the record to indicate that Grenada is abusing the Board's processes."

4. Mr. Riley, a locomotive engineer, a person who is neither a shipper nor a state, county or local official, in the meantime has endeavored to overturn the findings and conclusion the Board's Decision. By his Petition, filed September 11, 2012, Mr. Riley echoed Dr. Bondurant's petition and asked the Board to declare GRYR's Notice of Exemption null and void *ab initio* or to revoke it. GRYR filed its Reply on September 24, 2012.

5. Without having obtained a waiver from the Board, pursuant to 49 C.F.R.

§ 1110.8, Mr. Riley, on September 28, 2012, filed a Petition For Leave to File Response together with the Response to GRYR's Reply, in violation of the Board's regulation, at 49 C.F.R. § 1104.13(c), that a reply to a reply is not permitted. GRYR on October 11, 2012, filed its Reply to Mr. Riley's Petition for Leave to File Response requesting the Board to dismiss or deny Mr. Riley's Petition. In the alternative, GRYR petitioned the Board, pursuant to 49 C.F.R. 1117.1, to allow it to file a brief surreply to correct the most obvious errors in Mr. Riley's Response. Although the Board by its Decision of December 10, 2012, instituting a proceeding under 49 U.S.C. § 10502(d), accepted Mr. Riley's Petition and Response, as well as GRYR's Reply, in the interest of compiling a more complete record, GRYR's alternative request that it be allowed to file a brief surreply remains pending.

6. Largely as a result of Mr. Riley's filings, the Board, by its Decision served July 1, 2013, directed GRYR to provide certain information relating to the allegations which Mr. Riley had made concerning the embargoed bridge at MP 656.4 and its effect upon the shippers located between MP 625.6 near Grenada and MP 703.8 near Canton. The Board asked GRYR to file its Response by July 22, 2013, and invited Mr. Riley and any other interested persons to file their Replies by August 1, 2013. GRYR filed its Response on July 19, 2013, and Mr. Riley filed his Reply on July 25, 2013.

B.

Mr. Riley's Reply is a complete contrivance.

7. Although purportedly commenting on the information which had been furnished by GRYR in response to the Board's direction, Mr. Riley used his Reply as an intemperate and unprincipled attack upon the personnel of the GRYR. If Mr. Riley had

reviewed the Board's web page, he would have known that an altogether different rail line, the IC's Natchez Branch, became the Natchez Railway, LLC, which is controlled by Mr. Kern W. Schumacher. *See*, Finance Docket No. 35249, *Kern W. Schumacher--Continuance in Control Exemption--Grenada Railway, LLC and Natchez Railway, LLC*, served June 8, 2009. Far from being the "total lie" which Mr. Riley attributes to Michael Van Wagenen, Esq., on page 6 of his Reply, Mr. Van Wagenen was accurately quoted by the *Natchez Democrat* when he stated that A&K Railroad Materials, Inc. ("A&K") is not the parent company of the Natchez Railway, LLC, does not own it and has no financial interest in it.

8. Mr. Riley continues, on pages 6 and 7 of his Reply, to blast "this bunch" for letting "the same thing [keep happening] over and over. Railroads meet an untimely demise and communities are devastated and jobs lost." Significantly, however, but for what he terms "the TP&W fiasco", Mr. Riley fails to cite a single instance when "this bunch" brought about the claimed calamitous results. That Mr. Riley is ill informed is borne out by his assertion that V&S Railway somehow is involved in trying to bring about the demise of GRYR. V&S Railway, LLC operates in the states of Kansas and Colorado, hundred of miles distant from Mississippi, and has nothing whatever to do with the GRYR.

9. At page 7 of his Reply, Mr. Riley reveals his evident limited knowledge of the antitrust laws when he likens what is happening on the GRYR to "price fixing or getting the lion's share of the market to impose a monopoly". Mr. Riley's sounded off as if he never has heard of Genessee & Wyoming, Inc., Patriot Rail Company, LLC, Pioneer Railcorp and the several other short line railroad holding companies. GRYR doesn't even

come close to being in their league, nor does Mr. Schumacher, who is in control of the GRYR.

10. All of these baseless assertions by Mr. Riley, of course, are a prelude to Mr. Riley's plea, at page 8 of his Reply, that the exemption pursuant to which GRYR acquired the Southhaven-to-Canton rail line from the IC be revoked. That exemption now has been in effect for more than four years. In its Decision in Docket No. AB-364 (Sub-No. 14X), *Mid-Michigan Railroad, Inc.--Abandonment Exemption--in Kent, Ionia, and Montcalm Counties, MI*, served September 26, 2008, the Board declared:

The Interstate Commerce Act, as amended, at 49 U.S.C. 10502(a), favors exemption from regulation whenever appropriate and directs us to grant exemptions to the maximum extent consistent with that Act. Under 49 U.S.C. 10502(d), however, the Board may revoke an exemption in whole or in part if it finds that regulation is necessary to carry out the RTP set forth in 49 U.S.C. 10101. Here, petitioner wants us to revoke the exemption and withdraw our authorization of the abandonment. The party seeking revocation of an exemption has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link LLC--Acquisition and Operation Exemption--Certain Lines of Soo Line Railroad Company d/b/a/ Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

In its Decision in Docket No. FD 35306, *Lassen Valley Railway LLC--Acquisition and Operation Exemption--Union Pacific Railroad Company*, served November 30, 2010, the Board explained:

Under 49 U.S.C. § 10502(d), the Board may revoke an exemption when it finds that application of a statutory provision is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. The party seeking revocation has the burden of showing that the criterion is met. See 49 C.F.R. § 1121.4(f). Petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and that more detailed scrutiny of the transaction is necessary. See Consol. Rail Corp.--Trackage Rights Exemption--Mo. Pac. R.R., FD 32662 (STB served June 18, 1998). Here, however [petitioner] does not even attempt to identify any relevant aspect of the RTP or explain why applying an exempted statutory provision is necessary to carry it out, or does he articulate any reasonable, specific concerns demonstrating that more detailed scrutiny of the transaction is needed.

Accord, Docket No. FD 35331, *Sierra Northern Railway--Lease and Operation Exemption--Union Pacific Railroad Company*, served March 27, 2012; Docket No. FD 35410, *Adrian & Blissfield Rail Road Company--Continuance in Control Exemption--Jackson & Lansing Railroad Company*, served September 27, 2011; Docket No. FD 35412, *Middletown & New Jersey Railroad, LLC--Lease and Operation Exemption--Norfolk Southern Railway Company*, served September 23, 2011; Docket No. FD 35173, *Pacific Sun Railroad, L.L.C.--Lease and Operation Exemption--BNSF Railway Company*, served May 27, 2009.

11. Like the petitioner in the *Lassen Valley* proceeding, Mr. Riley has not even attempted to identify any relevant aspect of the RTP which would be advanced or to explain why applying the statutory provisions of 49 U.S.C. § 11324 (d) are necessary to carry out the RTP's goals or objectives; nor does Mr. Riley articulate any reasonable, specific concerns demonstrating that more detailed scrutiny of the rail line's acquisition is needed.¹

12. GRYR was fully justified in embargoing the 114-year old bridge at MP 656.4 in the belief that it literally was falling apart. The photographs of the bridge attached as Exhibit 1 amply give credence to GRYR's concern. Mr. Riley attached as Exhibit E to his Reply what he terms a bridge engineering diagram. The drawing may have been representative of wooden trestles which IC installed along its lines. It, however, is not a drawing of the embargoed bridge which, as the photographs show, is a concrete structure.

¹ Whatever evidence may have been introduced in Docket No. AB-1087X, *Grenada Railway, LLC--Petition for Abandonment Exemption--in Grenada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties*, is irrelevant, for the proceeding was terminated at GRYR's request and the Board's Decision, served November 11, 2011, without the Board's having assessed the validity or weight of the evidence that had been introduced.

13. The record in this proceeding heretofore has contained no estimate of the cost of repairing the embargoed bridge. At page 1 of his Reply, Mr. Riley said he would offer one. According to Mr. Riley all that is required is replacing spans 5 and 6 while retaining the concrete piles and caps. Mr. Riley fails to explain how he arrived at that conclusion. He certainly did not ask GRYR to allow him to enter upon its property to inspect the embargoed bridge, and, as a locomotive engineer, Mr. Riley knows that railroads fervently disallow trespassers on their lines. But Mr. Riley not only identifies the repairs that are required, he itemizes the parts and their prices and the workers and their hourly wages needed to effect the repairs. There is nothing in the background and experience of Mr. Riley to lend any credence to his \$12,824.00 estimate of the cost of the "band-aid" repairing the embargoed bridge. Mr. Riley may be a locomotive engineer; he most assuredly is not a mechanical engineer, and he fails to aid the Board in providing it with his contrived estimate of the cost of repairing the embargoed bridge.

14. Attached as Exhibit 2, is an estimate of the cost of "band-aid" repairing the 114-year old bridge at MP 656.4 prepared by a Registered Professional Engineer with more than 40 years of experience in the railroad industry, Mr. Ed Landreth of Landreth Engineering, LLC of Albuquerque, NM. In his verified report, Mr. Landreth calculates the cost of repairing the bridge to be at least \$238,273.00 and not the \$12,824.00 that Mr. Riley came up with.

15. When it comes to what he terms is his claimed correction of the GRYR's books, at page 2-4 of his Reply, Mr. Riley is guilty of comparing apples and oranges. In his protest of October 5, 2011, in GRYR's aborted abandonment proceeding, while disputing GRYR's assertion of the net liquidation value of the 81.3-mile line between

Grenada and Canton sought to be abandoned, Mr. Riley did not question GRYR's sworn testimony that GRYR lost \$109,927 operating the Grenada-to-Canton line in 2010 and \$94,674, the first six months of 2011. Mr. Riley still does not assail those figures. Instead, he endeavors to calculate the revenues and costs for the entire 175.4-mile line between Southhaven and Canton. Mr. Riley, however, is no more capable of calculating the earnings and operating costs of the GRYR than he is of estimating the amount it would take to repair the embargoed bridge. Mr. Riley may be a locomotive engineer; he is not an accountant.

16. Attached as Exhibit 3 are the income statements of the GRYR -- the entire Southhhaven-to-Canton railroad line -- for the year 2012 and the first six months of 2013, presented by the verified statement of Mr. Aaron Parsons, Assistant Vice President of the GRYR . Because of their confidential and proprietary contents, the income statements are filed under seal, subject to a protective order. Without disclosing their details, it suffices to say that the income statements for the GRYR establish with certainty that the GRYR cannot afford to pay the cost of effecting even the "band-aid" repair of the bridge at MP 656.4, much less replacing it.

17. In is Decision in Docket No. FD 33386, *Decatur County Commissioners, et al v. the Central Railroad Company of Indiana*, served September 29, 2000, *aff'd sub nom. Decatur County Commissioners v. STB*, 308 F.3d 710 (7th Cir. 2002), the Board declared:

An embargo can be issued by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations. Embargoes, which may be of varying duration, are quite common in the railroad industry and typically do not result in government intervention. They can be challenged, however, and in the rare case in which they are used improperly, a rail carrier may be liable for damages and/or injunction. Under its common carrier obligation, the embargoing railroad must restore safe and

adequate service within a reasonable period of time to any line as to which it has not applied for abandonment authority. A service curtailment that extends beyond a reasonable time can be construed as an illegal abandonment if unaccompanied by an abandonment application or exemption request.

The reasonableness of an embargo is determined by a balancing test, taking into consideration such factors as the length of the service cessation, the carrier's intent, the cost of repairs, the line's traffic volume and revenues, and the carrier's financial condition. The cost of repairs, relative to the volume of traffic on the line and the financial condition of the carrier, often is particularly important. Typically, an embargo is found to be invalid, or to constitute an unlawful abandonment, where the embargo is a long one and the cost of repairs is not substantial [citations omitted].

Accord, Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, served May 15, 2003; Finance Docket No. 32821, *Bar Ale, Inc. v. California Northern Railroad Co. and Southern Pacific Transportation Company*, served July 20, 2001.

18. The embargo of the bridge and the derauling of the line at MP 625.6 and MP 703.8 were perfectly reasonable. None of the shippers situated on the affected segment of the GRYR filed a Reply in response to the Board's invitation in its July 1, 2013, Decision. Indeed GRYR in the past two years received no reasonable request for transportation or service from any of the shippers situated between MP 625.6 and MP 703.8. As the Board noted in Docket No. FD 42086, *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, served May 12, 2004, "[T]he record does not show that any shipper requested service from [the railroad] during the 2-year out-of-service period. Any inquiry about [the railroad's] duty to repair the Line would have to be predicated upon [the railroad's] having received a reasonable request for service."

19. Mr. Riley's Reply of July 25, 2013, fails to afford a basis for the revocation of the exemption, and his plea that the exemption should be revoked warrants the Board's denial.

C.

The IPH Reply is nothing but endeavored retribution.

20. The Verified Statement of Mr. Edwin E. Ellis attached to the Reply of his Iowa Pacific Holdings, LLC ("IPH") details how, while the GRYR's abandonment petition was pending, he endeavored to persuade Mr. Schumacher to sell him the GRYR and his disappointment when Mr. Schumacher responded that he was not interested in selling the railroad. It was for that reason and only that reason that Mr. Ellis had his IPH file the Reply in support of Mr. Riley's Petition for Revocation. Mr. Ellis simply has no present interest in the GRYR.

21. If, as IPH claims on page 5 of its Reply, IPH believes that it would be a better candidate to own and operate the Southhaven-to-Canton railroad line than the GRYR, why hasn't it sought to buy the GRYR by filing a Feeder Line application pursuant to 49 U.S.C. § 10907, as the IPH Reply itself suggests on page 9? That's the very purpose of the statutory provision. *See*, Docket No. FD 35160, *Oregon International Port of Coos Bay--Feeder Line Application--Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.*, served October 31, 2008; Docket No. FD 34890, *Pyco Industries--Feeder Line Application--Lines of South Plains Switching, Ltd. Co.*, served August 31, 2007; Docket No. FD 34335, *Keokuk Junction Railway Company--Feeder Line Acquisition--Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, served October 28, 2004. What Mr. Ellis' reluctance to pursue that means of procuring the GRYR suggests is that Mr. Ellis' interest in acquiring the GRYR is more talk than substance.

22. The IPH Reply has more than its fair share of errors. On page 3, the IPH Reply refers to the GRYR as a subsidiary of A&K. In fact, as already noted, it is controlled by Mr. Schumacher. On pages 6 and 7, the IPH Reply refers to the *Roaring Fork* proceeding as an example of A&K's acquiring an active rail line for the ultimate purpose of abandoning it. In fact, Mr. Schumacher and Mr. Morris Kulmer were denied the right to acquire the line through an OFA and, hence, had no opportunity to abandon it. The attachment to the IPH Reply, a list of seven Board approved abandonments of all or segments of A&K affiliated railroads, refers to the Trinidad Railway, Inc. as a subsidiary of A&K. In fact, its line was sold by Trinidad Railway, Inc. to Kern Valley Railroad Company, an A&K affiliated railroad.

23. At page 8, the IPH Reply assumes that Mr. Schumacher's representatives did not perform a due-diligence inspection of the railroad line between Southhaven and Canton before its conveyance, for the condition of the bridge at MP 656.4 allegedly was not noted. That is wholly without foundation and contrary to the facts. Even Mr. Riley said he had safely operated trains over the bridge as a locomotive engineer for the CN. But 114-year old bridges do deteriorate, even within two years' time, and that is what happened between 2009 and 2011, and the bridge now is in need of repairs costing at least \$238,273.00. Significantly, the IPH Reply does not disagree that the bridge is in need of repairing.

24. At pages 7 and 8, the IPH Reply quotes from Docket No. FD 35130, *Central Oregon & Pacific Railroad, Inc.--Coos Bay Line*, served April 11, 2008, in urging that GRYR improperly embargoed the bridge at MP 656.4. IPH, however, neglected to quote the next, all important paragraph:

When determining whether a failure to serve is reasonable, as well as how long the failure to serve may reasonably continue, the Board typically balances the following factors: (1) the cost of repairs necessary to restore service; (2) the amount of traffic on the line; (3) the carrier's intent; (4) the length of service cessation; and (5) the financial conditions of the carrier. The factors are not applied in a formulaic way. Rather, the objective is to determine whether the carrier's decision to cease service on the line was reasonable considering the circumstances, and whether the carrier's decision to continue failing to serve is reasonable as well [citations omitted].

25. Mr. Ellis and his IPH fail to establish that GRYR's embargo of the bridge at MP 656.4 is unreasonable, because they do not dispute that the bridge is in need of repair, estimated to cost not less than \$238,273.00, they do not refer to a single request for transportation or service from any shipper situated between MP 625.6 and MP 703.8, they do not allege that GRYR has failed to make a good faith attempt to operate the railroad profitably, they note that the bridge has been out of service for only two years' time, and above all they have no means of disagreeing that the GRYR has incurred deficits in operating the railroad in 2012 and the first six months of 2013. Mr. Ellis and his IPH have proved no bases for reconveying the GRYR back to the IC as they ask the Board to order.

D.

The four shippers have no cause to complain.

Four shippers, each located north of MP 625.6, Resolute Forest Products and Fly Timber Company of Grenada, MS, Carlisle Construction Materials of Senatobia, MS, and United Solutions of Sardis, MS, filed replies on August 2, 2003, in response to the Board's invitation. Common to their pleadings is the shippers' claims of shortcomings of the GRYR coupled with their concern that the GRYR may seek the Board's abandonment authorization. Their pleadings are unmeritorious.

Resolute and Fly were protestants in the GRYR's aborted abandonment proceeding, and in essence their current pleadings read as if they were repetitive of their earlier ones. Neither of these shippers, however, has cause to complain about GRYR's service, because GRYR needn't serve either one at all if it chose not to do so. Resolute is a shipper of rolls of paper in boxcars, and, being commodities tendered for transportation in boxcars, the rolls of paper are exempt, pursuant to 49 C.F.R. § 1039.14(a). Fly is a shipper of trim-grade and floor grade hardwood and untreated railroad ties, namely, lumber and wood products, yet another category of exempt commodities, pursuant to 49 C.F.R. § 1039.11. Nevertheless, GRYR has served these two shippers, as well as the other two shippers. Carlisle and United Solutions.

None of the four shippers in tendering or receiving their shipments of freight via Memphis have experienced a rate increase since Mr. Schumacher acquired the Grenada Branch from the IC. GRYR's rate was \$850.00 per car in 2009, as published in Item 600 of Freight Tariff GRYR 8008, effective July 1, 2009; it remains \$850.00 per car today. If GRYR had increased its rate 3% annually, as the Class I railroads are reported on average to have increased their rates, the four shippers would be paying more than \$100 above the \$850.00 per car they currently are paying, or \$956.68 per car. Understandably, the four shippers don't bother to mention the savings which they in fact are enjoying.

The most ill informed statements appear in the Resolute's reply. First, it claims that its mill at Grenada was switched every other day by the IC but is switched only twice a week by the GRYR. Resolute recollection is flawed. Service to customers was provided by the IC on a tri-weekly basis. Then Resolute contends that it incurs unconscionably high demurrage at its mill as a consequence of the two-day a week

unconscionably high demurrage at its mill as a consequence of the two-day a week service to Southaven which the GRYR renders. If Resolute is incurring high demurrage at its Grenada mill, it is not because the boxcars loaded with rolls of paper are sitting there waiting to be picked up by the GRYR. If Resolute is incurring high demurrage, it must be because Resolute is not notifying GRYR that the boxcars have been loaded and are released to the GRYR. Demurrage ceases upon the timely notification of the railroad that the car has been loaded or unloaded, as the case may be, and is released to the railroad. If a consignee or shipper does that, the car can sit there for days awaiting the railroad's switch, and demurrage would not be one cent higher.

If GRYR were as awful as the shippers portray it to be, it is a wonder that in the four years they have been served by the GRYR not one of them has filed a complaint with the Board, pursuant to 49 U.S.C. § 11101(a). None of them has even complained informally of the GRYR's transportation or service to the qualified and accommodating personnel of the Board's Rail Customer and Public Assistance Program.

None of the shippers found the want of GRYR's transportation or service in the region to be so egregious as to warrant seeking the relief afforded by 49 U.S.C. § 11123, *See, Docket No. 34802, Pyco Industries, Inc.--Alternative Rail Service--South Plains Switching, Ltd. Co.*, served January 26, 2006; *Ex Parte Docket No. 628, Expedited Relief for Service Inadequacies*, served December 21, 1998. That none of the shippers availed itself of the remedies available to it suggests that there is little merit in their statements.

Indeed, the shippers failed altogether to meet their burden of proof that having Mr. Schumacher file an application to acquire the IC's Grenada Branch rather than

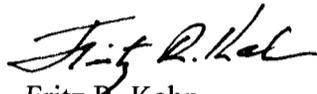
procuring it by Notice of Exemption would have advanced the goals and objectives of the Rail Transportation Policy of 49 U.S. C. § 10101.

WHEREFORE, Grenada Railway LLC, pursuant to 49 C.F.R. § 1117.1, respectfully asks the Board to grant it leave to file its brief surreply to the replies filed by Mr. Robert J. Riley, Iowa Pacific Holdings, LLC and the four shippers situated on the GRYR so as to correct the misstatements they contain and to provide the Board with a more current and complete record on which to base its actions.

Respectfully submitted,

GRENADA RAILWAY, LLC

By its attorney,



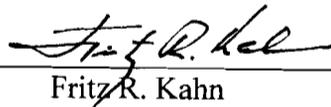
Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: August 21, 2013

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Petition upon each party of record by mailing it a copy by prepaid first-class mail.

Dated at Washington, DC, this 21st day of August, 2013.

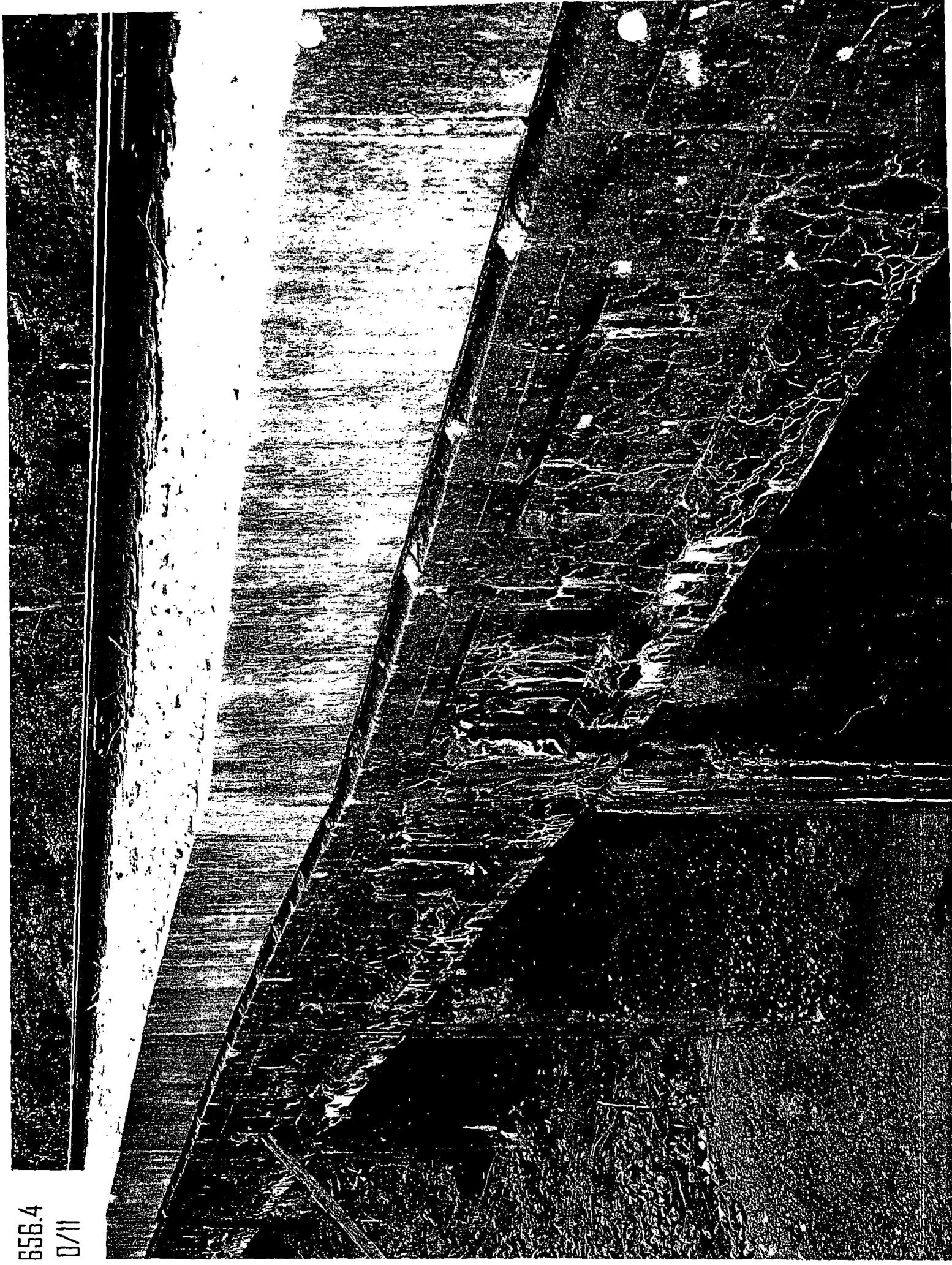


Fritz R. Kahn

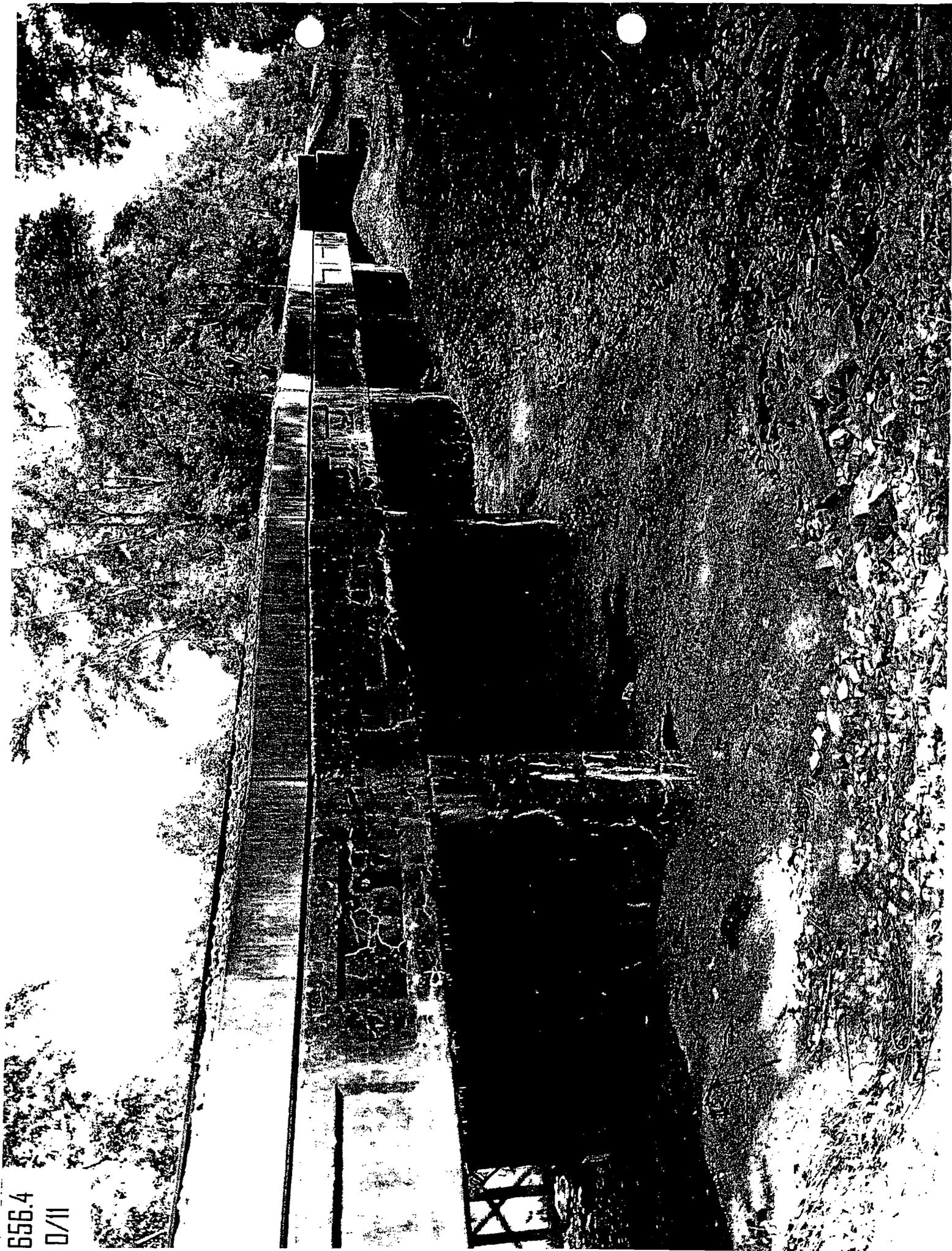
EXHIBIT 1

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EXHIBIT 2



FBN SEVICES, INC.

dba LANDRETH ENGINEERING, LLC
12231 Academy Rd. NE #301-284 --- Albuquerque, NM 87111
Phone: 505-239-9915 --- Email: EWLandreth@aol.com

August 14, 2013

Cynithia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW, Room #100
Washington, DC 20423-0001

RE: Docket No. 35247, Grenada Railway, LLC
Response to STB Document 234592 Received July 29, 2013

Dear Ms. Brown,

At the request of the Grenada Railway, LLC, I have reviewed Mr. Riley's estimate for his suggested "band aid repairs" to Grenada Railway, LLC Bridge No. 656.4 and have the following comments.

The existing concrete Bridge No. 656.4 is shown on the Grenada Railway, LLC (former CN/IC) track chart as having been constructed in 1914. Without benefit of the bridge design plans and due to the date of construction a reasonable assumption is that the bridge is marginal for today's 263,000 lb. rail car loading and current practice requires at least 286,000 lb. rail car design for unrestricted interchange between railroads and new construction requires a 315,000 lb. rail car design. The bridge repair suggested by Mr. Riley will only provide a temporary fix within a 263,000 lb. rail car loading for Bridge No. 656.4.

Review of the age of the bridges shown on the track chart for the southern line segment of the Grenada Railway between MP 622.5 to the end of line at MP 704 shows 1.5 miles of bridges are over 80 years old.

The failure at Bent 6 of Bridge No. 656.4 is due to settlement of the concrete bridge bent which has caused rotation and failure of the end bearing for the concrete girders.

Mr. Ripley's Band-Aid cost estimate for repairs to Bridge 656.4 neglect's major tasks required to affect this repair. Mr. Riley is ignoring or missing the facts that the existing track structure and failed girders need to be removed and that the pier is settling and needs to be replaced and doesn't include such simple items as vehicles, equipment, meals and lodging for the labor force.

Below is Mr. Riley's original estimate of \$12,824.00 compared to recent prices and the additional work that would be required to accomplish what Mr. Riley considered is relatively cheap repair without comment concerning the validity of what he is proposing.

<u>Riley Estimate:</u>	<u>Riley</u>	<u>Landreth</u>
20 pc. 7"x16"x18' Stringers	\$5,500.00	\$ 8,884.35
48 pc. 4"x8"x14' Deck Planks	\$2,304.00	\$ 3,887.10
4 pc. 8"x10"x16' Ballast Retainer	\$ 320.00	\$ 246.41
23 tons of Ballast	\$ 750.00	\$ 900.00
120 pc 7 inch steel spikes	\$ 80.00	\$ 380.40
28 – 24" All thread and nuts/washers	\$ 200.00	\$ 100.00
Labor 6 men at 16 hours each (Contractor w/ 6 men for 2 days)	\$1,920.00	\$10,000.00
Backhoe rental for a week	\$ 750.00	\$ 960.00 (2 days)
Misc. Expenses	<u>\$1,000.00</u>	<u>\$ 1,000.00</u>
Project Total	\$12,825.00	\$26,357.86

Required Work - Ignored in Riley Estimate

Remove & Replace Track	\$ 10,850.00
Removal & Disposal of Concrete Girders & Pier	\$ 40,000.00
Replace Bridge Pier (with H pile Pier)	\$137,000.00
Bridge Caps	\$ 1,815.00
Freight	\$ 2,250.00
Engineering & Supervision	<u>\$ 20,000.00</u>

Missing Work in Riley Estimate \$211,915.00

Corrected Estimate for "Band-Aid" repair to Bridge 656.4 \$238,273.00

Mr. Riley's estimate for a "Band-Aid" repair to Bridge 656.4 is at least \$238,273.00 not the \$12,824.00 that he has presented to the Board.

Mr. Riley shows a 2010 total revenue rail car count of 1,319 rail cars for this line segment and a 2011 total revenue rail car count of 721 rail cars.

Mr. Riley refers to the Grenada Railway, LLC gross revenue of \$850 per rail car handled previously across the rail line. Most Class 1 railroads struggle to achieve a 80% operating ratio and the short line industry struggles to achieve a 90% operating ratio. The Grenada Railway, LLC for the line segment south of Grenada has reported a net loss.

If the Grenada Railway, LLC could achieve a nonexistent 90% operating ratio, the Grenada Railway would have to transport 150 revenue rail cars across the line to break even with an expenditure of \$12,825 as suggested by Mr. Riley and 2,803 revenue cars across the line to break even with an expenditure of \$238,273. The 2,803 revenue cars required to break even with an expenditure of \$238,273 is more than twice the total number of revenue cars handled during 2010.

Mr. Riley considers his expenditure of \$12,825 as a cheap expense but neglects to calculate that this would consume 11% of the 2010 nonexistent net revenue (90% operating ratio) whereas the actual estimated cost of \$238,273 for his "band aid" repair would consume in excess of 2.12 times the 2010 nonexistent net revenue (90% operating ratio).

My background and qualification's statement is enclosed as Attachment 1

If I can provide any additional information or clarification to the above, please contact me.

Sincerely,

Edward W. Landreth

Ed Landreth, PE

Attachment



FBN SEVICES, INC.
dba LANDRETH ENGINEERING, LLC

12231 Academy Rd. NE #301-284 --- Albuquerque, NM 87111
Phone: 505-239-9915 --- Email: EWLandreth@aol.com

Ed Landreth founded Landreth Engineering, LLC upon taking early retirement from The Atchison, Topeka and Santa Fe Railroad (Santa Fe) in 1994 prior to the Santa Fe merger with the Burlington Northern Railroad and incorporated as FBN Services, Inc. dba Landreth Engineering, LLC on April 18, 2011.

Ed Landreth is a Registered Professional Engineer with more than forty-two years' hands-on experience, designing and managing major civil engineering projects.

Landreth Engineering, LLC provides railroad engineering and administrative services to the short line industry and corporate clients. These services include railroad real estate valuations, railroad acquisition valuations, railroad operations, track and bridge inspections, track and bridge maintenance plans as well as railroad startup assistance.

Landreth Engineering, LLC also provides private individuals and corporate clients engineering plans, specifications, bid documents, and engineering management for the construction of private rail lines and industry tracks.

Ed Landreth provided expert witness affidavits in numerous proceedings before the STB and predecessor agencies during his career with the Santa Fe Railroad and has continued to provide expert witness affidavits and testimony as a railroad consultant. As a railroad consultant he provides engineering consulting services to Class 1 railroads, the short line railroad industry and for private sector rail related projects.

Ed had in excess of 27 years progressive experience with The Atchison, Topeka & Santa Fe Railway Company.

In his last position, as Director Asset Management he was the department head for the Santa Fe Real Estate and Contracts Department. In this position, he was responsible for the management of the railroad's real estate, property sales, leases and contracts. In that role, he was one of the four key members of the Santa Fe team that negotiated the sale of approximately 380 miles of rail corridor and passenger commuter rights to municipalities and counties in Southern California, and the sale of approximately 4,000 miles of branch lines to short line railroads.

Ed progressed through the ranks in Santa Fe's Engineering and Maintenance Department. His last position in the Engineering Department was department head for System Construction. During his tenure as Manager System Construction, he directed the projects for expansion of the Denver Auto Facility and the Houston TOFC Facility. This involved preparation of design plans, engineering cost estimates, contract plans and specifications, solicitation of proposals, awarding bids, and providing owner inspection, payment and confirmation of completed projects. He also managed the design and expansion of the Chicago TOFC facility and provided design and estimates for the rehabilitation and expansion of TOFC and auto facilities across the system.

Ed Landreth has a long list of accomplishments. Some representative examples of his project work include:

As head of the Western Regional Construction Office, he prepared plans, specifications, bid proposal, solicitation of proposals, and award of project, field engineering, and project management for the relocation of six miles of railroad main line due to the Bureau of Reclamation project for the construction of Brantley Dam, north of Carlsbad, NM. The project included approximately 1 million cubic yards of embankment; 200,000 cubic yards of cut; 2,000 linear feet of concrete bridge construction involving the driving of two miles of H-section piling to support concrete footings. The project was completed two months ahead of schedule and under budget.

As Public Projects Engineer – Western Lines, he represented Santa Fe in highway grade crossings, grade separations, public projects and negotiations with federal, state and local representatives. He also served as an expert witness in numerous grade crossing litigation and drainage lawsuits. He provided railway company review and approval of engineering plans prepared by state and local agencies, and he prepared and furnished railway company estimates and negotiated contracts for work required to accommodate public projects.

As Construction Engineer, he provided the final location and design of 40 miles of new line construction for the Star Lake Railroad between Grants and South Hespah, NM, and preliminary location and design of 70 additional miles between South Hespah and Star Lake and to the Navajo Reservation in northwest New Mexico. Final location included property acquisition surveys, determination of final grade line, drainage design, soil investigations, grading specifications, selection of barrow sites, determination of waterway openings, selection of bridge structures, preparation of construction specifications and contract documents.

He managed the designed and the construction of the locomotive and car repair facilities at Cleburne, TX. This work consisted of a fueling facility to accommodate ten locomotives, a locomotive washing facility, a locomotive running repair facility to accommodate fifteen locomotives and wheel truing machine. He also managed the design of a rail car repair facility including grit blast, paint booths, one spot facility, and staging and storage tracks to support the rail car facility.

He designed streets, storm drainage, water and sewer utilities and obtained approval from the City of Dallas, TX for improvement plans. He prepared contracts for the construction of all utilities to serve a portion of the Santa Fe Land Improvement Company Jupiter Road Industrial Park in Dallas and the Miller Road Industrial Park at Garland, TX.

Ed Landreth earned a Bachelor of Science in Civil Engineering at the University of Missouri – Rolla (formerly Missouri School of Mines), Rolla, Missouri. He is a Registered Professional Engineer, State of New Mexico PE 5801. Previous certifications (Not Current) include Registered Professional Engineer, State of Colorado PE 12637, Registered Professional Engineer, State of Texas PE 40023, and Registered Public Surveyor, State of Texas LS 2841.



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Example List of Services

Contract Management

Property Rental Rates

- Preparation of Exhibits for Leases and Contracts
- Evaluation of existing Leases and Contracts
- Annual Leased Property Inspections
- Maintenance of Lease and Contract Records

Property Management

- Net Liquidation Values for Railroad Lines
- Land Development Plans
- Land Sales & Acquisitions
- Asset Acquisitions
- Asset Liquidation's
- Due Diligence Studies
- Annual Inspections
- Maintenance of Land Records and Inventory

Engineering & Design

- Industry Track Alignments ▪ Field Surveys and Studies ▪ Cost Estimates
- Hydrology ▪ Concrete & Foundation Design
- New line location ▪ Intermodal Facilities ▪ Auto Unloading Facilities
- Grade Crossings ▪ Grade Separations
- Litigation Support
- Maintenance of Engineering Records and Maps

Construction Management

- Preparation of Plans
- Construction Sequence
- Standards and Specifications
- Contract and Bid Preparation
- Project Contract Management
- Project Inspection and Quality Control

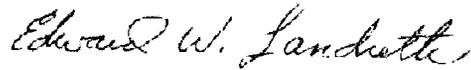
Track Maintenance

- Track & Bridge Inspections ▪ Rehabilitation Programs ▪ R/W Inspection
- Roadway Drainage Inspections

VERIFICATION

I, Edward W. Landreth, President and CEO of FBN Services, Inc. d/b/a Landreth Engineering, LLC, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Report, dated August 14, 2013, and attached Qualifications Statement and that their 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 Landreth Engineering, 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 Albuquerque, NM, this 19th day of August, 2013.



Edward W. Landreth

EXHIBIT 3

VERIFICATION

I, Aaron Parson, Assistant Vice President of the Grenada Railway LLC ("GRYR"), declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing income statements for 2012 and the first six months of 2013 of the GRYR, and they 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 GRYR. 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 17th day of August, 2013.


Aaron Parsons