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March 31, 2009

By e-filing

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 100
Washington, DC 20024

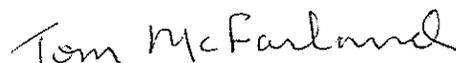
Re: Finance Docket No. 35175, *Roseburg Forest Products Co.; Timber Products Company, L.P.; Suburban Propane, L.P.; Cowley D&L, Inc.; Sousa Ag Service and Yreka Western Railroad Company -- Alternative Rail Service -- Central Oregon & Pacific Railroad, Inc.*

Ex Parte No. 346 (Sub-No. 25C), *Rail General Exemption Authority -- Lumber or Wood Products*

Dear Ms. Quinlan:

Hereby transmitted is Petitioners' Supplemental Statement, for filing with the Board in the above referenced matters.

Very truly yours,



Thomas F. McFarland
Attorney for Petitioners

BEFORE THE
SURFACE TRANSPORTATION BOARD

ROSEBURG FOREST PRODUCTS CO.;)	
TIMBER PRODUCTS COMPANY, L.P.;)	
SUBURBAN PROPANE, L.P.; COWLEY)	FINANCE DOCKET
D&L, INC.; SOUSA AG SERVICE and)	NO. 35175
YREKA WESTERN RAILROAD)	
COMPANY-- ALTERNATIVE RAIL)	
SERVICE -- CENTRAL OREGON &)	
PACIFIC RAILROAD, INC.)	
)	
RAIL GENERAL EXEMPTION)	EX PARTE NO. 346
AUTHORITY -- LUMBER OR WOOD)	(SUB-NO. 25C)
PRODUCTS)	

PETITIONERS' SUPPLEMENTAL STATEMENT

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COWLEY D&L, INC.
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SOUSA AG SERVICE
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DATE FILED: March 31, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

ROSEBURG FOREST PRODUCTS CO.;)	
TIMBER PRODUCTS COMPANY, L.P.;)	
SUBURBAN PROPANE, L.P.; COWLEY)	FINANCE DOCKET
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PRODUCTS)	

PETITIONERS' SUPPLEMENTAL STATEMENT

Pursuant to the Board's decision served March 4, 2009 (ordering paragraph 2 on page 12), Petitioners Roseburg Forest Products Co., et al. hereby submit a Supplemental Statement responsive to the questions raised in that decision at page 7, 9 and 11.

SCOPE OF STATEMENT

This Supplemental Statement is responsive to the Board's request for additional information regarding Shipper-Petitioners' "commercial needs and why CORP's 2-day-a-week service schedule is inadequate to satisfy them." (Decision at 11). More particularly, this Supplemental Statement is directed at the following subject matter identified at page 9 of the decision:

- (1) the frequency and severity of the delays RFP and TPC have endured in supplying finished goods to their customers and the consequences, if any, to them of those delays;

- (2) the extent to which internal difficulties at their Oregon mills contribute to the various problems about which RFP and TPC complain; and
- (3) the feasibility of addressing these problems through means other than a return to a 5-day-a-week service schedule (i.e., building more track at the mills for loading and unloading cargo or storing raw materials at the mills).

In addition, this Supplemental Statement clarifies several additional subjects addressed in that decision, i.e.:

- (1) the CORP-RFP contract did not govern the potential Weed-Saginaw traffic that was ignored by CORP (decision at 9); and
- (2) Snow did not prevent CORP from operating between January 31 and February 12, 2008; the shippers went 10 days without empty cars during that period (decision at 7); and
- (3) the rail options discussed in the decision at 8 are not feasible.

The proposed alternative rail service provider, West Texas and Lubbock Railroad Company (WTL), is addressing the Board's request for "assurances that WTL's plans to operate the Line will not result in degrading service to SLRG's customers" (decision at 11).

FORMAT OF STATEMENT

Located at Tab 1 of this Statement is the Supplemental Verified Statement of Mr. Ray Barbee, Vice President-Marketing and Sales of Petitioner Roseburg Forest Products Co. (RFP). Mr. Barbee's Statement explains in detail why CORP's 2-day-a-week rail service is inadequate to satisfy RFP's commercial needs.

Located at Tab 2 of this Statement is the Supplemental Verified Statement of Ms. Susan S. Hart, Office Manager of Petitioner Timber Products Company, L.P. (TPC). Ms. Hart's Statement establishes that TPC's internal rail transportation facilities are adequate for receipt of rail shipments of raw materials and shipments of finished products; that construction of additional trackage and loading-unloading facilities at TPC's manufacturing mills is not feasible; and that CORP's rail service to TPC is inadequate.

Located at Tab 3 of this Statement is the Supplemental Verified Statement of Andrew E. Jeffers, Traffic Manager-Rail of RFP. Mr. Jeffers' Statement establishes that the RFP-CORP rail transportation contract did not cover rail shipments from Weed, CA to Saginaw, OR; that CORP is failing to provide adequate rail service to RFP; that "rail options" referred to at page 8 of the Board's decision served March 4, 2009 that involve rail transportation by Union Pacific Railroad Company (UP) are not feasible; and that RFP's internal facilities and operations at its Oregon mills are adequate for rail receipt of raw materials and shipment of finished products.

Located at Tab 4 of this Statement is the Supplemental Verified Statement of Mr. Court Hammond, President of Petitioner Yreka Western Railroad Company (YWR). Mr. Hammond's Statement establishes that contrary to CORP's claim, snow conditions at and near Siskiyou Pass did not disable CORP from providing scheduled rail service between January 31 and February 12, 2008.

Located at Tab 5 of this Statement is the Legal Argument of Petitioners' counsel that establishes that along with evidence filed earlier in this proceeding, the Supplemental Verified Statements prove conclusively that "over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided

by CORP,” thereby warranting prescription of alternative rail service under 49 C.F.R. § 1146.1(a).

Located at Tab 6 of this Statement is a letter from Mr. Tom Hawksworth of CORP to shippers on the Siskiyou Line, dated December 13, 2007, in which CORP’s curtailment of rail service from 5 to 2 days per week was announced.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35175

SUPPLEMENTAL VERIFIED STATEMENT OF RAY BARBEE

My name, is Ray Barbee, I make the following statements based upon my personal knowledge. I am the vice president of marketing for Roseburg Forest Products. Roseburg Forest Products ("RFP") is an integrated company that owns timberlands which are used in the manufacture of building material products. These products include stud lumber, veneer, plywood, particleboard, and other forest products for sale on both the foreign and domestic markets. Roseburg has mills throughout the United States. It is the second largest producer of fir plywood in the West.

Roseburg Forest Products is heavily dependent upon shipping by rail both finished products and raw materials. As a result of my experiences in marketing and shipping materials I am very familiar with railroad shipping, transportation scheduling, economics of various transportation alternatives, and with the current "just in time" inventory programs utilized by our company and our customers. I make this verified statement based upon my first hand knowledge of the inadequate service by CORP and the impacts thereof upon RFP and its customers. In my position, I have dealt with railroads all over the country and base the following comments on my experience not only with CORP but with these other railroads.

The following statements address issues or questions raised by the Surface Transportation Board ("Board") in its decision of March 3, 2009.

1. Marketing of forest products is now based upon Just in Time protocols that require timely shipment of raw materials and finished products.

The Surface Transportation Board requested further information as to the "frequency and severity of the delays that RFP and TPC have endured in supplying finished goods to their customers and the consequences, if any, to them of those delays." (Decision p. 7).

To address that question, it is necessary at the onset to understand today's wood products market place and its dependence on Just in Time ("JIT") inventory management and to also recognize that both the wood products manufacturers and customers have shifted from a practice of retaining large inventories of raw material and finished products that could be shipped as convenient, to the more modern practice known as "Just In Time" shipments.

Operating under a JIT protocol we acquire raw materials on the basis that they are shipped into our mills in response to the mills' immediate needs. Secondly, we manufacture and ship material to our customers in response to their immediate needs. In

today's international and domestic markets, the close adherence to JIT protocols and ability to meet tight time schedules is a major part of the strategy that maintains a manufacturing company's, as well as its customer's, competitive edge in both the domestic and foreign markets. Simply put, if a company is not able to meet these JIT market requirements then it is no longer a viable supplier in today's markets and in turn is not going to persevere.

For example, using our Dillard, Oregon plywood mill as an example, the JIT protocol is initiated upon receipt of an order for plywood of a specific size and grade to be shipped to a customer by a specified date – which is based upon the customer's JIT protocol. That order then triggers our own JIT scheduling wherein we then acquire the veneer from a supplier, which in most cases, but not all, is our own mill in Weed, California. The veneer is delivered to our mill on a date that is scheduled for the near term lay-up (the term "lay-up" refers to that part of the plywood manufacturing process wherein the individual sheets of veneer are laid down, glue placed between sheets, and the final treatment that creates a plywood sheet) and manufacture of the customer's plywood order. The actual lay up date is scheduled in advance to allow us to timely manufacture and ship the plywood to meet the customer's promised date. As with our mills' receipt of veneer under the JIT principle, the customer operating on JIT likewise does not want the product delivered either later or earlier than the scheduled promised date. The "Just in Time" protocol means you purchase raw materials, manufacture finished goods and ship them on time to customers within the shortest time frame possible. Neither the Dillard plywood mill, which in this case is the customer for the veneer produced by our Weed veneer mill, nor the customer for our finished plywood products, maintain extensive inventories of finished goods or raw materials. The customers rely upon manufacturers to ship finished product within very tight time constraints. Receipt of these products by Roseburg's customer in a timely manner enables the customer to meet the commitments he has made to the ultimate end user of the product. Late or unreliable shipping of logs or raw materials to our plants throws this entire process out of sync.

In today's markets the end customer does not maintain inventories rather they rely upon JIT shipments. Maintaining an inventory represents a serious drain on operating capital and does not comport to the JIT principles under which either the customer or mills operate.

In 2007 and 2008, the delays we were experiencing with CORP transit of our shipments resulted in uncertainty as to whether we could meet our customer's JIT requirements for the final product and whether we could rely on JIT shipments from the Weed facilities to meet our mill requirements in Oregon. As a result of the delays we were unable to operate the Oregon mills on a regular production schedule and in turn we were unable to meet our JIT protocol for manufacturing facilities. During this time period when the trainloads of veneer were not delivered to Oregon on time, we had to scramble to arrange raw material from other sources which entailed last minute arrangements for trucks to haul veneer from these other facilities. In those situations wherein we were not able to arrange substitute veneer in a timely manner, we then shifted orders from one mill to another to meet the customer's time constraints.

CORP's delays required us to not only scramble to maintain our shipping schedules but also, and more significantly in this case wherein the delays were frequent and unannounced, CORP's actions left us with no confidence in its ability to provide transit in a manner that provided us with the level of service necessary to develop markets or assure our existing clients of JIT shipments.

Based upon the delays and uncertainty we experienced prior to the 2 day a week service being implemented, we anticipated that given CORP's inability to resolve the problems, these service inadequacies would not be resolved and would in fact only get worse. The move by CORP from 5 day to 2 day/week service was the final act that forced us to abandon the JIT protocols of rail and in turn switch to trucking because we need reliability of service and certainty as to our receipt of raw materials for scheduling our manufacturing plants. CORP's rail service did not provide the reliability of service or certainty that we had received from the rail operators on this line in the past and which service we had developed our mills and product line around.

The problems we faced with uncertainty and delay were felt both in our plywood manufacturing facilities as well as our lumber facilities. In addition to its plywood facilities, Roseburg also operates a stud mill in Riddle. The Riddle mill has historically received a major percentage of its raw logs via rail from its sister company's timberlands in California. With the reduction in rail shipments out of northern California we were forced to develop new sources of raw material. While we have been able to do so in part due to the depressed lumber and plywood markets, these log markets will not be available to us at economical rates when the demand for building materials is restored their its pre-2007 levels. The price of the raw material is dependent both on the acquisition costs and the transportation costs. In the case of logs for our Riddle mill, the sourcing shift away from the northern California timberlands resulted in us incurring increased acquisition costs for logs primarily due to the transportation costs. In addition to the cost, the loss of this service; service delays; and uncertainty of rail all combined forced us to shift away from raw material out of California and in turn acquire the majority of our material from Oregon. The ability of RFP to utilize the larger logs generated from the California timberlands was tied to the ability to ship by rail. It simply was not economical to ship these larger items by truck.

Not only have our acquisition costs increased as a result of not having access to the rail to ship large logs out of northern California, the lack of rail transportation has forced us out of the "green market" for stud lumber, a market that we had successfully developed for our plywood product line. Our sister company's purchase of its California timberlands was a strategic move made years ago to provide raw material for our lay-up plywood operations in Coquille, Riddle and Dillard Oregon. Roseburg Forest Products' facilities require special veneers to make their products - which veneers we obtained from the Weed facility. In addition to our normal sanded plywood product line, we had recently developed a niche market for "green" certified products under the Forest Stewardship Council ("FSC") produced at our Riddle facility. The ability to acquire logs off of the California timberlands was a critical ingredient in our attaining this high level FSC green certification. Our northern California timberlands are one of the few FSC certified timberlands - very few private timberlands in Oregon are so certified.

While we are able to add trucks to ship veneer to maintain the FSC position in plywood, due to the uncertainty in CORP's Siskiyou operations during 2007, we made the decision in the fourth quarter of 2007 to not market our FSC status in the stud lumber product line. We made the decision not to introduce that product line out of our fear that CORP would not provide the service required to ship the logs out of northern California to our stud mill in Riddle as required to support the program. This product line was dependent upon shipments of green certified logs from our northern California timberlands to our Dillard facility. Since we lacked reliable service and it was uncertain whether logs could be delivered in a timely manner or even whether the line would continue to operate, we were forced not to introduce the FSC stud lumber program for our customers.

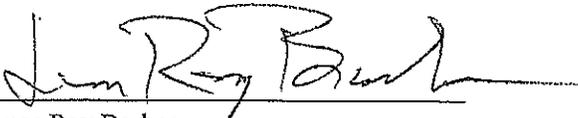
The larger logs that we obtained from the California timberlands that were railed north to Oregon are those that are oversized for our veneer plant in Weed, i.e., they are too large to be manufactured in that plant but could be manufactured at Riddle or Dillard. Now they are sold into the northern California log market at an economic loss since that market area has for some time been depressed because of the lack of available manufacturing facilities in the surrounding area.

While the Board appears to distinguish between impacts to our company and those to our customers, clearly with respect to both the veneer and the green program, the customer for the material shipped from California was our own mills. As the customer for this material, the deterioration in service provided by CORP was not only substantial, but it was also directly attributable to the opportunity loss of not being able to enter the FSC stud lumber market. While we have been able through quick action to rearrange shipments from other sources to meet our customer needs, this is a hardship on our mills that was a direct result of the inadequate and unreliable service provided by CORP.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Dated this 20th day of March, 2009.

ROSEBURG FOREST PRODUCTS

By: 
James Ray Barbee
Vice President - Marketing & Sales

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35175

SUPPLEMENTAL VERIFIED STATEMENT OF SUSAN HART

My name is Susan S. Hart, I am the same Susan S. Hart that previously submitted verified statements in this proceeding. As established in my original verified statement, I am Office Manager of Timber Products Company, LP ("TPC") in Yreka, California. Among my responsibilities is to oversee our outbound shipping needs from our facility in Yreka, California to our multi-plant destinations (our customers) in Southern Oregon.

I make this supplemental Verified Statement to address comments made by the Surface Transportation Board ("Board") in its decision of March 3, 2009. Specifically, I am responding to the Board's request for additional information.

My statements herein are based upon my own first-hand knowledge of the service provided by CORP as well as its predecessors. Further, the information herein relative to TPC's shipping facilities is made upon my own knowledge of our various facilities.

- 1. Timber Products Company internal rail transportation facilities are adequate and have been adequate through the last several decades. Building more track and loading facilities is not feasible.**

Among the items the Surface Transportation Board requested further supplementation was the "extent to which internal difficulties at their Oregon mills contribute to the various problems about which RFP and TPC complain" (Decision p 7). I provide the following information to clarify this issue.

At the onset, it is important for the Board to recognize that from the time period I assumed oversight of rail freight for TPC in 1994, our facilities have been adequate to handle all of our railroad shipping needs. Commencing in the spring of 2007 we started having problems in communicating on a regular basis with CORP. It was essential to have frequent communication between TPC and CORP to enable us to make adjustments in our shipping based upon CORP's schedules and to keep things flowing. When the communication link became sporadic we simply were left in the dark as to when cars would be shipped, empties returned etc. Multiple attempts were made to contact CORP that went unanswered. Later in the summer of 2007 we started having problems with unannounced dropped haulers. Similarly with the failure of CORP to deliver empties to us, we simply could not tender loaded cars to them. While the train chart implies they hauled all the cars tendered, that is not an accurate reflection of what was occurring since we had more material we would have shipped except they were not delivering empties to us to load and ship. These are just some – not all - of the examples of how service was continually on a downward spiral commencing in early 2007. It was only commencing in the fall of 2007 through the spring of 2008 when we experienced service problems resulting from CORP's inability to move cars in a timely manner, failure to provide cars, and, its bunching of rail cars at the various facilities, that we were unable to meet our rail shipping needs. Based upon the long history of the facilities being able to handle the shipping, the 2007-08 rail issues were clearly service related and not a problem with the facilities. As noted above, throughout the 15 years I have been responsible for rail transportation at our facilities we never had a problem with facilities being able to handle our rail shipping.

While CORP argued, and the Decision implies, that the facilities need to be expanded to allow the bunching of rail cars at our facilities, the facilities have never been a problem in the past. In addressing this issue, I note that our Yreka facility which ships veneer to our customers and our mills in Oregon, has more than adequate spur facilities, the only problem in Yreka occurs when CORP bunches cars or there is a system emergency such as a derailment. With respect to our plywood lay-up facilities in Oregon, again our problems are not facility oriented but are a reflection of service problems such as bunching of cars and CORP's failure to move material in a timely manner.

With respect to CORP's assertion that our facilities are the source of our problem, I note that the Oregon facilities are well established plants that are settled in manufacturing complexes where land space is a premium and the neighboring properties are occupied by other industrial or rail facilities. Our plywood mills have been in existence at these locations since 1938 in Medford and 1945 in Grants Pass. Each of our Oregon facilities was designed to accommodate both the shipping of finished goods and accepting raw materials by rail. We inventory raw material at our California facility and then ship on a Just in Time basis to meet our manufacturing requirements.

While the implication is that our spurs are too short and that TPC could resolve the CORP service problems by simply lengthening the lines, it is simply not possible to lengthen the lines sufficient to accommodate the volume of rail cars (13 rail cars) that would be necessary to move our raw veneer from our California mill if service were only twice a week. Secondly, even if we could expand the spurs, we would still suffer from the problems created by the bunching of cars. The volume of veneer we process has required the five day a week service and the facilities have historically been able to adequately unload this level of material under this schedule.

As noted above, we operate with the veneer being inventoried at our California mill and shipped as required to meet the production orders at the Oregon mills. Historically, five day a week service met the needs. To meet these schedules on a 2 day a week schedule the trains will need to move rail cars containing several production days of veneer rather than a daily level. At the 5 day a week level we were shipping 5 cars per day, therefore to move all of these on the 2 day a week service would involve 13 car loads from us which when coupled with RFP's loads would exceed the train size that CORP said it could move over the Siskiyou. Additionally, that number of cars exceeds the safe storage capacity at CORP's railhead in Montague, California.

Further, the allegation that CORP made that our Medford mill has room to place only two cars, is simply wrong. As discussed later and demonstrated by the photos I have attached hereto, the mill not only can accommodate more cars on the siding, the siding is adjacent to CORP's own yard which yard has consistently provided space for the rail cars necessary to operate the mill.

While the statement as to internal difficulties implies that the spurs could be expanded by adding more track, it is important to recognize that because of the maturity of the plant and the other industrial developments in their surroundings, just adding another spur for access is not only very difficult and expensive, it is also with respect to the Oregon mills a physically impossible proposition. As the photos attached and discussed below depict, our facilities extend to the property line.

Further, it is somewhat disingenuous of CORP to make the argument that the spur lines could be expanded given that they are the landowner adjacent to the mill in Medford and any expansion would require acquisition of its land, the very land that CORP utilizes as a switch yard and as its main line.

To illustrate the difficulties in expanding the spurs and to depict the existing facilities, I am attaching a number of photographs to illustrate TPC's rail facilities:

The first photo depicts the TPC mill in Grants Pass and the spur accessing the plant (Photo 1). The photo not only depicts the spur it also depicts the loading/unloading dock which is also depicted in Photo 2. This dock is made of reinforced concrete and is many feet thick. The dock is designed to be at the same elevation as the bed of the railcars to allow a forklift to load finished products into box cars and unload veneer from specially modified flat cars. At any given time this spur can accommodate 8-9 rail cars.

I note that the front one-half of the spur depicted in Photo 1, is covered to accommodate loading and unloading of dry material during wet weather periods. Photo 3 also depicts the front portion of the same spur and the overhead roofing. Protection from the weather is required since some of the veneer we utilize is very high value material that is received by rail from the east coast. This material is high value and is dried before it arrives. If it gets wet it will be ruined. Typical of this material are the Birch and Black Walnut veneers which are 1/42" thick by 4' wide by 8' long. These veneers are depicted in Photo 4. These thin veneers cost \$98/sheet and are the top surface of the panel. The imported veneer is dried at the manufacturing facility back east and must be kept under cover and dry until glued under high pressure and temperature into a panel. In addition to these expensive veneers, we also unload at this facility the veneer produced at Yreka. Our Yreka veneer is used for the back and inner plies and is not dried prior to shipment –it can withstand more moisture exposure than the Birch and Black Walnut. In addition to the requirement to maintain a dry facility for the dried veneer, the finished panels must also be kept dry while loading into boxcars.

Photo 5 depicts the same spur depicted in Photos 1-4, only this photo depicts the rail spur as it enters the building. To the right of the tracks is the outer wall of the building and adjacent to that wall is a chain link fence which is the property line. As noted earlier, CORP is the adjacent property owner immediately bordering us across the chain link fence. The CORP right of way is immediately across the fence. Given the location of the right of way, there is no room on TPC's property to add another spur and loading dock. Similarly, as far as lengthening this spur it also is impossible given that it already occupies all of the useable space within the building and any expansion would require that we extend onto the adjacent owner's facility.

To place this spacing into perspective, the TPC's daily production at this mill produces 6 railcars of plywood. This level of production requires us to load finished products and unload veneer at the rate of 10 to 12 cars/day. Two day/week service won't work with a spur that can only spot 8-9 cars at a time when 50 to 60 car loads per week are required to be moved in and out of this facility.

Furthermore the 2 day a week service will require bunching of cars on a nearby siding. Bunching will result in loaded veneer cars sitting unloaded at the Oregon mill while the veneer plant in California has no cars to load.

To visualize the size and limitations imposed by storing substantial inventories of veneer, can be seen in photo 6 where the veneer can be seen beyond the parking lot. This is the green veneer from our Yreka facility. Similarly, the volume of finished products that is ready for shipment to customers is evidenced in Photo 7 near the loading dock.

In the case of the TPC mill at Medford this mill can spot 6-7 rail cars on their rail spur (not two as alleged by CORP). This spur accommodates both the daily loading and shipping of finished products as well as the daily unloading of veneer. Photo 8 depicts this spur as it enters the building and photo 12 depicts the spur as it passes through and out into the open clearly showing the amount of loading and unloading space on this spur for 6-7 cars.

Photos 9 & 10 depict the inventories of finished products at the Medford mill site. Maintaining an inventory of finished goods to await shipment under a two day a week service is not a cost effective practice and again does not conform with Just In Time protocols.

While the Medford mill spur does not immediately abut the neighbor's property line - which neighbor is again CORP, adding another spur would be just as problematic as adding a spur at the Grants Pass facility. With respect to the Medford mill, the problem is the presence of underground facilities including a fire control system. Photo 11 depicts the location of a large buried fire system tank with accompanying controls. This is the fire system for the plant and is outlined by the red posts. To add a spur at this location would require constructing the spur over the top of that installation which is simply not feasible.

Further complicating the construction of an additional spur at the location of the existing fire system is that it would require construction of another loading dock to allow the loading of the box cars and unloading of flat cars. In this case the only location where a dock could physically be built would result in the

dock being functionally useless since it would be on the wrong side of the tracks. To use a dock situated on that side of the tracks would require not only that there be some system for crossing both spurs (the existing as well as new spur) and that the crossing be at the elevation of the loading dock. Modifications of this nature not only would be difficult they would also be of limited if any functional value. The claim that these modifications could easily be done is clearly an indication of CORP's lack of operational experience and is indicative that the CORP representative who made the comment relative to solving the internal problems simply lacked familiarity with the TPC facilities' operation or layout.

The physical layout of these two plants together with the lack of space between them and the surrounding neighbors presents a nearly insurmountable task to modify rail access to allow the storage and movement of the number of rail cars that would be required to accommodate CORP's arbitrary decision to reduce service to 2 days/week. To cavalierly dismiss these physical impediments as "TPC's decision not to address it's internal problems" shows a lack of understanding of operational constraints that are common for rail shippers situated in historic industrial areas - particularly in Oregon wherein land use laws promote the concentration of facilities and the resulting concurrent congestion in industrial areas. Clearly even if one could build more track and add more inventories at the facilities, it would still not resolve the deterioration in rail service by CORP or address the problem of CORP's inability and unwillingness to provide adequate service.

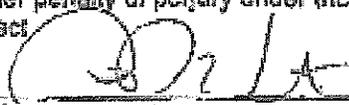
2. The decline in rail service has been substantial and measurable for several years.

In the Decision, the Board also noted that rail service was adequate under the 2 day a week service (Decision p. 6); however, this statement simply ignores the fact that we were forced to move our shipping away from rail in order to meet our needs. Obviously 2 day a week service is adequate when no one is shipping. The lack of reliable and dependable service effectively led us not to tender additional cars. Since the fall of 2007 we could not rely on CORP to communicate with us on their ability and schedule for delivering empty cars to our veneer facility in California for loading, or for moving our loaded veneer cars to Oregon in a timely manner. Lacking adequate delivery, or assurances of timely delivery, we originally stopped shipping by rail anything that was time sensitive. Later we found that we could not obtain assurances that even the transit of items that were not time sensitive, could be adequately delivered and therefore were forced to switch entirely to truck. If we had adequate and timely service we would still be shipping by rail. Service was a progressive deterioration until it was no longer adequate and therefore we simply stopped tendering the full number of loaded cars to the railroad. Further, we were not able to get empties back for loading. Some days we didn't tender loaded cars since CORP simply did not deliver empties to us to allow loading - we couldn't ship if we had no cars to load.

The deterioration in service was in contrast to my experience over the 1994 through 2007 time period wherein shipments were timely and regularly made and we were confident in the service. In addition, in the past I would routinely speak with the local railroad employees and be kept apprised of rail car status. These communications allowed me to plan in advance for alternative chip and veneer transport by truck when car shortages were anticipated or cars would be delayed. This prior practice and experience is in stark contrast to the manner in which the railroad was operated starting in 2007. The deterioration in service was substantial and very measurable. When CORP subsequently informed us that it would switch to two day a week service, it was clear that if they could not provide adequate service at the five day a week service level then it would be impossible for them to provide adequate service at the two day a week level. While the train charts indicate they hauled the cars presented to them, it ignores that we were not tendering cars since they were demonstrating they could not handle more cars.

It was a result of these service inadequacies that led us to stop tendering cars to CORP.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Susan S. Hart
Date: 23 MAR 09

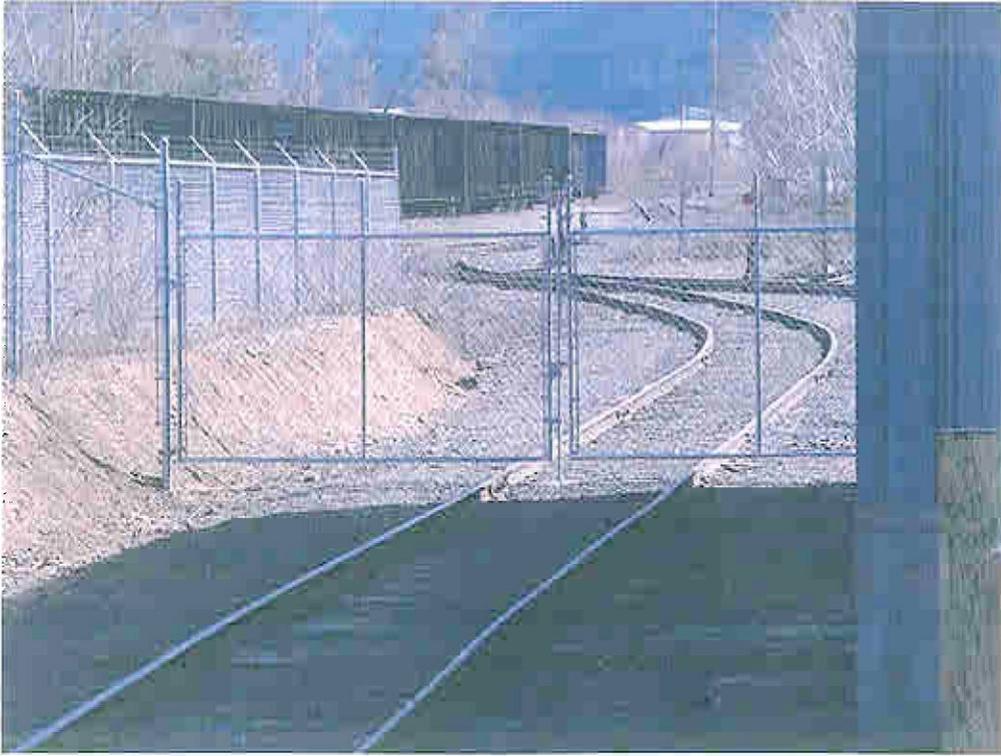


PHOTO 1



PHOTO 2

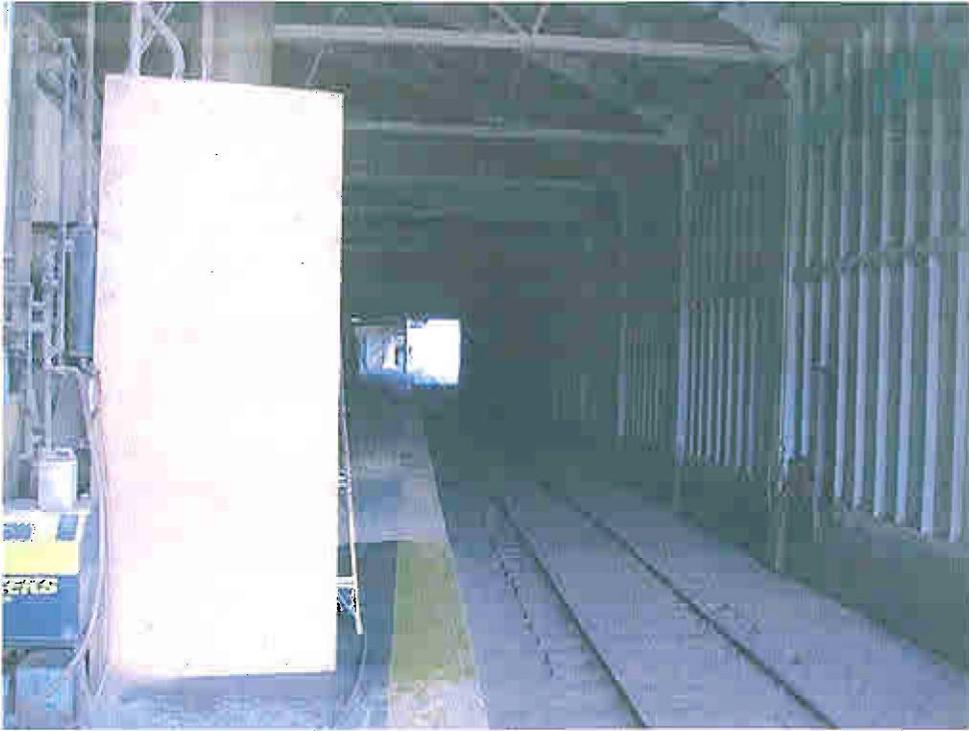


PHOTO 3



PHOTO 4



PHOTO 5

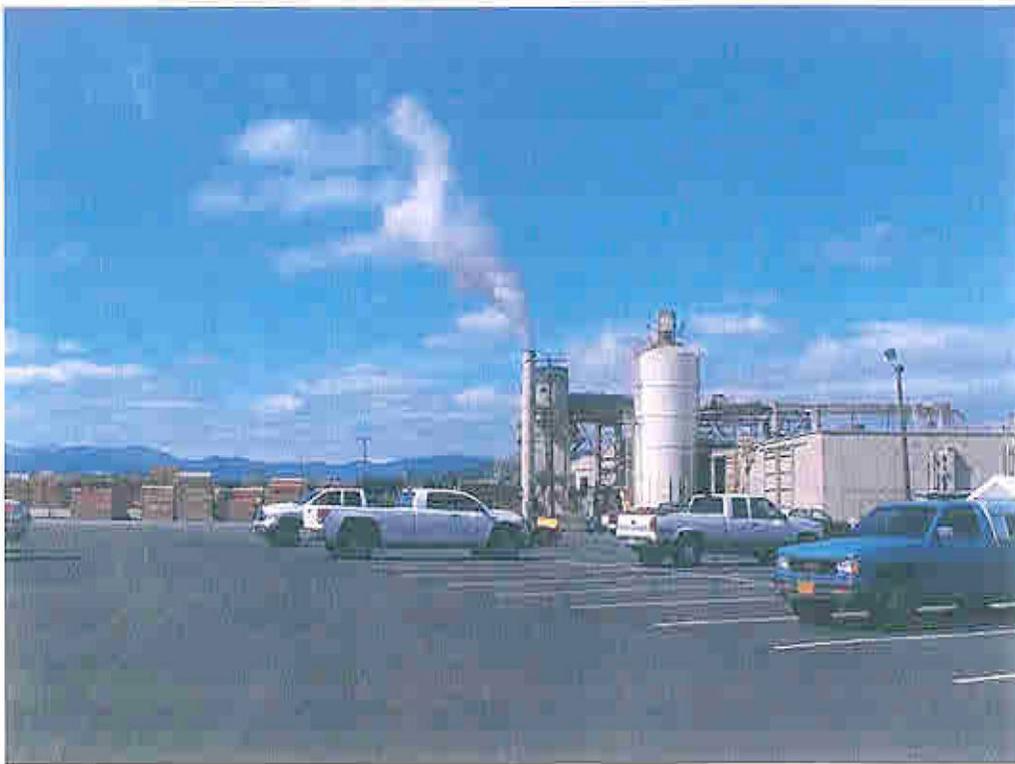


PHOTO 6



PHOTO 7



PHOTO 8



PHOTO 9

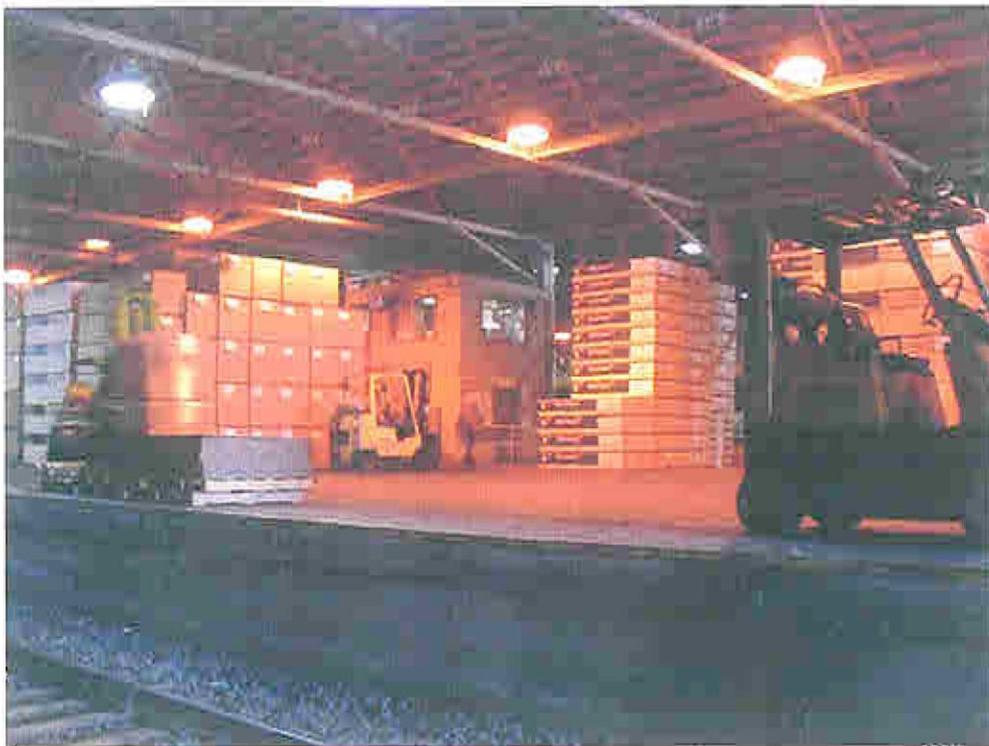


PHOTO 10

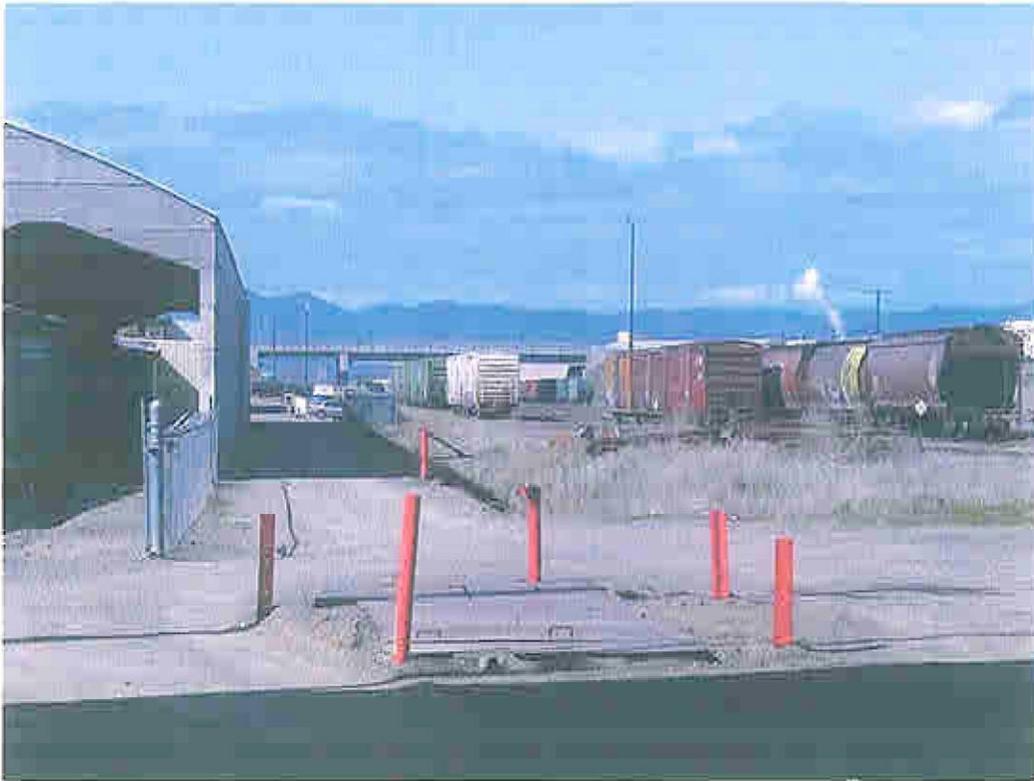


PHOTO 11



PHOTO 12

3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35175

SUPPLEMENTAL VERIFIED STATEMENT OF ANDREW E JEFFERS

My name, is Andrew E. Jeffers, I make the following statements based upon my personal knowledge. I am the Traffic Manager – Rail for Roseburg Forest Products. In this position I am the primary contact with the various railroads, including CORP, for all rail shipments either coming into or out of our plants. I deal with railroads all over the country. I am the same Andrew E. Jeffers that previously filed a rebuttal statement in this proceeding. The following statements address issues or questions raised by the Surface Transportation Board (“Board”) decision of March 3, 2009.

1) The Roseburg Forest Products – CORP Contract did not Cover Shipments to Saginaw.

In the decision of March 3, 2009, the Board as part of its review of the Siskiyou Shippers’ Coalition argument that “CORP’s rate increases, combined with its failure to quote a rate for proposed new traffic in December 2007, show that CORP deliberately intended to downgrade service on the Line“ (Decision p. 8).

While the rate increase CORP imposed on the Siskiyou line in 2008 was clearly an attempt to drive away traffic, the rate increase did not stand alone. The rate increase was just one of many actions by CORP that demonstrated that it did not want shipments on the line. In my prior verified statement, I used as an example of the lack of good faith efforts by CORP to accept additional shipments. While CORP had stated the line did not have sufficient traffic, we made attempts on several occasions to inquire not only as to how much additional traffic they needed and in fact told them that we could generate more traffic. They did not respond to our repeated requests as to how much additional traffic they needed, nor did they provide us with information on how to coordinate additional shipments that we proposed. One and not the only example of this was the shipments from Weed to Saginaw, Oregon.

In the Board’s decision it incorrectly stated “the opportunity for new traffic to which petitioners refer involved only 4-5 cars per month to be shipped by RFP from Weed to Saginaw, Or.” (p. 9). Based upon this misconception, the Board raised the question of “[i]f the contract applied to the proposed new traffic, then it is unclear why RFP would have asked CORP to quote a rate, since presumably the contract would set one.”

To clarify this misconception, I note that I was the one who made the attempt to develop additional car shipments over CORP's lines, among these attempts was the proposal to ship these cars to Saginaw.

First, I note that the Board's confusion on this issue results in part from a misconception that there was ever a rate either by contract or public filing for shipments from Weed, California to Saginaw, Oregon. Not only did the contract not include shipments to Saginaw, the public tariff filings did not cover shipments from Weed to Saginaw. My attempts, and attempts by others within Roseburg Forest Products ("RFP"), to obtain a rate for shipments never received a response. We made repeated attempts to receive a rate all of which ignored.

The second misconception that contributed to the Board being unclear, is the fact that the issue of generating new traffic to Saginaw was not merely the failure to quote a rate, it was the need for CORP to communicate with us as to how to coordinate shipments over this route. Since the Saginaw facility was small, it was essential to provide close coordination between RFP, the customer in Saginaw, and CORP. We made repeated telephone requests to CORP to work out schedules and coordination of moving both full and empty cars into and out of the customer's facility, but could never get a response.

I presented this case in my prior verified statement as an example of how when RFP developed additional customers which could be served by rail, and in turn resulted in increased transit of railcars, CORP not only did not provide us the service, they did not even provide us with responses that were basic to being able to move the cars.

As noted this was not a rate issue – since CORP never quoted a rate, it was clearly a service issue, in the face of developing increased carloads CORP was not willing to provide even the basic service one would expect of a common carrier. As a result this customer and the market he represented simply was not available to us and we lost the customer.

I want to be clear that this was not an isolated instance. We had similar experiences with CORP with respect to shipping material from Weed to our mills in Oregon. When CORP made the statement to RFP that they wanted more traffic, we asked them how much and what they could serve. As with the Saginaw situation, we got no response. It is my opinion that the CORP was not serious about providing the service to move additional cars. I personally was prepared to ship additional car loads of logs from California to Oregon. As with the Saginaw scenario we could not get information from CORP as to whether they could handle the logs cars, when the cars would be available, and the timing.

I present these examples to illustrate that service was the issue, it was not only an issue of quoting rates, it was also an issue of coordinating and scheduling, making cars available, responding to communications from the shipper, and, in general not providing any service. One could argue it was incompetence on behalf of CORP however, that was not the case since we were provided the level of service we requested prior to 2007. It

was only subsequent to that date that service was downgraded and we were unable to obtain the service requested.

Based upon my own efforts to line up additional opportunities for increased shipments, I was prepared to ship an additional 4-5 cars per month north from Weed to Saginaw. If the market developed as I anticipated then I was planning on shipping additional cars.

2) CORP is Failing to Provide Adequate Rail Service.

In its order, the Board noted that it was unable to find that CORP is failing to provide adequate rail service. (p.10). While RFP is currently not shipping cars north over the Siskiyou line, this switch from rail to truck was the result of CORP limiting its service to two days per week, longer transit times, and failing to handle all the material presented to it.

As I noted in my prior verified statement, RFP ships raw logs and veneer north out of California to its facilities in Dillard and Riddle and that it ships woodchips south from Weed to Black Butte. (p. 3)). What the Board did not recognize is that RFP has leased rail cars that we use to ship material north. These cars are then unloaded and shipped back to Weed for reloading. Based upon the unreliability in obtaining rail cars in a timely manner, RFP directly leased cars to assure itself of the timely availability of cars for its various shipments. The leased cars enable us to control shipments and therefore have timely movement of materials. The economics of the leased cars were established based upon the efficiencies of being able to schedule the cars in a manner wherein some cars are being unloaded in Oregon while other cars are being loaded in California, thus both facilities can operate in an efficient manner. To make this work we require not only that cars not be bunched at one mill, but also that we have five day per week service. The cars were essentially in service for the full work week. However, if the cars are only moved two times per week then the cost of the cars becomes a significant negative factor on the economics of rail and the bunching of cars prevents us from an orderly movement of materials.

The bunching of cars under the two day per week service results in RFP not having adequate empty cars in Weed during the majority of the week. This failure to move cars in a timely and adequate manner was a continuous problem but became highly exacerbated when CORP went to the 2 day per week schedule in January 2008.

This deterioration in service was substantial and measurable after January 2008 throughout the 2 day week operations and continued until we were forced to go to trucks in order to maintain our mill operations. I am able to document that empty cars were bunched in Oregon on 2-3 days in January 2008 alone, and in turn loaded cars were bunched in California 2-3 days in January 2008 as well. By bunching the turn around times precluded us from shipping all the volume we normally shipped.

Recognizing the economics of leased rail cars, it is important to also recognize that by the shipping schedules of CORP wherein cars are left behind and bunched, we frequently found ourselves with all of the cars bunched at either the north end or the south end of the line resulting in no cars to load at one end or no cars to unload. One facility would be overloaded while the others would be sitting idle. This was a scheduling problem that became acute starting in 2007 and became highly exacerbated with the shift to two day per week service.

The bottom line was that as a result of the bunching we experienced we simply were not able to increase the number of shipments over the CORP line. If the cars had been properly scheduled then we could not only restore the full level of shipments but we could efficiently add more shipments. As long as the cars were bunched at one end or another there simply was not space, facilities, or room to add additional cars - particularly if these additional cars ended up being bunched as well.

I want to be clear, RFP's tendering of cars for shipment was limited not because we did not want to ship by rail, but by the failure of CORP to move the traffic in a timely manner, CORP's bunching of cars, and by CORP's failure to communicate with us as to shipping dates and delivery dates. Tendering of cars is dependent upon the quality of service, in the absence of adequate service RFP simply was not willing to tender more cars only to see them meet the same fate as the other cars and most likely only to see the service issues we were already facing become more exacerbated by the inability of CORP to move traffic.

3). UP not willing to Operate over the Siskiyou Summit.

In the Board's decision it notes that CORP stated that other rail options are available and that UP retained the right to operate over the Siskiyou Pass. It also notes that the record does not reveal whether UP would be willing to provide service and under what conditions. (Decision p. 8).

I discussed just this scenario with UP prior to CORP's cessation of traffic over the Siskiyou summit. I attempted to work with UP to establish rates for these moves. This traffic would move via UP's Cascade Sub-division line. UP was very candid with me and advised that this line was at or very near capacity.

4) Internal Difficulties at RFP are Result of CORP

In the Board's decision, it requested supplementation as to "the extent to which internal difficulties at their Oregon mills contribute to the various problems about which RFP and TPC complain." (p. 7).

In response to the Board's inquiry I inspected our mill rail facilities and examined our shipping processes. I note for the Board that RFP has siding for loading and offloading that is adequate to handle our shipping requirements. I further note that with the exception of the OSB facility in Riddle, these facilities have been in place for

decades. Throughout the last several decades these facilities have handled the loads with little problem and in fact handled far more traffic during the high volume periods of the 1970's and 1990's. It is my view that these facilities, including the new OSB facility could handle far more traffic than currently being served.

The only physical limitations we have at our facilities are when CORP bunches cars and jams up the system. CORP's failure to timely deliver or remove cars, or for that matter to communicate with us as to shipments and schedules, are significant inadequacies in service not in facilities.

To illustrate the loading facility at Roseburg's Riddle mill I have attached two photos, one depicts the loading facility looking to the east and the other same point only looking to the west. The facility is well equipped to handle a significant number of rail cars. The Riddle loading facility allows us to spot 14-15 cars on the spur. This allows us to unload veneer at one end and to load finished product simultaneously at the other end. It is a full day's operation to process the 14-15 cars. Once we start loading or unloading we can not stop to move the cars out to facilitate different cars on the spur since it would create a safety hazard and require closing up cars and moving all equipment and material away from the cars. In addition to the plywood facility we also unloaded 3 cars per day at Riddle and 2 log cars per day at Dillard. If two days worth of veneer was shipped to Riddle, I could not process it nor could I store the cars while awaiting space to unload. The siding outside are not sufficient in size and any stored cars would create both a safety hazard and impede normal mill operations. Two day per week service simply would result in a jam up the system.

5) CORP Service Did Not Regularly Move Cars.

In its Decision, the Board notes that “[p]etitioners do not dispute, however, that if all five of CORP's locomotives were in service, CORP could move as many as 37 carloads a train (74 carloads a week) north over the Siskiyou Pass on its 2-day-a-week service schedule.” (Decision p. 6).

I reviewed the Train Chart submitted by CORP that is referenced by the Board and note that during the period when the 2-day-a-week-service was in place, CORP on only one occasion had the referenced five locomotives. I note that on only 10 days during the period of January through May of 2008 did they in fact operate 5 of its locomotives. Even when they did operate all 5 then did not move 37 carloads a train. In fact on four days of the ten days in which they operated all 5 of their locomotives (1/24/08, 2/08/08, 2/19/08 & 2/21/08) they moved 28, 30, 33, and 31 carloads and on these days left behind 5, 5, 9 and 8 carloads. Never did they move 37 carloads in one train. I point this out to illustrate that the number of locomotives is immaterial to how they operated, for not only is the 37 carloads mere assumptions, based upon actual movements, they were simply not able to handle the theoretical 37 carloads a train. Further, the number of locomotives they owned is also immaterial for if they were serious about providing the service they would have leased more locomotives or larger locomotives.

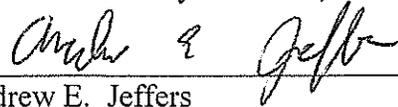
While the record is silent as to the number of carloads tendered since we were well aware that in 2008, that CORP was not able to move more cars in a timely or efficient manner. Further, we were well aware that even when we offered to tender more cars, CORP was not prepared to provide us with the basic in shipping information to enable us to ship the cars.

CORP outlined the volumes that RFP represented it could tender to CORP and that we represented that more business was available if we could attain a desired level of service. It's interesting to note that in CORP's response, no mention is made of the fact that CORP could not service the volumes we originally tendered. Also no mention is made that it took several meetings and many discussions for them to admit that they were unable to service the tendered volumes. For example, prior to going to the two day a week schedule, we developed a program in cooperation with CORP wherein we would ship 5 log cars per day from Weed to our Oregon mills (Dillard & Riddle). CORP in turn was to cycle the empties back in a manner that allowed us to ship 5 loaded cars north each day resulting in 25 loaded car loads per week. We leased additional railcars to make this program work. CORP was able to meet these cycle times originally in late 2007, but over time dropped to only 4 days per week. They were simply not able to make the turnarounds as they had done in the past and as they committed when we initiated the program. At that point we would have logs ready to load but no empty cars available. This not only adversely impacted our scheduling at the mills, it drove up our costs of rail cars and left equipment and crews sitting idle awaiting cars. This occurred prior to the 2 day a week schedule and clearly demonstrated to us that we would not be able to physically and economically move these cars on a 2 day a week schedule. We originally developed this log program in an effort to meet CORP's request for additional loads.

RFP tried to offer these volumes based upon its good faith belief that CORP would have the staffing and equipment needs to handle our business. At no time during these discussions did CORP ever indicate that RFP was trying to give them more business than they could handle. In actuality we prepared to tender the additional cars but given the lack of empties to load, we simply could not ship. So when CORP alleges they hauled everything we tendered, it is a chicken and the egg comment, since they were not cycling the empties to us in sufficient time and numbers to allow us to ship the full amount. The failure to move our log cars on the agreed upon schedule, was clearly substantial deterioration in service and was easily measured.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Dated this 20th day of March, 2009.



Andrew E. Jeffers



Riddle Loading Dock Looking East—Photo 13



Riddle Loading Dock Looking West—Photo 14

4

SUPPLEMENTAL VERIFIED STATEMENT OF COURT HAMMOND

My name is Court Hammond. I am President of Yreka Western Railroad Company (YWR). YWR is a Petitioner in this proceeding. A verified statement in my behalf has previously been filed in this proceeding. My background and qualifications are contained in that statement. As particularly pertinent in connection with this supplemental verified statement, I am familiar with the effect of snowfall in the area of the Siskiyou Mountains on railroad operations in that area. YWR operates between Yreka and Montague, California. Those points are located at high elevations that routinely receive very heavy snowfall in winter. As President of YWR, I am familiar with the effect of heavy snow on rail operations.

My testimony is directed at the statements of the Surface Transportation Board (STB) at page 7 of its decision in this proceedings served March 4, 2009 to the effect that CORP was unable to provide rail service during the period between January 31 and February 12, 2008 because it "ran out of space to push the snow" from heavy snowfall at that time.

Based on my experience, that snowfall did not disable CORP from providing rail service during that period. The snowstorms between January 31 and February 7, 2008 were widespread, not concentrated on the Siskiyou Summit Pass. I note that the newspaper articles that were attached to the verified statement of Mr. Patrick Kerr of CORP stated that I-5 was closed for only four hours on February 1, and was operational at all times on all other days during the period between January 31 and February 12, 2008. Moreover, closure of I-5 has no necessary bearing on rail service over Siskiyou Summit. I live in Ashland, OR and drive over I-5 to Yreka, CA each day for work on YWR. The Pass on I-5 is routinely closed for snow amounts of less than 2

inches to impose chain restrictions for 2-wheel drive vehicles and trucks. Most closures of I-5 are due to accidents and traffic congestion rather than snow accumulation. The newspaper articles refer to other closures of highways due to snow, but with the exception of I-5, all of those highways are located 50 to 95 miles to the southeast and east of Siskiyou Summit.

Mr. Tom Hawksworth, retired marketing manager of CORP, stated to me prior to the January-February storms that the CORP operating department was given orders from Rail America management not to run any trains until the storm(s) had abated. He also stated that general snow removal procedures dictate that during snow events, light locomotives be operated over a line to keep snow accumulations to a minimum. Had the CORP operated trains during the snow events, the total accumulation would not have multiplied and strained CORP's ability to deal with it. This was a marked change in operating practices and service schedules since Rail America was acquired by Fortress Cap.

Let me briefly describe snow removal and operating practices on the YWR, the Colorado Central Railroad, the Colorado Kansas and Pacific Railroad, and the Trinidad Railroad, on which I have been employed as Chief Operating Officer and Locomotive Engineer. When snow levels exceed the ability of locomotives and pilot plows, a flanger or spreader and flanger will be sent out to move the larger snow drifts out of the cuts. Moving the snow away from the center line of the track with flangers and or spreaders prevents the snow from dragging against the car/locomotive body. The flanger is a short flat car type with 2 plows, one for between the rail snow removal and smaller wings for pushing the snow clear of the car body or locomotive body

clearing on the track. When this action is not sufficient to keep up with snow accumulations, a spreader with a front mounted plow and very large, extendable side wings is deployed.

CORP/RA maintains such a spreader at the Medford yard in Oregon, solely for snow events on the Siskiyou subdivision. Attached to this Statement as Appendix CH-1 is a photograph of that spreader in CORP's Medford Yard on March 28, 2009. This unit is used to move large quantities of snow out of the track and uses the larger extendable wings to push snow 5-15 feet clear of the center line of the track. The snow is pushed to the downhill side of the right of way. This unit is shown in the CORP photographs.

The Siskiyou Pass is a mountain line with an uphill side and a downhill side, much like the Colorado operations described above. The contention that there was no place to push the snow is not true. Cuts on the right of way are the first location to require snow removal efforts. The pilot plows on the locomotives will push snow to the side and in front of the unit and will keep a cut of the right of way open, and is usually sufficient with light to moderate snow fall. It is very effective in daily operations. In a cut, only so much snow can be pushed aside before it falls back into the track. Heavy snow removal is not accomplished in single pass of equipment. It requires several passes to move the snow to a location, or out of a cut, where it can be pushed aside or downhill. This is a time consuming and costly feature of snow removal.

A flanger and/or spreader is used for larger snow accumulations, (usually 3 to 4 feet or more). With two or more locomotives pushing the snow, the wings of the flanger or spreader allow for removal of the snow from the cuts, and then the snow is pushed father away from the

centerline of track by extending the wings. Once the level of snow exceeds the capacity of the spreader to push snow clear of the right of way, or over the downhill side of the grade, bulldozers or other heavy excavation equipment are used. The bulldozers or loaders will push the snow farther aside, providing open space for the spreader to move its next snow accumulation. This is not measured in inches of snow, rather feet. Spreaders will handle 5-10 feet of drifted, heavy and compacted snow.

The UPRR on Donner Pass over the Cascade Mountains utilizes this procedure very effectively with much larger snow accumulations than the Siskiyou Pass.

CORP's reduction in train service from five to two days per week contributed to CORP's inability and/or unwillingness to provide rail service during the beginning of February, 2008. When CORP provided daily train service, operation of the locomotives itself had a significant effect in keeping snow accumulation down. As a result, use of heavy snow-removal equipment was kept to a minimum. However, with trains not operating more than twice per week, it was necessary for CORP to operate light locomotives or trains during non-service days in order to prevent snow from accumulating. CORP failed to do so.

YWR's trackage is located less than 27 miles from Siskiyou Summit. The Summit is approximately 2,000 feet higher than the elevation on which YWR's trackage is located. YWR experienced the same heavy snowfall that was experienced at Siskiyou Summit, yet YWR was able to provide daily rail service to Timber Products Company (TPC).

There were sufficient days between CORP's scheduled 2-day-a-week operation for CORP to clear the snow, yet CORP did not provide service for extended periods, and failed to provide empty cars for at least 10 days in order to keep up with TPC's production.

The photographs attached to Mr. Kerr's statement confirm the insufficiency of CORP's efforts to remove the snow and provide rail service. None of the photographs show the wings of the spreader in an extended position. The photographs show only the plow clearing the center of the track. The photographs indicate that the snow train consisted of only two four-axle GP locomotives. If the snow actually was as serious as CORP claimed, CORP would have used a greater number of locomotives, including six-axle SD locomotives. Moreover, the photograph showing the buildings was taken at a location looking north from the portal of Tunnel No. 13, which is one of the highest elevations on the line at which snow accumulation would be expected to be the deepest. That location is reached by an access road only a few hundred feet from I-5. A tracked bulldozer or loader could have easily accessed that location to push snow away from the trackage. It is apparent that this means of snow removal was not utilized.

I want to point out in addition that the Train Charts attached to Mr. Kerr's statement contain incorrect information. On January 15 and January 17, 2008, the Charts contain the notation "Due to derailment on Yreka Western no cars I-C". YWR did not experience a derailment on either of those dates. In fact, YWR's records show that it delivered five loaded cars to Montague, CA for interchange to CORP on January 14, 2008 and 10 loaded cars at the same location on January 16, 2008. CORP failed to accept that traffic in interchange on January

15 and January 17 for an unexplained reason other than a derailment on YWR. I note that Messrs. Tom Hawksworth and John Bullion of CORP had stated to me that CORP would not operate over Siskiyou Summit "just to deliver empty cars to Montague."

Finance Docket No. 35175
Ex Parte No. 346 (Sub-No. 25C)
SVS - Court Hammond

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 25, 2009.


COURT HAMMOND



5

LEGAL ARGUMENT

PETITIONERS' EVIDENCE, AS SUPPLEMENTED HEREIN, WARRANTS PRESCRIPTION OF ALTERNATIVE RAIL SERVICE

1. There Has Been A Substantial Measurable Deterioration Of CORP's Service

The standard for prescription of alternative rail service is set out succinctly in 49 C.F.R.

§ 1146.1(a), viz.:

(a) General. Alternative rail service will be prescribed under 49 U.S.C. 11123(a) if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.

That standard implements the following provision of 49 U.S.C. § 11123(a):

When the Board determines that . . . a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, . . .
(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines . . .

In promulgating 49 C.F.R. § 1146 in *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1996), the Board stated that because it is not possible or appropriate to define in the abstract what constitutes adequate service for all traffic under all circumstances at all times, the standard for determining inadequate service would be applied on a case-by-case basis under flexible general rules (at 975). Nevertheless, the Board there said that the standard of "substantial measurable deterioration" described "serious objectively determinable service declines" (*id.*).

Cases decided under the standard of "substantial measurable deterioration" provide a good indication of what constitutes inadequate rail service. The most recent such decision is *PYCO Industries, Inc. - Alternative Rail Service - South Plains Switching, Ltd. Co.*, 2006 S.T.B.

LEXIS 42 (Finance Docket No. 34802, decision served January 26, 2006) (*PYCO* case). The Board there found such deterioration on the following basis (at *10-11):

. . . Here, the daily shortfall of 14 carloads for switching at Plant No. 1 (more than half of the 26 carloads that PYCO previously could load there), the continued lack of delivery of sufficient boxcars to serve Plant No. 2, and the period in November 2005 during which SAW performed no switching at all at Plant No. 2 indicate a serious deterioration in SAW's service to PYCO . . .

In the present case, the evidence shows a deterioration of CORP rail service beginning at the time of Fortress's acquisition of CORP's parent company, and culminating in a 60-percent service reduction (from 5 to 2-day-a-week) in January, 2008. A 60-percent service reduction is substantial and measurable under any reasonable definition of those terms.

Nevertheless, the decision served March 4, 2009 indicates that the 2-day-a-week service may have been adequate for Petitioners' needs, i.e. (decision served March 4, 2009 at 6):

Reduced service schedule. The evidence suggests that the 2-day-a-week schedule CORP implemented in January 2008 was adequate for the number of cars RFP and TPC tendered for movement to their Oregon mills. As far as we can tell from petitioners' submissions, RFP and TPC together tendered approximately 68 carloads of logs and raw veneer a week (60 carloads from RFP and 18 carloads from TPC). Petitioners do not dispute, however, that if all five of CORP's locomotives were in service, CORP could move as many as 37 carloads a train (74 carloads a week) north over the Siskiyou Pass on its 2-day-a-week service schedule. (footnote omitted).

Those findings are refuted in Mr. Jeffers' Supplemental Verified Statement, i.e., on only 10 days during the period January through May did CORP operate with five locomotives, and even on those days, CORP did not move 37 carloads per train. On four of those 10 days, CORP moved 28, 30, 33 and 31 carloads, and left behind 5, 5, 9, and 8 carloads, respectively. (See Train Chart, dates 1-24-08; 2-8-08; 2-19-08; and 2-21-08) (Supp. V.S. Jeffers, Tab 3 at 5). CORP was thus not able to handle the traffic tendered by Petitioners under 2-day-a-week service,

even with five locomotives. In the very words of the governing statute (49 U.S.C. § 11123[a]), it was thus shown that CORP "cannot transport the traffic offered to it in a manner that property serves the public."

Moreover, CORP did not seek to lease additional locomotives or larger locomotives, as they would have done if they were serious about providing adequate service (*id.*). The failure of the incumbent rail carrier in the *PYCO* case to replace a defective locomotive was cited as evidence of inadequate service. (2006 STB LEXIS 42 at *15, "... While equipment failure might be a valid basis for a temporary service interruption, SAW states that it has six locomotives and it has not provided any reason why one of the other five could not have been used to switch cars at Plant No. 2 during that time . . .).

At pages 6-7 of the decision, the Board notes that on nine Tuesdays and four Thursdays between January 15 and May 6, 2008, CORP left carloads behind at origin when it provided train service, and that on two of those occasions those carloads waited up to five days to be transported to Petitioners' mills. It is unclear from the decision whether that evidence was cited to maximize or to minimize the severity of CORP's service failures. In fact, that evidence underscores the seriousness of CORP's inadequate service. A failure to provide service on multiple cars tendered for transportation on 13 occasions in an abbreviated period is a strong indication of inadequate rail service. Petitioners should not have been required to wait one day after CORP's scheduled train service for those cars to be transported, let alone five days after the scheduled service day. The evidence cited at pages 6-7 of the decision thus strongly supports a finding of inadequate CORP rail service.

On page 7 of the decision served March 4, 2009, the Board appears to exonerate CORP for its failure to provide scheduled service on three consecutive Tuesdays and Thursdays between January 31 and February 12, 2008 because CORP allegedly "ran out of space to push the snow" that had fallen during that period, and ran extra trains on February 2 and February 8 "to clear out the backlog of carloads and deliver empty cars." On the contrary, as demonstrated in the Supplemental Verified Statement of YWR President Court Hammond, CORP's rail operations were not impeded by snow during that period. (Supp. V.S. Hammond, Tab 4, at 1-5). The Train Chart shows that on February 2, CORP transported only 19 of the 26 carloads that had been left behind on January 29, and did not deliver any empties. (Response of CORP at 63). In fact, no empties were provided until February 8, 10 full days after empties were previously provided to the shippers (*id.*). There is no way that failure to provide empty cars for loading for a period of 10 days can be reconciled with the provision of adequate service.

In addition, the Board incorrectly found that CORP's failure to quote a rate and to provide a service schedule for new traffic developed by RFP for transportation from Weed, CA to Saginaw, OR does not establish grounds for an alternative service order because the rail transportation contract between RFP and CORP presumably provided for a rate for that traffic (decision served March 4, 2009 at 9). The fact is that neither the RFP-CORP contract nor public tariffs provided for a Weed-Saginaw rate. (Supp. V.S. Jeffers, Tab 3 at 2). Nor did CORP cooperate in providing a service schedule for the new traffic. As Mr. Jeffers aptly put it (*id.*):

. . . We made repeated telephone requests to CORP to work out schedules and coordination of moving both full and empty cars into and out of the (Saginaw) customer's facility, but could never get a response.

An unmistakable hallmark of a rail carrier's provision of inadequate service on a rail line is its disinterest in new rail traffic on the line. CORP's disinterest in the Weed-Saginaw traffic is thus a prime example of inadequate service.

2. **CORP's 2-day-a-week Service Is Inadequate To Satisfy Petitioners' Commercial Needs**

In describing the effect of inadequate rail service in the *PYCO* case, the Board said (2006 STB LEXIS 42 at *11:

... PYCO has demonstrated through ample, credible evidence that, as a consequence of these service inadequacies, it will soon run out of storage capacity for its cottonseed oil and related products, and will be forced to curtail or close operations ...

It appears from subsequent events, however, that PYCO was not forced to curtail or close operations. In Finance Docket No. 34870, *PYCO Industries, Inc. v. South Plains Switching, Ltd. Co.*, PYCO filed a formal complaint to recover damages resulting from inadequate rail service. In an amendment to that complaint filed on May 17, 2007, PYCO stated that it was able to avoid lost sales during the period of inadequate rail service by trucking its product from Lubbock, TX to Plainview, TX for transloading to railcars for subsequent transportation to destination (amended complaint in F.D. No. 34870 at 3-4). The amended complaint sought recovery of the excess costs of that truck-rail transportation compared to all-rail transportation. Thus, in the *PYCO* case, the adverse effect of inadequate rail service took the form of increased transportation costs, not lost sales to customers. The amended complaint was voluntarily dismissed following a settlement of its issues.

The Supplemental Verified Statements hereby filed make it clear that CORP's 2-day-a-week service was wholly inadequate to satisfy the commercial transportation needs of RFP and TPC. As articulated by Mr. Barbee of RFP (Tab 1 at 3):

. . . The move by CORP from 5 day to 2 day/week service was the final act that forced us to abandon the JIT protocols of rail and in turn switch to trucking because we need reliability of service and certainty as to our receipt of raw materials for scheduling our manufacturing plants. CORP's rail service did not provide the reliability of service or certainty that we had received from the rail operators on this line in the past and which service we had developed our mills and product line around.

JIT refers to "Just in Time" delivery. The JIT protocol means that you purchase raw materials, manufacture finished goods, and ship them on time to customers within the shortest time frame possible. If a marketer of forest products is not able to meet JIT protocols, it will no longer be a viable supplier. (Tab 1 at 2).

Consequently, RFP was required to resort to more costly truck transportation for receipt of its veneer and logs for use as raw materials. As Mr. Barbee testified (Tab 1 at 3):

. . . The price of the raw material is dependent both on the acquisition costs and the transportation costs. In the case of logs for our Riddle mill, the sourcing shift away from the Northern California timberlands resulted in us incurring increased acquisition costs for logs primarily due to the transportation costs . . .

The same was true for veneer. Mr. Barbee stated (Tab 1 at 2):

. . . During this time period when the trainloads of veneer were not delivered to Oregon on time, we had to scramble to arrange raw material from other sources which entailed last minute arrangements for trucks to haul veneer from these other facilities . . .

In addition to added transportation costs for trucking, CORP's inadequate rail service resulted in added costs for railcars leased by RFP. As aptly explained by RFP's Traffic Manager-Rail (Tab 3 at 3):

... The leased cars enable us to control shipments and therefore have timely movement of materials. The economics of the leased cars were established based on the efficiencies of being able to schedule the cars in a manner wherein some cars are being unloaded in Oregon while other cars are being loaded in California, thus both facilities can operate in an efficient manner. To make this work we require not only that cars not be bunched at one mill, but also that we have five day per week service. The cars were essentially in service for the full work week. However, if the cars are only moved two times per week then the cost of the cars becomes a significant negative factor on the economics of rail and the bunching of cars prevents us from an orderly movement of materials.

* * *

This deterioration in service was substantial and measurable after January 2008 throughout the 2 day week operations and continued until we were forced to go to trucks in order to maintain our mill operations. I am able to document that empty cars were bunched in Oregon on 2-3 days in January 2008 alone, and in turn loaded cars were bunched in California 2-3 days in January 2008 as well. By bunching the turn around times precluded us from shipping all the volume we normally shipped.

The lack of reliable transportation by CORP has forced RFP out of the "green market" for stud lumber. "Green" stud lumber products are certified under the Forest Stewardship Council (FSC). RFP's northern California timberlands are one of the few FSC certified timberlands for green certified logs which are used in the manufacture of green stud lumber products. Very few private timberlands in Oregon are FSC certified. Due to the unreliability of CORP's rail service, RFP decided not to introduce the green stud lumber product line out of fear that CORP would not provide the service required to ship green logs from Weed, CA to Riddle, OR to support the program. As a result, the oversized green logs were sold into the northern California log market

at an economic loss because that market was depressed due to the absence of wood manufacturing facilities in the surrounding area. (Supp. V.S. Barbee, Tab 1 at 3-4).

Thus, CORP's 2-day-a-week service was inadequate to satisfy the commercial needs of RFP and TPC because, as in the *PYCO* case, that rail service resulted in substantially increased freight transportation costs, greatly increased costs and reduced efficiency of RFP's leased railcar fleet, and inability to participate in the market for "green" stud lumber.

3. **There Were No Internal Difficulties At The Oregon Mills Of RFP And TPC That Contributed To The Problems About Which They Complain**

At page 7 of the decision served March 4, 2009, the Board made the following statements:

The evidence, however, suggests that the problems at RFP's and TPC's Oregon mills were not solely attributable to CORP's 2-day-a-week schedule. CORP attributes the problems at these mills to internal difficulties, noting that TPC's Medford Mill has room to place only two cars . . .

Contrary to the Board's statements, there was no such evidence. There is no sworn testimony in any of CORP's pleadings to support allegations of "internal difficulties" at the mills of RFP and TPC. The sole verified statement in CORP's Response dated September 3, 2008 was in behalf of CORP Director of Marketing Patrick Kerr. (Response at 39). There are no such allegations in Mr. Kerr's verified statement. The only references to "operational difficulties" and sidetrack capacity at TPC's Medford mill are in unsworn and unsupported allegations in CORP's argument at pages 24-25 and 27 of CORP's Response dated September 3, 2008.

CORP's unsworn allegations are false. For one thing, TPC's trackage at Medford can accommodate 6 to 7 cars, depending on their length, not 2 cars as alleged by CORP. (Supp. V.S. Hart, Tab 2 at 3). That trackage accommodates both the daily loading and shipping of finished

products, as well as the daily unloading of veneer. (*Id.*). That track is shown in Ms. Hart's Photo 8 as it enters TPC's building, and in Photo 12 as it passes through and out into the open. (*Id.*). Moreover, the siding is adjacent to CORP's own yard at Medford, which has consistently provided space for the railcars necessary to operate the mill. (*Id.*, at 2).

Ms. Hart's Supplemental Verified Statement and the 12 photographs attached thereto establish conclusively that TPC's internal rail transportation facilities at its Oregon mills are entirely adequate for handling inbound shipments of raw materials and outbound shipments of finished products. Ms. Hart assumed oversight of rail freight for TPC in 1994. TPC's facilities at Yreka and at its Oregon mills have consistently been adequate to handle all of TPC's rail transportation needs throughout that 15-year period. As aptly stated by Ms. Hart (Tab 2 at 1):

... It was only commencing in the fall of 2007 through the spring of 2008 when we experienced service problems resulting from CORP's inability to move cars in a timely manner, failure to provide cars, and its bunching of cars at the various facilities, that we were unable to meet our rail shipping needs. Based upon the long history of the facilities being able to handle the shipping, the 2007-08 rail issues were clearly service related and not a problem with the facilities. As noted above, throughout the 15 years I have been responsible for rail transportation at our facilities we never had a problem with facilities being able to handle our rail shipping.

TPC's Oregon mills are well-established plants. TPC's plywood mill has been located at Medford since 1938 and its plywood mill has been located at Grant's Pass, OR since 1945. Both of those mills were designed to accommodate both the acceptance of raw materials and the shipment of finished goods by rail. Those plants have successfully done so throughout their existence until CORP's reduction of rail service resulted in bunched deliveries of raw materials. (Supp. V.S. Hart, Tab 2 at 2).

RFP has siding at its Oregon mills that is adequate to handle its shipping requirements. The RFP Riddle mill has spur track to accommodate 14 to 15 cars. With the exception of its OSB facility at Riddle, that siding has been in place for decades. The trackage accommodated large traffic volumes during busy shipping periods in the 1970's and 1990's. The only physical limitations of those facilities occur when CORP bunches cars and jams up the system. That results from inadequate rail service, not inadequate rail facilities. (Supp. V.S. Jeffers, Tab 3 at 4-5; *see, also*, photos 13 and 14).

Based upon all of the foregoing, a finding is warranted that there were no internal difficulties at the Oregon mills of RFP and TPC that caused or contributed to the rail transportation problems about which those shippers have complained.

4. **It Is Not Feasible To Build More Track At The Mills For Loading And Unloading Cargo Or Storing Raw Materials At The Mills**

It bears repeating that the Board's inquiry, whether building more track or storing raw materials at the mills would alleviate Petitioners' transportation problems, was prompted by CORP's unsworn and demonstrably inaccurate contention that there is only a 2-car spot at TPC's Medford mill, and that there are "internal difficulties" at the Oregon mills. The successful functioning of those mills for decades until CORP drastically curtailed rail service thoroughly disproves CORP's allegations.

Petitioners' supplemental verified statements establish that it is not feasible to construct more private track at the mills in any event. TPC's daily production level of veneer is the equivalent of approximately 5 carloads. At 5-day-a-week service, the private trackage at TPC's Oregon mills was adequate to accommodate that 5 carloads of veneer per day. However, at 2-

day-a-week service, that private trackage is insufficient to accommodate the 13 cars that would have to be delivered on each of those two days to satisfy TPC's veneer requirements. Those 13 carloads, plus the traffic required by RFP, would exceed the train size that CORP has said that it could transport over Siskiyou Summit. In addition, that number of cars exceeds the safe storage capacity at CORP's railhead at Montague, CA. (Supp. V.S. Hart, Tab 2 at 2).

It is physically impossible for TPC to lengthen the private sidetrack at its mills to accommodate the required 13 cars at a time. Ms. Hart has presented a series of photographs to illustrate why that is so. Photographs 1 through 5 show that, as to TPC's mill at Grant's Pass, OR (Tab 2 at 3):

. . . Given the location of the right-of-way, there is no room on TPC's property to add another spur and loading dock. Similarly, as far as lengthening this spur it is also impossible given that it already occupies all of the useable space within the building and any expansion would require that we extend onto the adjacent owner's facility.

Ms. Hart summarized the Grant's Pass situation as follows (Tab 2 at 3):

To place this spacing in perspective, the TPC's daily production at this mill produces 6 railcars of plywood. This level of production requires us to load finished products and unload veneer at the rate of 10 to 12 cars/day. Two day/week service won't work with a spur that can only spot 8-9 cars at a time when 50 to 60 car loads per week are required to be moved in and out of this facility.

It is equally impossible to expand the private trackage at TPC's Medford mill. Six or seven railcars can be spotted on the existing sidetrack at that mill. Photographs 8 through 10 and 12 depict that existing private track. Photograph 11 shows a large buried fire system tank with accompanying controls outlined by red posts. That houses the fire control system for the Medford mill. To add private sidetrack at the Medford mill would require construction of the

track over the top of that fire control installation, which is simply not feasible. Even if private track could be constructed over the fire control system, the additional loading-unloading dock that would also be required would be functionally useless because it would be on the wrong side of the tracks. CORP's unsworn claim that modifications of this nature could easily be done reflects CORP's lack of operational experience in wood products facilities and TPC's facilities in particular. (Supp. V.S. Hart, Tab 2 at 3-4).

The same is true for RFP. Mr. Jeffers has presented Photographs 13 and 14 to illustrate the existing private trackage at RFP's Riddle mill. Mr. Jeffers has related the physical conditions at the mill to the inadequacy of CORP's 2-day-a-week service as follows (Tab 3 at 5):

... The Riddle loading facility allows us to spot 14-15 cars on the spur. This allows us to unload veneer at one end and to load finished product simultaneously at the other end. It is a full day's operation to process the 14-15 cars. Once we start loading or unloading we can not stop to move the cars out to facilitate different cars on the spur since it would create a safety hazard and require closing up cars and moving all equipment material away from the cars. In addition to the plywood facility we also unloaded 3 cars per day at Riddle and 2 log cars per day at Dillard. If two days worth of veneer was shipped to Riddle, I could not process it nor could I store the cars while awaiting space to unload. The siding outside are not sufficient in size and any stored cars would create both a safety hazard and impede normal mill operations. Two day per week service simply would result in a jam up the system.

In sum, TPC and RFP lack the ability to alleviate the adverse effect of CORP's curtailed rail service by means of construction of additional private track at their Oregon mills.^{1/}

^{1/} There has been no serious contention that RFP and TPC should mitigate the effect of CORP's inadequate rail service by storing more raw materials at their Oregon mills. As clearly and thoroughly explained in the Supplemental Verified Statement of RFP Vice President Barbee (Tab 1 at 1-3), that practice would be directly contrary to the Just-in-Time protocol on which modern marketing of forest products is based.

5. The Rail Options Referred To In The March 4 Decision Are Not Feasible In Light Of Union Pacific's Position

Two alternative rail routings, both of which involve rail transportation by Union Pacific Railroad Company (UP), are suggested as potential "options whose viability would undercut petitioners' claim that they lack access to adequate rail service." (Decision served March 4, 2009 at 8). One such routing is transportation by UP over Siskiyou Summit. The other involves transportation by UP between Black Butte, CA and Eugene, OR (Cascade Subdivision) in connection with CORP at both locations. (*Id.*)

The short answer to these options is that UP is not interested in participating in the traffic. UP does not intend to reinstitute rail service over Siskiyou Summit, and UP does not want to haul the traffic over its Cascade Subdivision line (Black Butte-Eugene) because that line is at or near capacity. (Supp. V.S. Jeffers, Tab 3 at 4).

Inasmuch as that completely undercuts those options, it is not necessary to emphasize that in addition, RFP's earlier evidence established that the Black Butte-Eugene option is wholly unsatisfactory because of (1) the two additional rail interchanges; (2) the 150-mile circuitry; and (3) the non-truck-competitive rate level. (Rebuttal V.S. Jeffers at 7).

CONCLUSION AND REQUESTED RELIEF

The Board is respectfully urged to refer again to CORP's letter of December 13, 2007 to its shippers that announced the curtailment of rail service from 5 to 2-days-a-week. (Copy attached as Tab 6 for ready reference). There was no contention in that letter that the 60-percent reduction in rail service was warranted by a corresponding reduction in rail traffic, nor by any reduction in rail traffic at all. No such traffic reduction was shown at that time. The letter said

that "(t)he Siskiyou Subdivision is difficult, expensive terrain for rail operations," but that had been the case during all of the many years in which the Subdivision was successfully operated. It is no more expensive to operate now than in the past. The letter alleged, but did not attempt to demonstrate, that CORP loses money operating over the Siskiyou Subdivision. But if that was the case, the appropriate action was to seek abandonment (as in the Coos Bay case) so that local interests could acquire the line by an offer of financial assistance to continue needed rail service. Instead, CORP commenced a slow-motion abandonment by drastically curtailing rail service and exorbitantly increasing rates.

In those circumstances, the shippers' only recourse is alternative rail service for immediate relief, and a feeder line acquisition for the longer term. The wholly-unsatisfactory alternative is a continued impasse whereby the rail line sits unused because rail service over it is inadequate for the shippers' needs and rates are at levels designed to keep traffic off the rails. In those circumstances, the public interest strongly supports the remedy of alternative rail service. The Board should find that the evidence submitted by Petitioners, as supplemented by the verified statements in this supplemental filing, establishes conclusively that there has been a substantial measurable deterioration of CORP's rail service that warrants prescription of alternative rail service under 49 C.F.R. § 1146.1(a).

Respectfully submitted,

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*JKS
CORP*

To: Shippers That Move Traffic Via The Siskiyou Subdivision of CORP

From: Tom Hawksworth

December 13, 2007

CORP has a business problem. We lose money operating over the Siskiyou Subdivision. In order to try to stem our losses we will be making several changes in our service offering.

Effective January 15, 2008, all traffic that originates or terminates north of Belleview, OR will be interchanged at Eugene. Today a portion of this traffic moves south over the Siskiyou Subdivision via the Black Butte interchange. We have talked with UP about service schedules and have been told that total car cycle times should be roughly comparable to the cycle times today, even though some of these cars may travel further than they do today. We are also told that you will not see a change to your rate as a result of this routing change. You will not have to alter your bills of lading or do anything differently for the change to take place. We will make all the arrangements with UP. This change will reduce most of the tonnage moving over the Siskiyou Subdivision.

All traffic that originates or terminates south of Hornbrook that is interchanged with UP at Black Butte will continue to be interchanged at that point.

For traffic that originates and terminates in the Weed area on CORP, we will continue to operate over the Siskiyou Subdivision on a reduced service schedule effective January 15th. Our plan is to operate twice a week in each direction, but we will modify our schedule as appropriate for the traffic. And we will be working with our shippers to determine if we can secure enough revenue commitments to continue operating the line on a reduced schedule. We will seek some combination of higher prices and / or additional volume in an effort to achieve the necessary economics. If we are unable to secure the necessary economics to profitably operate the subdivision, we will discontinue all service over the Siskiyou mountain pass on April 15, 2008.

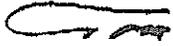
We are in the railroad operating business, so anytime we consider discontinuing service it is painful for us. But we do not want to be in the business of losing money, so we are prepared to make some changes. The Siskiyou Subdivision is difficult, expensive terrain for rail operations. Shifting most of the traffic to the Eugene interchange and reducing our days of service will help us reduce our costs. We hope that we will be able to offer you a value proposition that is sufficiently attractive to you to allow us to maintain operations over the segment while still providing you savings compared with alternative transportation and / or shipping patterns. We understand that you will only favor us with your business if we earn it by providing you with the best service and rate option for you. We trust that you will understand that we will only be able to continue operations over the Siskiyou Sub if the line can become economically viable.



We will continue to keep you apprised if there are any changes to this plan.

I will ask for a meeting with you in the near future to discuss this change more fully. In the meantime, if you have any questions please let me know.

Thank you,

A handwritten signature in black ink, appearing to be a stylized name or set of initials.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2009, I served the foregoing document, Petitioners'

Supplemental Statement, by e-mail on the following:

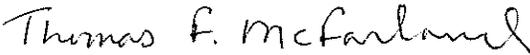
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